

NH.PUC\*01/03/95\*[80792]\*80 NH PUC 1\*Public Service Company of New Hampshire

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80 NH PUC 1

**Re Public Service Company of New Hampshire**

DR 94-172

Order No. 21,482

New Hampshire Public Utilities Commission

January 3, 1995

ORDER adopting stipulation allowing an electric utility to maintain its existing fuel and purchased power adjustment clause rate of 0.335 cents per kilowatt-hour. However, the utility is not allowed to reduce its nuclear capacity factor for the Seabrook Station from 100% to 90% with respect to replacement power costs associated with an unscheduled outage. The utility also is not allowed to reduce its coal inventory reserve at the Merrimack Station.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Nuclear generating costs — Replacement power costs following unplanned outages — Nuclear capacity factor — No reduction from 100% to 90% — "Deterministic" versus "probabilistic" approach — Retention of existing fuel clause rate — Electric utility — Stipulation. p. 3.

2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Coal inventory — Need for backup supply — No reduction in coal reserves. p. 3.

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APPEARANCES: Gerald M. Eaton, Senior Counsel, Public Service Company of New Hampshire, and Gerald Garfield, Esq. of Day, Berry and Howard on behalf of Public Service Company of New Hampshire, Office of the Consumer Advocate by Michael A. Holmes, Esq. on behalf of residential ratepayers, and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 15, 1994 Public Service Company of New Hampshire (PSNH or the

Company) 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, 1994 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.

Prior to the November 18, 1994 hearing, the parties and Staff filed a document entitled "Stipulation and Recommendation Regarding FPPAC Rate Level" (First Stipulation). The First Stipulation, *inter alia*, recommended 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.

On December 1, 1994 the Commission issued Order No. 21,446 adopting the First Stipulation setting the FPPAC rate at \$0.0035 per kWh for this FPPAC.

On November 18, 1994, the Commission held a hearing on the merits of the parties' and Staff's positions on the capacity factor to be applied in assessing appropriate replacement power cost disallowances for imprudent nuclear outages<sup>1(1)</sup>, PSNH's proposed two year "trial" reduction in the size of Merrimack Station's coal reserve, and a Second Stipulation among

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the parties and Staff. At the November 18, 1994 hearing the Commission also continued the issue of Extraordinary Measures/Imprudence Mitigation Fund for hearing in March of 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

As was indicated above, the OCA, PSNH and Staff entered into a Second Stipulation which was presented to the Commission at the November 18, 1994 hearing. The Second Stipulation resolves the issues of an unplanned outage at the Seabrook Nuclear Power Station related to the Main Steam Isolation Valves (MSIV), extensions of refueling outage 3 at the Seabrook Nuclear Power Station for reemphasis of procedural guidelines to Seabrook Station staff at the commencement of the refueling outage 3 and the retrieval of certain parts of a pair of Binoculars out of the reactor core, and resolution of the consequences of an outage at the Connecticut Yankee nuclear unit for repairs to the thermal shield.

The Staff, OCA and the Company all supported the Second Stipulation as an equitable resolution of the disputed issues.

### A. *Public Service Company of New Hampshire*

PSNH asserts that the appropriate capacity factor to be applied by the Commission in assessing the coinciding disallowance for replacement power costs resulting from an imprudent outage at nuclear power stations is 90%. PSNH bases its position on the fact that no nuclear power station runs at 100% of its rated capacity 100% of the time; thus, it is inequitable to disallow 100% of the incremental cost of the replacement power purchased due to imprudence at

a nuclear power station.

PSNH requested that the Commission allow it to reduce the coal inventory at Merrimack Station from 70 days to 60 days in December and January, from 60 days to 50 days and from 90 days to 80 days in the event of a rail or United Mine Workers (UMW) Strike for all other months on a "trial basis" for two years. PSNH bases its request on its belief that the inventory amounts currently in place exceed the amount needed to provide safe and adequate service to its customers. In support of this contention PSNH noted its ability to maintain an adequate supply of coal at Merrimack Station (90 days) in 1993 during a 270 day strike by the UMW, its lease of two sets of 100 rail cars and an overall utility industry practice of reducing coal inventories to reduce operating costs.

In its proposed FPPAC rate the Company passed all Hydroelectric Small Power Producer cost reductions on to ratepayers<sup>2(2)</sup>.

#### *B. Office of the Consumer Advocate*

The OCA objected to the reduction of the nuclear capacity factor from 100% to 90%. The OCA adopted the position set forth by Staff recommending a deterministic rather than a probabilistic approach to imprudent nuclear outages. The OCA went on to state that a 90% capacity factor is reasonable and appropriate in long range planning for such factors as fuel planning, but was inappropriate for short term outages.

The OCA also objected to the proposed reduction in the coal inventory at Merrimack Station. The OCA indicated that the proposal was inequitable to ratepayers because stockholders would receive all of the benefits of the savings from reduced operating costs during the Fixed Rate Period while ratepayers would bear all of the risk associated with the reduction in inventory. In its post-hearing brief the OCA offered to agree to the reduction provided PSNH bore the risk of replacement power disallowances if Merrimack Station was unable to operate due to the proposed reduction.

#### *C. Staff*

The Staff objected to PSNH's proposal to reduce the nuclear capacity factor from 100% to 90%. As was stated above Staff believes a "deterministic" approach to nuclear outages is preferable to the "probabilistic". Staff asserted that the Commission should conduct discreet factual analyses of each imprudent outage to assess 100% of the appropriate capacity factor to be applied in computing any disallowances.

Staff concurred in PSNH's proposal to

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reduce the coal inventory at Merrimack Station. Staff added, however, that the 90 day strike inventory should remain unchanged. PSNH concurred in Staff's position on the 90 day strike inventory.

### III. COMMISSION ANALYSIS

As is set forth above the issues for Commission consideration are the Second Stipulation, the appropriate nuclear capacity factor, the proper coal inventory at Merrimack Station, and the

appropriate treatment of all cost reductions due to the renegotiation of the six Hydroelectric SPP rate orders.

[1] We find the Second Stipulation reached among the parties and Staff brings to an equitable conclusion the resolution of certain disputed outages at Seabrook Station and Connecticut Yankee. Appendix A. The Second Stipulation is supported by the testimony of the expert retained by the Commission and the OCA, and we believe ratepayers have been protected from any potential imprudence while avoiding costly litigation. We, therefore, find the Stipulation just and reasonable and will approve it.

The Company has not persuaded us that 90% is the appropriate nuclear capacity factor to be used in computing the coinciding disallowance for replacement power. In view of the fact that the Company testified that Seabrook Station's current long term capacity factor between refueling outages is 87%, we find no basis in the proposed 90% capacity factor.

Furthermore, we believe the approach recommended by the Staff and the OCA is a more justifiable approach on the record before us. The adoption of a so-called deterministic approach in assessing the appropriate capacity factor to be applied to a particular imprudent outage leaves open a range of possible capacity factors. Those capacity factors depend on the particular facts of each imprudent outage, including among other factors, the operating conditions prior to and subsequent to the outage and the length of the outage. Overall, we consider the case-by-case review of outages to be the fairest approach to all concerned parties. Furthermore, we reject the company's assertion that it is being held to a perfection standard since the deterministic approach clearly leaves room for the recovery of replacement power costs when the outage does not result from imprudence.

[2] In regard to the coal inventory at Merrimack Station, we believe the risk of any reduction in inventory outweighs the costs. The estimated savings of approximately \$175,000, a small percentage of the entire fuel costs of Merrimack Station, is a small price to pay for the insurance that this low cost plant will be available to provide safe and reliable service to customers at a relatively low cost. We also find no support for a "trial" reduction as we fail to see what data such a trial would establish that would not be apparent from an historical analysis of inventory levels at the current reserve requirements.

Finally, we support the Company's inclusion of all of the savings resulting from the renegotiation of certain rate orders with certain hydroelectric facilities in FPPAC. We further note that the FPPAC rate also includes the first of three \$500,000 reductions in FPPAC rates resulting from the settlement of Docket DR 93-179

3(3) .

Based upon the foregoing, it is hereby

ORDERED, that the appropriate nuclear capacity factor to be used in computing the coinciding incremental disallowance for replacement power costs incurred because of an imprudent outage is a factual determination that will be based on the circumstances of each discreet outage; and it is

FURTHER ORDERED, that the coal inventory at Merrimack Station shall remain at their

current levels.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1995.

FOOTNOTES

<sup>1</sup>The capacity factor proposed by PSNH would not only apply to Seabrook Station but all other nuclear stations in which PSNH has an interest or entitlement.

<sup>2</sup>As part of its agreement with the State of New Hampshire which allowed a reorganized PSNH out of

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bankruptcy, Northeast Utilities, PSNH's parent, agreed to use its "best efforts" to renegotiate rate orders with six Hydroelectric SPPs and eight woodburning SPPs. These savings are the result of the renegotiation of all six of the Hydroelectric SPP rate orders.

<sup>3</sup>Pursuant to the Rate Agreement, all of the savings resulting from the renegotiation of rate orders with the eight wood burning plants are applied to the so-called deferral account during the fixed rate period, which ends on June 1, 1997. Subsequent to that date savings from the TIMCO and Bristol plants will be applied equally to reduce FPPAC costs and the remaining deferral accounts.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-172, Order No. 21,446, 79 NH PUC 660, Dec. 1, 1994.

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NH.PUC\*01/03/95\*[80793]\*80 NH PUC 4\*Claremont Gas Corporation

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80 NH PUC 4

**Re Claremont Gas Corporation**

DE 94-056

Order No. 21,483

New Hampshire Public Utilities Commission

January 3, 1995

ORDER directing a natural gas local distribution company to employ a third-party technician acceptable to commission staff to oversee and monitor the company's abandonment of service and associated purging of residual gas from a pipeline. For the original order authorizing the company to discontinue service, see Order No. 21,309 (79 NH PUC 426).

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1. SERVICE, § 65

[N.H.] Commission jurisdiction — As to abandonment and discontinuance of service — Collateral issues — Selection and appointment of person to oversee abandonment procedures — Gas utility. p. 7.

2. SERVICE, § 243

[N.H.] Abandonment — Terms and conditions — Appointment of qualified technician to oversee discontinuance activities — Gas utility. p. 7.

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APPEARANCES: Ransmeier & Spellman, P.C., by Harold T. Judd, Esq. on behalf of Claremont Gas Corporation; Donald Ware on behalf of the City of Claremont; Kenneth Traum 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:

ORDER

I. PROCEDURAL HISTORY

On August 5, 1994, the New Hampshire Public Utilities Commission (Commission) issued Report and Order No. 21,309 which approved the Settlement Agreement (Agreement) entered into by Claremont Gas Corporation (Claremont), the Office of Consumer Advocate (OCA), and the Staff of the Commission (Staff). The Agreement outlined the terms and conditions under which Claremont was authorized to permanently discontinue its gas service within its franchise territory. The Agreement was presented to the Commission at a duly noticed final hearing on July 21, 1994.

During the final hearing there was considerable testimony offered by Claremont relating to the abandonment of Claremont's gas pipelines. Specifically, Claremont acknowledged the need to purge the main pipelines of residual gas after the system is shut down and all customers are converted to bottled propane. Claremont indicated its intention to designate an employee from the Synergy organization, Robert Autry, as

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the individual who would oversee the abandonment project. According to Claremont, Mr. Autry has had substantial experience purging propane gas pipelines in Florida.

Mr. Autry never provided the promised supervision. Accordingly, approximately one month after the issuance of Report and Order No. 21,309, Staff filed a motion seeking an order requiring Claremont Gas to retain a third-party project supervisor. The basis for this request was Staff's assertion that the pipeline abandonment was being inadequately supervised, was proceeding in the absence of specific plans or procedures, and that Claremont Gas had planned to purge a section of pipeline without notifying Staff. Staff subsequently withdrew its motion,

without prejudice, and by letter dated September 15, 1994, advised the Commission that it was continuing to negotiate with Claremont with regard to the abandonment process.

After Staff withdrew its motion seeking third-party supervision, the docket reflects a significant exchange of correspondence between Claremont and Staff culminating in Staff filing a Motion to Show Cause and Request for Hearing on November 10, 1994. Staff's Motion requested that Claremont be ordered to appear at a hearing in order to explain why it had failed to involve Robert Autry in the abandonment planning process and also to update the Commission regarding various matters relating to the conversion of customers. Claremont countered with a November 16, 1994 Response and the Commission held a duly noticed hearing on November 29, 1994. The only contested issues addressed at the hearing relate to the adequacy of the personnel who Claremont has designated to complete the pipeline abandonment<sup>1(4)</sup>.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Claremont

Claremont's Response alleges, *inter alia*, that Staff's Motion simply reflects the frustration of certain Staff members that they are not empowered to make management decisions for Claremont. Claremont contends that it already has the necessary personnel in place to complete the abandonment safely, and that Staff has made repeated demands during the preparation of Claremont's written abandonment plan — all of which Claremont has accommodated — including those that Claremont considered "irrelevant or unnecessary". It further contends that the Regional Manager for Synergy Gas Corporation, James M. Trickett, is qualified and competent to supervise the pipeline abandonment.

Claremont's Response asks the Commission to (a) deny Staff's Motion, (b) order Staff to divulge the "statutes and regulations" and other standards that establish the level of expertise necessary to supervise the abandonment, and alternatively, (c) order a technical session that includes the Chief Engineer and any Commissioners who wish to attend for the purpose of addressing the issues raised in Staff's Motion.

During the hearing Mr. Trickett characterized the pipeline abandonment as a "simple process" of injecting nitrogen gas into the pipeline. He explained that the original abandonment plan called for using a compressor to draw the residual gas out of the pipeline, but that because this proposed approach had not been supported by Staff, Claremont agreed to use the so-called nitrogen gas methodology

2(5).

Claremont alleges that the modified abandonment plan it has developed virtually eliminates the safety concerns originally raised by Staff. Mr. Trickett testified that Robert Autry was originally proposed by Claremont because he had experience abandoning gas pipelines using a compressor. Now that Claremont has agreed to use nitrogen gas instead of a compressor, it argues that Mr. Autry's involvement is unnecessary because he has no more experience using nitrogen gas than does Mr. Trickett.

During the hearing in this matter Mr. Trickett testified that he had been designated by Synergy to supervise the pipeline abandonment because he has experience purging pipelines in

trailer parks and small residential developments on Florida. Mr. Trickett added that although he had never abandoned a system of Claremont's size, he possesses the necessary qualifications

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to safely purge the pipeline. Claremont also introduced a letter from John Martin, who is the Monitor which Claremont retained pursuant to the Settlement Agreement, which supports Claremont's contention that it has the necessary personnel to complete the abandonment.

*B. City of Claremont*

The City of Claremont appeared through its Engineer, Donald Ware, who testified that he would like the pipeline to be purged as soon as possible. According to Mr. Ware, the City's primary concern with any delay is the safety risk associated with emergency excavations which are frequently necessary because of spontaneous water main breaks. Mr. Ware testified that from the City's standpoint, the reduced safety risk outweighs any problems associated with doing the abandonment during the winter.

*C. OCA*

The OCA offered no testimony during the hearing in this matter but it did cross-examine the witnesses in order to clarify Staff's position with regard to the adequacy of Claremont's personnel and the risks associated with the pipeline abandonment. OCA indicated that it would defer to Staff's expertise with regard to the technical issues in dispute.

*D. Staff*

Staff presented the testimony of Richard Marini and Robert Egan, respectively the Staff's Gas Safety Engineer and a Utility Analyst in the Safety Division. Messrs. Marini and Egan both testified that Mr. Trickett lacked the level of experience and technical expertise which they believed necessary to safely supervise the pipeline abandonment.

Mr. Marini acknowledged Mr. Trickett's experience in the retail propane industry, but added that Claremont Gas is a distribution system with fundamentally different attributes than the propane lines which Mr. Trickett had previously abandoned. Mr. Marini supported his opinion by referencing several sections of the American Gas Association (AGA) publication *Purging Principles and Practices*, and as an example he indicated that Mr. Trickett had overlooked an important calculation during the planning process.

Mr. Marini also related his observations of the Hanover Street abandonment which was conducted under Mr. Trickett's supervision. According to Mr. Marini, Staff considered the Hanover Street abandonment a "pilot" in order to evaluate Claremont's request to have Mr. Trickett supervise the abandonment of the remainder of the pipeline. Mr. Marini stated that the Hanover abandonment was not conducted in a satisfactory manner, and in support of this conclusion he offered a letter from William Gute who is the Eastern Regional Director of the United States Department of Transportation Office of Pipeline Safety. Mr. Gute was in New Hampshire for his annual evaluation of the Commission's Gas Safety Program and he accompanied Mr. Marini to Claremont on the day of the Hanover abandonment. Mr. Gute's November 21, 1994 letter expressed his "serious reservations" about the qualifications of the Claremont personnel who conducted the Hanover abandonment.



Mr. Egan testified that Mr. Trickett has not demonstrated that he has the planning capability to supervise the abandonment. Messrs. Egan and Marini also expressed concern that Claremont had failed to address various issues while planning the abandonment until Staff specifically requested their inclusion. Despite Staff's input, Messrs. Egan and Marini testified that Claremont's abandonment plan was still inadequate, and both recommended that Claremont should be required to seek the assistance of an individual with greater expertise and experience who could supervise the pipeline abandonment.

### III. COMMISSION ANALYSIS

When we approved the Settlement Agreement in this matter, we directed Claremont to consult with Staff regarding the personnel who will be utilized to abandon the distribution pipeline. While we were hopeful that a consensus could be reached on this issue, our order specifically reserved the authority to adjudicate

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and resolve any disputes which arose during the abandonment process. Order No. 21,309, p. 12.

[1] In addition to the Settlement Agreement and our order approving it, we also recognize this Commission's responsibilities under RSA 374:28 in the matter of franchise discontinuances. That statute delegates to the Commission the authority to grant requests to permanently discontinue service when to do so is consistent with the public good. In exercising its decision-making authority, the Commission has the discretion to establish the terms under which such requests may be granted. In this case, we are confronted with an issue relating to public safety. It is our belief that we have been vested with broad discretion to impose those conditions which we deem prudent in order to ensure that the pipeline facilities of Claremont are safely abandoned.

The record reflects conflicting testimony and documentary evidence relating to several fundamental aspects of the pipeline abandonment which require technical expertise to evaluate. Staff and Claremont disagree on the level of risk to safety posed by the abandonment process. From this starting point, it is not difficult to envision differences with regard to the level of experience and qualifications which should be required of the supervisory personnel who are in charge of the project.

We note at the outset that Claremont's objection to Staff's recommendation is based primarily upon its assertion that its own management responsibility should not be "usurped" by the judgment of Staff. Claremont does not allege that Staff's recommendations will lead to unintended consequences, i.e., greater safety risks, or that additional supervisory personnel would impose an unreasonable expense to Claremont. Likewise, Staff does not contend that Mr. Trickett is incapable of completing the abandonment without incident. The issue before us is whether we should adopt Staff's recommendation and impose an additional safety measure which Claremont's management deems unjustified and unnecessary.

This is not a case which requires the resolution of disputed facts. We are called to settle a difference of opinion. We have the discretion to rely upon the expert opinion testimony

presented by Staff as long as there is a reasonable basis to do so. *New England Tel. & Tel. Co. v. State of New Hampshire*, 113 N.H. 92, 102 (1973).

[2] While recognizing that genuine differences of opinion may exist relative to the qualifications of Claremont's current personnel, for the reasons set forth below, we adopt Staff's recommendation and order that an individual who is acceptable to Staff be retained in order to supervise the pipeline purging and to ensure the abandonment is completed as expeditiously and safely as possible.

Although Mr. Trickett testified that he believes that he has the necessary expertise to safely manage the abandonment project, Staff expressed a contrary opinion. Based on our review of the testimony, we are not persuaded that Mr. Trickett has the qualifications to safely manage this particular abandonment project. As noted above, the instant dispute requires us to evaluate expert opinions and technical evidence in order to determine whether an additional measure of safety is in the public good. In light of the conflicting evidence regarding the safety risks involved with this project, we believe it is prudent to require on-site supervision by an individual with more proven technical expertise and experience in order to reduce the chances that a safety hazard will be created during the purging. This individual may be someone within the Synergy organization or a third-party, but his or her level of expertise and experience must be reasonably acceptable to Staff.

When we announced our decision at the Commission's December 19, 1994 meeting, we directed Claremont to retain the above-referenced individual by January 5, 1995. Due to the delay in finalizing our written order, we will extend that date to January 16, 1995. If additional time is needed to retain this individual we direct Claremont to seek Staff's consent and promptly advise the Commission of its efforts and need for additional time.

In addition, at least seven days prior to the commencement of the purging, Claremont should file with the Commission a comprehensive written abandonment plan which has been reviewed and approved by the above-reference individual.

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In light of the testimony offered by the City of Claremont, we are also concerned that the abandonment should be completed as expeditiously as possible. Mr. Trickett testified that the preparation work should be completed by the end of this month or early January 1995. According to Mr. Trickett the actual abandonment process will take four to six weeks once the preliminary work was completed. Transcript, November 29, 1994 p. 55. As such, we direct Claremont to complete the abandonment by February 15, 1994 unless good cause is shown why it cannot meet that deadline. Claremont should use whatever resources are available to it, including additional personnel, in order to safely complete the abandonment within the designated time frame.

Until the abandonment is completed, we direct Claremont to adhere to all requirements of DigSafe and all other applicable state and federal safety standards. We direct Claremont to keep Staff and the City of Claremont informed as to the status of the preparatory work, including the City-wide survey, and promptly advise the Commission if unforeseen events cause further delays.

Based upon the foregoing, it is hereby

ORDERED, that Claremont shall retain an individual by January 16, 1995 who is acceptable to Staff and who will provide on-site supervision during the purging process;

FURTHER ORDERED, that Claremont shall file a comprehensive abandonment plan at least seven days prior to the commencement of the purging process;

FURTHER ORDERED, that Claremont shall exercise its best efforts to complete the pipeline abandonment before February 15, 1995;

FURTHER ORDERED, that until such time as the pipelines are purged of residual gas, Claremont shall comply with all DigSafe requirements and other state and federal safety standards.

By order of the Public Utilities Commission of New Hampshire this third day of January, 1995.

#### FOOTNOTES

<sup>1</sup>Claremont offered testimony which explained that the process of converting its customers to bottled propane had gone slower than expected because there were technical difficulties associated with many of the conversions. At the time of the hearing, Claremont was in the process of completing the conversions of two customers; two other customers had failed to respond to Claremont's attempts to contact them.

<sup>2</sup>Claremont acknowledges that the nitrogen gas methodology was discussed during the final hearing but only in the context of dividing the pipeline into a *few* sections, as opposed to 8 sections which the current abandonment plan proposes. It is this difference which Claremont claims materially reduces the safety risks.

#### 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\*01/04/95\*[80794]\*80 NH PUC 8\*Public Service Company of New Hampshire

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80 NH PUC 8

### **Re Public Service Company of New Hampshire**

DR 94-252

Order No. 21,484

New Hampshire Public Utilities Commission

January 4, 1995

ORDER approving an electric utility's special rate contract with Freudenberg-NOK Limited Partnership - Seal Division, an economic development arrangement under which demand charges will be waived for incremental consumption above a base demand level.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic

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development — Incentives for increasing industrial demand — Special rate contracts — Waiver of demand charges for additional incremental demand — Electric utility. p. 9.

2. RATES, § 333

[N.H.] Electric rate design — Demand charges — Waiver of — Via special rate contracts — Relative to additional incremental use beyond base demand levels — Pursuant to economic development incentives — Terms and conditions. p. 9.

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BY THE COMMISSION:

ORDER

On October 27, 1994, Public Service Company of New Hampshire (PSNH) filed a request for approval of a special contract, NHPUC-98, between PSNH and Freudenberg-NOK Limited Partnership (Freudenberg-NOK), on behalf of its Seals Division located in Bristol, New Hampshire, effective January 1, 1995. PSNH's filing included testimony and exhibits supporting a discounted rate for Freudenberg-NOK in redacted form pending a Commission order granting approval of PSNH's Motion for Protective Order of certain information considered confidential in the Technical Statement. PSNH filed an unredacted version of its Technical Statement on December 14, 1994, after the Commission granted PSNH's Motion for Protective Order (Order 21,460 on December 13, 1994).

[1, 2] PSNH Special Contract No. NHPUC-98 provides for rates of electric service lower than those otherwise available under applicable tariff Rate LG by modifying the MAXIMUM DEMAND provision of Rate LG such that all kW demand above specified levels (the incremental demand associated with Freudenberg-NOK's expanded investment at its facilities in Bristol) are excluded from the bill. The exclusion of demand charges above the BASE DEMAND as specified in Special Contract No. NHPUC-98 provides an economic incentive for production expansion in Bristol, New Hampshire rather than at one of Freudenberg-NOK's other Seals Division plants. If Freudenberg-NOK does not expand production by an agreed upon level by March 31, 1995, or falls below a specified level at any time during the ten-year term of the contract, PSNH may at its discretion determine and bill Freudenberg-NOK under Rate LG of PSNH's tariff.

Article 4 of the special contract specifies that Freudenberg-NOK will not generate electricity

for its own use other than for emergency purposes nor shall Freudenberg-NOK receive electricity from any other supplier during the term of the Agreement. Either party may terminate Special Contract No. NHPUC-98 prior to the ten-year period, but no sooner than sixty (60) months after the Effective Date, upon six (6) months written notice. An early termination fee is required.

Two different base demand levels, one for the months of June through September and another level for all other months, are proposed based on the seasonality of Freudenberg-NOK's load. PSNH states that the revenue received under Special Contract No. NHPUC-98 will exceed the marginal cost of serving Freudenberg-NOK during each year of the special contract and both PSNH and Freudenberg-NOK assert that this special contract is necessary for Freudenberg-NOK's investment decision to locate additional production equipment in Bristol, New Hampshire.

PSNH claims that Special Contract No. NHPUC-98 meets the guidelines in the Commission's "Checklist on Economic Development and Business Retention Special Contracts". PSNH states that Special Contract No. NHPUC-98 will benefit PSNH and PSNH's other customers by the additional revenue contribution toward fixed costs, a portion of which will go to reduce the FPPAC rate.

Upon review of the filing and the Staff's recommendation, the Commission finds Special Contract No. NHPUC-98 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633), as

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well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good. We are concerned, however, that PSNH may at its discretion still grant the special pricing for incremental load to Freudenberg-NOK even if the expansion falls below the limits specified in the contract. We will, therefore, require PSNH to provide us with notification if Freudenberg-NOK fails to expand to at least the level contained in Special Contract No. NHPUC-98 or having expanded to the specified level falls below the level at anytime during the term of the contract.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-98 between Public Service Company of New Hampshire and Freudenberg - NOK Limited Partnership (Freudenberg-NOK), on behalf of its Seals Division located in Bristol, New Hampshire is approved effective February 1, 1995, unless the Commission provides otherwise in an 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-98, 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 Freudenberg-NOK by our approval today of this special contract; 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 January 13, 1995 and to be documented by affidavit filed with this office on or before January 30, 1995; 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 30, 1995.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 94-252, Order No. 21,460, 79 NH PUC 683, Dec. 13, 1994.

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NH.PUC\*01/04/95\*[80795]\*80 NH PUC 10\*Northland Telephone Company of Maine, Inc.

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80 NH PUC 10

### **Re Northland Telephone Company of Maine, Inc.**

DF 94-284

Order No. 21,485

New Hampshire Public Utilities Commission

January 4, 1995

ORDER declining to assert jurisdiction over a stock conversion plan proposed by the nonregulated parent holding company of a local exchange telephone carrier.

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#### 1. SECURITY ISSUES, § 36

[N.H.] Commission jurisdiction — Over holding company transactions — Proposed stock conversion plan — Lack of commission authority. p. 11.

#### 2. INTERCORPORATE RELATIONS, § 18.1

[N.H.] Holding companies — Stock transactions — Proposed stock conversion plan — Internal change among investor control at parent company level — Lack of commission jurisdiction. p. 11.

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BY THE COMMISSION:

ORDER

[1, 2] On November 30, 1994 Northland Telephone Company of Maine, Inc. (Northland) filed a petition seeking an order from this Commission either disclaiming jurisdiction over or approving the conversion by Fleet Venture Resources, Inc. and Chisholm Partners II, L.P. (the Fleet Investors) of certain non-voting preferred stock of MJD Communications, Inc. (MJD) into voting stock.

MJD owns all of the outstanding voting stock of ST Enterprises, Inc. (STE), which, in turn, owns all of the outstanding voting stock of Northland.

The Commission has reviewed the Northland petition and the exhibits submitted therewith.

The proposed conversion will enable the Fleet Investors to elect majorities of the boards of directors of MJD, STE and Northland.

This proposed change in control among investor groups internally at the holding company level is not a part of a sale of the enterprise that would constitute a transfer of Northland's franchise as a public utility in New Hampshire as was the case in *Re Contel of New Hampshire, Inc., et al.*, Report and Order No. 21,195 in Docket Nos. DF 93-240 and 93-241. It does not appear, therefore, that the proposed conversion requires the approval of this Commission under RSA 374:30.

Based upon the foregoing, it is hereby

ORDERED, that this Commission disclaims jurisdiction over the conversion by the Fleet Investors of their holdings of MJD non-voting stock into voting stock.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] *Re Contel of New Hampshire, Inc., et al.*, DF 93-240, DF 93-241, Order No. 21,195, 79 NH PUC 226, Apr. 20, 1994.

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NH.PUC\*01/04/95\*[80796]\*80 NH PUC 11\*New England Telephone and Telegraph Company

[Go to End of 80796]

80 NH PUC 11

**Re New England Telephone and Telegraph Company**



DR 94-304  
Order No. 21,486

New Hampshire Public Utilities Commission

January 4, 1995

ORDER suspending a local exchange telephone carrier's proposed tariff provisions relative to the offering of a new "Phonesmart" feature, "call return."  
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1. SERVICE, § 449

[N.H.] Telephone — Special service — "Phonesmart" options — Proposed new feature — Call Return — Suspension pending further review. p. 11.

2. RATES, § 553

[N.H.] Telephone rate design — Special service — "Phonesmart" options — Call Return — Repeat Dialing — Proposed billing changes — Per-use and monthly charges — Suspension pending further review. p. 11.  
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BY THE COMMISSION:

ORDER

[1, 2] On December 16, 1994, New England Telephone Company (NET or Company) filed proposed revisions to its Phonesmart tariff for effect January 15, 1995. NET proposes to introduce Call Return, a feature which enables the subscriber to automatically redial the telephone number of the most recent incoming call

**Page 11**

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except for calls from PBX lines, DID lines, lines that have activated per call blocking and lines that are equipped with line blocking. NET proposes to offer this feature on a monthly and a per activation basis.

In addition, NET proposes the addition of a per activation billing option to the Repeat Dialing feature and the addition of a new feature package for both Call Return and Repeat Dialing. This filing also removes the restriction which prevents line blocking from being provisioned on PBX trunks and makes Call Trace generally available on all non-subscribing customer lines in areas where Phonesmart service is available.

Staff has requested that the proposed tariff pages be suspended to allow for a thorough review of the filing and the accompanying supporting material.

Based upon the foregoing, it is hereby

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



NHPUC - No. 75  
Part A - Section 6 -  
Third Revision of Page 14  
First Revision of 14.1  
Second Revision of Page 15  
Fourth Revision of Page 16

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1995.

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NH.PUC\*01/04/95\*[80797]\*80 NH PUC 12\*Consumers New Hampshire Water Company, Inc.

[Go to End of 80797]

80 NH PUC 12

**Re Consumers New Hampshire Water Company, Inc.**

DE 94-257

Order No. 21,488

New Hampshire Public Utilities Commission

January 4, 1995

PETITION by the Town of Pelham for withdrawal of a franchise granted a water utility but never exercised as to certain parts of the town; parties granted a continuance and proceedings held in abeyance pending possible settlement conferences.

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1. PROCEDURE, § 25

[N.H.] Conduct of hearings — Continuance — Holding of proceedings in abeyance — Factors — Opportunity for settlement negotiations. p. 13.

2. FRANCHISES, § 55

[N.H.] Termination — Withdrawal of granted but unexercised franchise — At request of municipality — Proceedings held in abeyance — To provide for an opportunity for settlement negotiations. p. 13.

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BY THE COMMISSION:

ORDER

On July 31, 1989, this Commission granted to Consumers New Hampshire Water Company,

Inc. (Consumers or the Company), at that time known as Southern New Hampshire Water Company, Inc. (Southern), with the acquiescence of the Board of Selectmen, a franchise permitting it to provide water service to those remaining areas of the Town of Pelham, New Hampshire it did not already serve. *Re Southern New Hampshire Water Company, Inc.*, 74 NH PUC 262 (1989) (hereinafter the Order). The Company had previously been granted the authority to serve three discreet community water systems, or satellite systems, in Pelham, thus, the order effectively granted the Company the right to provide service throughout the Town of Pelham. *Id.*

In March of 1994, the residents of Pelham adopted a warrant article at Town Meeting requesting its Representatives to the General Court request that this Commission "restrict

**Page 12**

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Southern New Hampshire Water Company's franchise rights to the current three satellites it presently serves." Minutes of 1994 Pelham Town Meeting, at 186.

On October 27, 1994, Representative James J. Fenton filed a Petition in accordance with the above referenced warrant article requesting the Commission reconsider the Order so that the Town might "regain the Franchise Rights to those areas not currently served by Southern ... ."

On November 3, 1994, the Commission issued an Order of Notice scheduling a prehearing conference for December 20, 1994 to entertain motions to intervene and to set a procedural schedule to govern its investigation.

[1, 2] At the December 20, 1994 hearing, a number of parties appeared and sought intervenor status and Consumers filed a Motion to Dismiss. After an off the record conference among the parties, Consumers requested, on behalf of all the parties, that the Commission hold the petition and Consumers' motion to dismiss in abeyance while the parties attempted to negotiate a mutually acceptable agreement. All parties to the negotiations, which include Consumers, the Pelham Board of Selectmen, the Pelham Economic Development Corporation and those Members of the General Court representing the Town of Pelham also requested that any party have the right to activate the proceeding upon request.

Initially, we will treat the Petition as a request to withdraw the Company's authority to engage in business in those areas it does not currently serve in Pelham pursuant to RSA 374:28. We will hold the Petition and the Company's motion in abeyance as requested by the parties. If a mutually acceptable agreement has not been reached or a request to reactivate the Petition has not been made on or before December 31, 1995, the docket will be closed without prejudice.

Based upon the foregoing, it is hereby

ORDERED, that this matter be held in abeyance at the call of the parties; and it is

FURTHER ORDERED, that this docket be closed without prejudice in one year unless otherwise ordered by this Commission.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1995.

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NH.PUC\*01/04/95\*[80798]\*80 NH PUC 13\*Trans National Communications, Inc. of New Hampshire

[Go to End of 80798]

80 NH PUC 13

**Re Trans National Communications, Inc. of New Hampshire**

Additional applicant: Trans National Communications, Inc.

DE 94-274

Order No. 21,489

New Hampshire Public Utilities Commission

January 4, 1995

ORDER authorizing Trans National Communications, Inc. of New Hampshire to transfer its operating authorities to its parent company, Trans National Communications, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Factors affecting approval — Intercorporate transfers — Transfer of operating authority to parent company — Sharing of personnel, financial resources, and technology — Telecommunications carrier. p. 13.

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BY THE COMMISSION:

ORDER

[1] On November 17, 1994, the Commission received the joint petition of Trans National Communications, Inc. of New Hampshire (TNC-NH), and Trans National Communications, Inc. (TNC), requesting to transfer to TNC the Authority and Administrative Rule waivers held by TNC-NH. TNC-NH, a New Hampshire

**Page 13**

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corporation, is the successor to MLDA, Inc. d/b/a Member's Long Distance Advantage (MLDA), also a New Hampshire corporation. The Commission approved the name change of MLDA to TNC-NH in DE 94-265, pursuant to Order No. 21,443, issued November 30, 1994, (revised December 2, 1994). Authority was granted to MLDA in DE 92-007, pursuant to Order No. 20,756, issued February 9, 1993.

The petition is filed in response to the passage of Laws of 1994, Chapter 193, Section 4, amending the domestic incorporation requirements in RSA 374:22. TNC certified it will adhere to all rules and regulations established by the Commission. TNC, a Massachusetts corporation, is the parent company of TNC-NH.

TNC-NH and TNC utilize the same technical and managerial staffs. TNC has filed a copy of its Certificate of Authority issued by the New Hampshire Secretary of State. TNC attests it maintains the same financial position as TNC-NH. The proposed tariff of TNC is functionally identical to the current tariff of TNC-NH; TNC will maintain the same tariffed rates and features.

Based on the foregoing, it is hereby

ORDERED, that the Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire granted to TNC-NH is hereby assigned to TNC 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 TNC will comply with the terms of Order No. 20,756, subsequently clarified in Order No. 21,319, Order No. 21,443, and all rules, regulations, and orders of the Commission and shall assume all obligations of TNC-NH; and it is

FURTHER ORDERED, that the proposed tariff of TNC, NHPUC No 1 - Telephone is approved as filed; and it is

FURTHER ORDERED, that TNC file a compliance tariff, pursuant to NH Admin. Rule 1601.04, within twenty days of the issuance of this order.

By order of the Public Utilities Commission of New Hampshire this fourth day of January, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249 et al., Order No. 21,319, 79 NH PUC 442, Aug. 10, 1994. [N.H.] Re MDLA, Inc. (Members Long Distance Advantage), DE 92-007, Order No. 20,756, 78 NH PUC 94, Feb. 9, 1993. [N.H.] Re MDLA, Inc. dba Member's Long Distance Advantage, DE 94-265, Order No. 21,443, 79 NH PUC 655, Nov. 30, 1994.

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NH.PUC\*01/05/95\*[80799]\*80 NH PUC 14\*Integrated Water Systems, Inc.

[Go to End of 80799]

80 NH PUC 14

### **Re Integrated Water Systems, Inc.**

DF 94-278

Order No. 21,490

New Hampshire Public Utilities Commission

January 5, 1995

ORDER authorizing a water utility to issue a promissory note in the amount of \$80,000 to an individual.

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1. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Promissory notes — Issuance to individual — Five-year term — Annual 9% interest rate — Water utility. p. 15.

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Page 14

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BY THE COMMISSION:

ORDER

[1] On November 23, 1994, Integrated Water Systems, Inc. (the Company) petitioned the New Hampshire Public Utilities Commission (the Commission) for authority, pursuant to RSA 369:1, to issue a Promissory Note to John L. Fischer in the amount of \$80,000. By Order of Notice, the Commission set a prehearing conference for December 28, 1994. At the prehearing conference, Locke Lake Colony Association (Locke Lake) requested and was granted full intervenor status. The Office of the Consumer Advocate also appeared at the prehearing conference.

The Commission Staff (Staff) reviewed the terms of the proposed financing, sought and received an amendment of those terms extending the life of the Note to five years, and recommends the amended terms. The obligations satisfied by the Promissory Note represent both capital and ongoing expenses. The Promissory Note is an unsecured note which does not place the integrity of the company's service to ratepayers at risk. It is Staff's understanding that the \$80,000 infusion occurred on August 4, 1994 and was treated as additional equity at that time. Per Paragraph 4 of the Company's filing, the mutual desire of the Company and Mr. Fischer to treat this infusion as a loan has prompted this petition.

The parties and Staff agree that granting authority for the Company to issue the Note shall not create a precedent for the treatment of the \$80,000 as debt for the purposes of the Company's pending rate case, DR 94-094.

We have reviewed the Company's petition for authority to issue a Promissory Note. Because the Note does not contain an effective date (but states that it is effective as of the date of execution) we will assume that the Note will become effective and interest will begin to accrue as of the execution date. Given that this is a *nisi* approval, the Note may not be executed until after the expiration of the *nisi* period. We find the issuance of the Promissory Note to be consistent with the public good, pursuant to RSA 369:1. We will, therefore, approve *nisi* the Company's petition.

Based on the foregoing, it is hereby

ORDERED, *NISI*, that the Company is authorized to issue an unsecured Promissory Note in the amount of \$80,000 to John L. Fischer for a term of 5 years from the date of its execution at a fixed annual interest rate of 9%, compounded monthly, resulting in equal monthly payments of

\$1,660.67, with this Order *Nisi* effective February 3, 1995, unless the Commission provides otherwise in a supplemental order issued prior to that date; and it is

FURTHER ORDERED, that this authorization does not constitute precedent for the treatment of said Promissory Note as debt for the purposes of DR 94-094; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 203.01, the Company cause an attested copy of this Order *Nisi* to be published once in a newspaper having general circulation in that portion of the state of New Hampshire in which operations are proposed to be conducted, such publication to be no later than January 16, 1995 and be documented by affidavit filed with this office on or before January 31, 1995; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than January 31, 1995.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 1995.

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NH.PUC\*01/09/95\*[80800]\*80 NH PUC 16\*Public Service Company of New Hampshire

[Go to End of 80800]

80 NH PUC 16

**Re Public Service Company of New Hampshire**

DR 94-293

Order No. 21,491

New Hampshire Public Utilities Commission

January 9, 1995

MOTION by electric utility for rehearing of that portion of Order No. 21,454 (79 NH PUC 675) which had denied protective treatment of the rates contained in a special contract with an industrial customer but had granted protective treatment of the customer's usage data; denied.

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1. PARTIES, § 1

[N.H.] Special contract customers — Granting of protective treatment — No concomitant, automatic elevation to formal party status. p. 16.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Granted as to customer-specific usage data relied upon — Denied as to actual contract rate itself — Competitive forces as a factor — Affirmation. p. 16.

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BY THE COMMISSION:

ORDER

On December 12, 1994 we issued Order No. 21,454 which approved in part, and which denied in part, a Motion for Protective Order (Motion) filed by Public Service Company of New Hampshire (PSNH). PSNH's Motion requested protective treatment under RSA 91-A:5,IV of information in its filing which relates to the commercial activities of its customer, Polyvac, Inc. (Polyvac), with whom PSNH seeks to enter into a special contract. PSNH also requested protective treatment as to the pricing terms of the Special Contract itself, a request which PSNH has not made in previous special contract filings.

In our Order we granted protective treatment with respect to customer-specific information of Polyvac and denied such treatment regarding the terms of the proposed special contract. In our Order, we accepted PSNH's argument that the Commission should afford protective treatment to the confidential commercial data of its Special Contract customers

1(6) . This information clearly falls within the exemptions to New Hampshire's Right to Know Law contained within RSA 91-A:5,IV. PSNH's Motion asks us to reconsider our order denying the same protective treatment to the proposed discounted rates and terms of its proposed special contract with Polyvac.

[1] PSNH's Motion supports its request for reconsideration on three grounds. First, it alleges legal error because Polyvac's position was not "listed or addressed" in our Order as required by RSA 363-17-b,II and III. We disagree. Polyvac was never made a party to this proceeding. We are certainly not statutorily required to grant party status to an entity unless requested to do so. Although we routinely issue protective orders which seek to protect the interests of PSNH's special contract customers, by so doing, we have not made those customers "parties" for purposes of meeting the procedural requirements of RSA 363:17-b.

[2] PSNH next alleges that we erred because our Order failed to acknowledge the existence of competitive forces in the electric industry. On the contrary, we explicitly recognized the increasing availability of alternative supply sources. We pointed out, however, that PSNH remains a monopoly provider of retail electric service in New Hampshire. The record does not support PSNH's contention that suppliers of co-generation and self-generation alternatives possess an unfair competitive advantage because the terms of special contracts remain public.

Finally, PSNH argues that the Order violates PSNH's right to equal protection under the

**Page 16**

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law as required by the United States and New Hampshire Constitutions. Because PSNH is not a member of a protected class, we must only determine if a rational basis exists for our differing treatment. Due to the vigorous development of toll competition in New Hampshire, we find a rational basis for granting protection to NYNEX while denying it to PSNH.

RSA 378:19, addressing special contracts, provides: "Such contracts shall be filed and made public as the Commission shall require and shall constitute a part of the published schedules of

the public utility making the same." We read this statute to require the rates themselves must be available to the public unless we find a basis under RSA 91-A to exempt that information from public disclosure. Because we do not consider PSNH's arguments to justify exemption from disclosure under RSA 91-A, RSA 378:19 requires making those rates public. This interpretation is consistent with past Commission practice.

Based on the foregoing; it is hereby

ORDERED, that PSNH's Motion for Rehearing of Order No. 21,454 is DENIED.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1995.

FOOTNOTES

<sup>1</sup>This information typically relates to the operating costs and marketing strategies of special contract customers. Competitors of special contract customers could use such commercial data to gain an unfair insight into the business profile of such customers.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,454, 79 NH PUC 675, Dec. 12, 1994.

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NH.PUC\*01/09/95\*[80801]\*80 NH PUC 17\*Public Service Company of New Hampshire

[Go to End of 80801]

80 NH PUC 17

**Re Public Service Company of New Hampshire**

DR 94-311

Order No. 21,494

New Hampshire Public Utilities Commission

January 9, 1995

MOTION by electric utility for approval of a special rate contract with an industrial customer, Nashua Corporation, and for protective treatment of the customer-specific usage data cited therein as well as the actual rate contained therein; granted as to the customer-specific data but denied as to the special contract rate itself.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Granted as to customer-specific usage data relied upon — Denied as to actual contract rate



itself — Competitive forces as a factor — Electric utility and industrial customer. p. 18.

## 2. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special rate contract — Developed on basis of customer-specific usage data — Confidentiality of such data — But disclosure of contract rate itself. p. 18.

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BY THE COMMISSION:

### ORDER

On December 23, 1994, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission, pursuant to RSA 378:18, special contract NHPUC-104, between PSNH and Nashua Corporation for its manufacturing facility located in

**Page 17**

Nashua, New Hampshire. Included in the filing were redacted materials, including Testimony and a Technical Statement (hereinafter the Supporting Materials) and a redacted copy of Attachment 1 to the Special Contract (Attachment 1).

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 Attachment 1 as well as the Supporting Materials.

In its motion, PSNH states that Attachment 1 and the Supporting Materials contain information concerning Nashua Corporation's operating costs, contractual arrangements, electric usage and alternatives and other competitively sensitive data, disclosure of which would result in substantial harm to Nashua Corporation by providing its competitors with a view of its cost structure and marketing strategies. PSNH also states that public disclosure of the information in Attachment 1 and 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.

[1, 2] 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 in Attachment 1 and the Supporting Materials 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 itself. Attachment 1 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 Nashua Corporation, 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. 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 further argues that because the petition of *Freedom Electric Company*, DE 94-163, is now pending which, if approved, could result in competition in retail electric sales, PSNH should be accorded protection of this material at least until the conclusion of the *Freedom* docket.

As we stated in our denial of PSNH's request in its contract with Polyvac, Inc., DR 94-293, we do not agree with PSNH that the discounted rate itself should be protected. As we stated in Order No. 21,454 (December 12, 1994), PSNH's circumstances are not analogous to those of NYNEX and it is not entitled to the same degree of protection:

... 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.

Order No. 21,454 at 2. We denied PSNH's request for reconsideration of Order No. 21,454 in Order No. 21,491 (January 9, 1995). As we noted in Order No. 21,491:

RSA 378:19, addressing special contracts, provides: "Such contracts shall be filed and

**Page 18**

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made public as the Commission shall require and shall constitute a part of the published schedules of the public utility making the same." We read this statute to require the rates themselves must be available to the public unless we find a basis under RSA 91-A to exempt that information from public disclosure. Because we do not consider PSNH's arguments to justify exemption from disclosure under RSA 91-A, RSA 378:19 requires making those rates public. This interpretation is consistent with past Commission practice.

We find no basis to treat PSNH's protection request regarding the rates in the Nashua Corporation special contract any differently.

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 Nashua Corporation; 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 Nashua Corporation; 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 ninth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,454, 79 NH PUC 675, Dec. 12, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,491, 80 NH PUC 16, Jan. 9, 1995.

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NH.PUC\*01/09/95\*[80802]\*80 NH PUC 19\*Public Service Company of New Hampshire

[Go to End of 80802]

80 NH PUC 19

**Re Public Service Company of New Hampshire**

DR 94-300  
Order No. 21,495

New Hampshire Public Utilities Commission

January 9, 1995

ORDER directing an electric utility and wood-fired small power producers, together with state representatives and consumer advocates, to again commence negotiations relative to establishment of appropriate power purchase agreements.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase transactions — Mediation and settlement negotiations — Parties — Electric utility and wood-fired small power producers — Representatives of state interests — Consumer representative of residential ratepayer interests. p. 20.

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BY THE COMMISSION:

## ORDER

The New Hampshire Public Utilities Commission (Commission) opened docket DR 94-300 to investigate the status of negotiations between Public Service Company of New Hampshire (PSNH) and the six remaining "non-settling" woodburning small power producers (the SPPs). At a duly noticed hearing on

Page 19

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January 4, 1995, the Commission granted the requests of N.H. Timberland Owners Association, New Hampshire Business and Industry Association and the Town of Springfield for full party intervention, hearing no opposition. The request of Granite State Electric Company was not ruled upon, pending a written submission of the company outlining its interest in the proceedings, as some of the parties argued that they wanted to see the reasons for intervention before deciding whether to object.

The Commission heard recommendations regarding the negotiations from Eric E. Van Loon of Endispute, Inc., the mediator leading the negotiations at the request of the New Hampshire Legislative Oversight Committee pursuant to Laws of 1994, Chapter 362. Mr. Van Loon described the efforts made in the negotiations and indicated that PSNH had reached a tentative agreement with one of the SPPs, Bridgewater Power Company (Bridgewater), and that a term sheet has been almost finalized. As contained in his report to the Legislative Oversight Committee, Mr. Van Loon does not believe further negotiations would be successful by merely putting the parties back into the room with more time. Rather, the parties would have to close what he sees as an "expectations gap" between the parties.

PSNH and the SPPs agreed with Mr. Van Loon's representation, though both expressed a willingness to continue to seek a negotiated settlement of the issues and confirmed that there is some room for further negotiation from their last positions. The SPPs argued that the negotiations became more complex because PSNH was representing not only the interests of its ratepayers, but the interests of its shareholders. The SPPs requested that negotiations continue but between the SPPs and the State of New Hampshire as "the real party in interest."

PSNH did not oppose the State participating in the negotiations but argued that it would be unfair to exclude PSNH from the negotiations. The Office of Consumer Advocate took issue with the SPPs' characterization of the State as the real party in interest, arguing that the real party in interest is not the State, it is the ratepayers of the State. Mr. Van Loon stated that bringing the State into the negotiations as an additional party might be fruitful.

[1] We are encouraged by statements of PSNH and the SPPs indicating their willingness to move from their respective final positions at the conclusion of mediation and their willingness to continue negotiations with Mr. Van Loon and a team representing the interests of the State of New Hampshire. We note that the Legislative Oversight Committee, in its December 1, 1994 report to Governor Merrill, stated a preference for "mutually acceptable solutions to the SPP/PSNH renegotiation issues" over litigation. Given the foregoing representations by PSNH and the SPPs and the recommendations of the Legislative Oversight Committee, we direct the SPPs and PSNH to continue with negotiation sessions mediated by Mr. Van Loon.

We also direct a State team comprised of Assistant Attorney General Wynn Arnold, Commission Utility Analyst Thomas Frantz and a consultant to be retained by the Commission to participate in the mediation sessions on behalf of the interests of the State of New Hampshire.<sup>1(7)</sup> The three members of the State team will not act as advisors to the Commission, and will be effectively "bifurcated" from the Commissioners and the rest of the Commission Staff for the duration of the negotiations. We reserve the right to designate additional members of the State team if we are informed that the three members identified are not able to adequately evaluate the positions advanced. Any additional members would be similarly "bifurcated."

From correspondence submitted by the SPPs' counsel, Robert Olson, it appears that neither PSNH nor the SPPs object to OCA's participation in the negotiations. Therefore, if OCA so desires, we direct the SPPs and PSNH to permit OCA to participate as a separate party on behalf of residential ratepayers.

Negotiations should commence as soon as possible. The parties are ordered to appear at the Commission for a Status Report on February 21, 1995 at 11 a.m. The deadline for submission of a final written agreement is March 10, 1995. On March 17, 1995 at 10 a.m., we shall conduct a hearing either to consider the

**Page 20**

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agreement, or, if there is no written agreement, to determine the Commission's next action.

We share the concerns OCA expressed at the January 4 hearing that this matter has been pending far too long. Therefore, we will not depart from the above schedule unless good cause to do so is adequately demonstrated by one or more of the parties. We also reserve the right to cancel all negotiations if at any time we are informed that there is little progress being made.

We await the signed Bridgewater settlement. Based on the representations of Mr. Olson and Mr. Eaton at the January 4 hearing, we are expecting the finalized term sheet to be filed with the Commission no later than Friday January 13, 1995. In the event that it is not filed by that date, we direct PSNH and the SPPs to file a statement on January 13, 1995 identifying the cause for delay and the prospects for final resolution.

Based upon the foregoing, it is hereby

ORDERED, that PSNH, the SPPs, the State of New Hampshire and if it so chooses, OCA, commence negotiations, mediated by Endispute, Inc. subject to the schedule delineated above.; and it is

FURTHER ORDERED, that the Town of Springfield, the New Hampshire Business and Industry Association, and the New Hampshire Timberland Owners Association are granted full intervention.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1995.

FOOTNOTES

<sup>1</sup> The consultant will be paid for by the parties pursuant to RSA 365:37,II, with 50% of the

costs paid by PSNH and 50% by the SPPs.

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NH.PUC\*01/10/95\*[80803]\*80 NH PUC 21\*Connecticut Valley Electric Company

[Go to End of 80803]

80 NH PUC 21

**Re Connecticut Valley Electric Company**

DF 94-275

Order No. 21,496

New Hampshire Public Utilities Commission

January 10, 1995

ORDER authorizing an electric utility to enter into an amended long-term bank loan agreement, so as to recognize the impact of potentially rising interest rates.

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1. SECURITY ISSUES, § 107

[N.H.] Long-term notes — Bank loans — Necessity of amendment — Factors — Recognition of potentially rising interest rates — Electric utility. p. 21.

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BY THE COMMISSION:

**ORDER**

[1] On December 30, 1994, Connecticut Valley Electric Company (the "Company") filed a request for approval of an addendum to the Loan Agreement with the First NH Bank. The addendum was added in order to alleviate a potential conflict between the financing documents and the opinion of the Company's New Hampshire counsel relating to the Company's receipt of all approvals. The addendum provides that in the event the Commission does not approve a rate higher than 9.5%, the bank has the option of calling payment of the outstanding loan balance at the maximum rate allowed by the Commission. In the event that the applicable interest rate in any adjustment date (annually) exceeds 9.5%, the Company would use its best efforts to seek an order that would permit payment of a higher rate of interest. If the

**Page 21**

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Commission does not permit a higher interest rate, the lender would have the option of demanding payment of the entire outstanding balance, and upon notice of the lender, the Company would be required to repay all of the outstanding principal amount, including accrued interest at the maximum rate allowed, not later than 6 months from the date of such notice.

The Commission's previous order was based upon the fact that the Company presently has a long term loan outstanding which expires in 2004 at an interest rate of 9.5%. A rate higher than the rate on the outstanding loan would result in a higher cost of capital which could result in higher rates. With interest rates trending upward, it appears that interest rates may rise above the 9.5% level. Therefore, our order was intended to set an upper limit up on the interest rates which was based upon the currently outstanding loan from Central Vermont Public Service Company. It appears that the Company's Board of Directors had similar concerns based upon its vote which provided that rates not exceed 9%.

Based upon the foregoing, it is hereby

ORDERED, that Connecticut Valley Electric Company is hereby authorized to enter into the amended long term loan agreement with the First NH Bank at the prime rate, adjusted annually, subject to the conditions contained in Order No. 21,476.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DF 94-275, Order No. 21,476, 79 NH PUC 718, Dec. 23, 1994.

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NH.PUC\*01/10/95\*[80804]\*80 NH PUC 22\*WilTel Inc.

[Go to End of 80804]

80 NH PUC 22

**Re WilTel Inc.**

DR 94-294

Order No. 21,497

New Hampshire Public Utilities Commission

January 10, 1995

ORDER approving an interexchange telephone carrier's proposal for offering discounted rates to customers taking a package service plan with any combination of "CustomOne" options and private line service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Discounted package plans — For any combination of "CustomOne" options and private line service. p. 22.



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BY THE COMMISSION:

ORDER

On December 7, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from WilTel Inc. (WilTel) requesting authority to introduce its CustomOne Cross Product Discount for effect January 11, 1995.

[1] The CustomOne Cross Product Discount offers WilTel's CustomOne customers a discount on the customer's combined CustomOne and Private Line billings. In order to qualify for this discount, a new customer must commit to a minimum of \$6,000 in annual charges which may be any combination of CustomOne and Private Line services, and a one year CustomOne Service Commitment Period. Existing CustomOne customers must commit to a minimum of the next step above their current annual charges but their new commitment may

Page 22

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consist of any combination of CustomOne and private line services, for a minimum one-year period.

The proposed changes are in the public good in that they 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. Therefore, the Commission will authorize the introduction of the CustomOne Cross Product Discount.

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:

9th Revised Page 1

4th Revised Page 63.3

5th 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.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 1995.

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NH.PUC\*01/10/95\*[80805]\*80 NH PUC 23\*Keene Publishing Corporation

[Go to End of 80805]

80 NH PUC 23



**Re Keene Publishing Corporation**

DE 94-282  
Order No. 21,498

New Hampshire Public Utilities Commission

January 10, 1995

PETITION by telephone directory publication company for assignment of an "N11" number for purposes of disseminating information services; denied, due to a proceeding addressing N11 number assignments still pending before the Federal Communications Commission.

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1. SERVICE, § 455

[N.H.] Telephone — Numbers — Assignment of "N11" numbers — Denial of N11 request — Factors — Limited availability — Related matter still pending before the Federal Communications Commission. p. 23.

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BY THE COMMISSION:

**ORDER**

[1] On November 21, 1994, Keene Publishing Corporation (Keene Publishing) petitioned the New Hampshire Public Utilities Commission (Commission) for assignment of an N11 telephone number to be used in the provision of information services.

In 1994 the Commission had a similar request in docket DE 94-184, and in 1992 the Commission had three similar requests in dockets DE 92-167, DE 92-176 and DE 92-183. Each of the 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.

Because the FCC docket is still pending, and given that N11 codes, such as 911, are a limited resource and should be reserved for a significant national use, we will deny the petition from Keene Publishing as we denied the above-mentioned requests.

Based on the foregoing, it is hereby

ORDERED, that Keene Publishing's petition is denied.

By order of the New Hampshire Public Utilities Commission this tenth day of January, 1995.

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NH.PUC\*01/10/95\*[80806]\*80 NH PUC 24\*Long Distance North of New Hampshire, Inc.

[Go to End of 80806]

80 NH PUC 24

**Re Long Distance North of New Hampshire, Inc.**

DR 94-295  
Order No. 21,499

New Hampshire Public Utilities Commission

January 10, 1995

ORDER authorizing an interexchange telephone carrier to reduce its minimum billing increment from 30 seconds to 18 seconds for its "Common Sense 800" services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special calling plans — "Common Sense 800" service — Minimum billing increment — Reduction from 30 seconds to 18 seconds — As fostering flexibility and competition. p. 24.

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BY THE COMMISSION:

ORDER

[1] On December 7, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from Long Distance North of New Hampshire Inc., (LDN) requesting authority to change the minimum billing increment from 30 seconds to 18 seconds for its Common Sense 800 product. LDN requested the change become effective January 7, 1995.

We find that the requested changes are in the public good. We permit 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 on toll rates and services. Therefore, we will authorize LDN to modify the minimum billing increment for Common Sense 800.

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:

11th Revised Page 2

4th Revised Page 20;

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 tenth day of January, 1995.

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NH.PUC\*01/16/95\*[80807]\*80 NH PUC 24\*Public Service Company of New Hampshire

[Go to End of 80807]

80 NH PUC 24

**Re Public Service Company of New Hampshire**

DR 93-247

Order No. 21,500

New Hampshire Public Utilities Commission

January 16, 1995

ORDER suspending an electric utility's proposed tariff revisions relative to its radio-controlled load management services. Under the proposed changes, an electric thermal storage system would be eligible for service under the radio-controlled option only if such system were "dynamic." Also, eligibility would be partly dependent on a customer's backup source of heat being either wood- or coal-fired, and not fueled by oil, propane, or any other alternative fuel.

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1. RATES, § 322

[N.H.] Electric rate design — Load factors

**Page 24**

— Space-heating customers — Radio-controlled load management service options — Eligibility criteria — Proposals for stricter criteria — Wood- or coal-only backup sources of heat — "Dynamic" electric thermal storage system — Suspension of proposed tariff revisions. p. 25.

2. SERVICE, § 320

[N.H.] Electric — Load control programs — For space-heating customers — Eligibility criteria — Proposals for stricter criteria — As to type of thermal storage systems and alternate fuels for backup heat — Suspension of proposed tariff revisions. p. 25.

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BY THE COMMISSION:

**ORDER**

On January 3, 1995, Public Service Company of New Hampshire (PSNH) filed in accordance with the Commission's Tariff filing Rules and in compliance with Commission Order No. 21,464, the following revised tariff pages:

NHPUC No. 35 - Electricity

Public Service Company of New Hampshire

1st Revised Page 39

2nd Revised Page 40

Effective: January 3, 1995

[1, 2] PSNH also included as supporting material a Technical Statement which describes changes to the Availability section of Rate LCS emanating from Order No. 21,464, issued December 19, 1994. PSNH will require a "dynamic" electric thermal storage system in order to receive service under the Radio-Controlled Option. PSNH also proposes that eligibility under the "non-electric heating source" Radio-Controlled Option be confined solely to wood and coal stoves used as backup heating sources provided they are sized and located to adequately heat the main living area. PSNH further specifies that conventional electric space heating be the only permanently installed space heating system. PSNH believes these changes support the intent of the Radio-Controlled Option which is to retain existing space heating customers and to regain electric space heating sales from those customers currently using wood and coal stoves in place of their installed space heating system.

On January 9, 1994 Whitney and Johnsen, Inc., representing approximately 60 of its electric heat customers who have indicated an interest in taking service under Rate LCS filed a Motion to Intervene as a full party.

On January 13, 1994, the Staff of the Commission (Staff), by letter, informed the Commission that, contrary to the representations of PSNH, Staff did not concur in the revised tariff and requested additional time to conduct further discovery.

Based upon the foregoing, it is hereby

ORDERED, that revised tariff pages:

NHPUC No. 35 - Electricity

Public Service Company of New Hampshire

1st Revised Page 39

2nd Revised Page 40

are suspended; and it is

FURTHER ORDERED, that the intervention of Whitney and Johnsen, Inc. is granted; and it is

FURTHER ORDERED, that a hearing be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on February 15, 1995, at 10:00 a.m.; and it is

FURTHER ORDERED, that any party wishing to file testimony or supplemental testimony, shall prefile such testimony with the Commission and known parties on or before February 8, 1995.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,464, 79 NH PUC 688, Dec. 19, 1994.

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NH.PUC\*01/16/95\*[80808]\*80 NH PUC 26\*Bedford Three Corners Waste Corporation

[Go to End of 80808]

80 NH PUC 26

**Re Bedford Three Corners Waste Corporation**

DE 94-138

Order No. 21,501

New Hampshire Public Utilities Commission

January 16, 1995

ORDER taking note of a sewage disposal utility's change in corporate name, from Bedford Three Corners Waste Corporation to Bedford Waste Services Corporation.

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1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Sewage disposal utility. p. 26.

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BY THE COMMISSION:

ORDER

[1] On July 11, 1994, Bedford Three Corners Waste Corporation (Bedford) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval to operate a sewage disposal facility in Bedford, New Hampshire. We granted Bedford's petition on December 6, 1994 in Order No. 21,453. During the hearing in this matter, Bedford indicated that it intended to amend its Articles of Incorporation in order to change its name to "Bedford Waste Services Corporation". Staff and Bedford agreed that it would be appropriate for Bedford to file the instant motion so that the record reflects Bedford's new corporate name. Staff consents to Bedford's Motion.

It is important that we be kept apprised of any such changes so that our records accurately

reflect the identity of franchise holders. Accordingly, we find that the Motion is appropriate and in the public good and will grant the request that the sewage disposal utility now be known as Bedford Waste Services Corporation.

Based on the foregoing, it is hereby

ORDERED, that Bedford's Motion to Amend Petition is hereby GRANTED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bedford Three Corners Waste Corp., DE 94-138, Order No. 21,453, 79 NH PUC 674, Dec. 6, 1994.

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NH.PUC\*01/16/95\*[80809]\*80 NH PUC 26\*New England Telephone and Telegraph Company

[Go to End of 80809]

80 NH PUC 26

**Re New England Telephone and Telegraph Company**

DR 94-305

Order No. 21,502

New Hampshire Public Utilities Commission

January 16, 1995

ORDER authorizing a local exchange telephone carrier to eliminate four-party residential service statewide, in anticipation of the availability of interstate equal access as well as emergency 911 services, neither of which is compatible with multi-party service.

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1. SERVICE, § 452

**Page 26**

[N.H.] Telephone — Party-line service — Elimination of four-party residential service — Factors — Facilitation of interstate toll carrier presubscription — Facilitation of emergency 911 services — Need for alternative service options — Both single- and two-party service. p. 27.

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BY THE COMMISSION:

## ORDER

On December 16, 1994, New England Telephone Company (NET or Company) filed proposed revisions to its Basic Exchange tariff for effect January 15, 1995 (the Petition). In its Petition, NET stated that it sought to remove Four-Party Service in anticipation of the July 1, 1995 availability of Enhanced 9-1-1 (E911). Because four-party circuits do not provide Automatic Number Identification (ANI), the Public Safety Answering Point (PSAP) would not be able to automatically identify the service address of the caller. An essential function of E911 utilizes ANI to query the Automatic Location Identification (ALI) database for the customer's name, service address and other pertinent information. ANI pre-determines the appropriate police, fire and/or emergency medical agencies, given the caller's location.

As of January 4, 1995, NET had approximately 4300 customers of Four-Party Service. Of these customers, only twelve (less than one percent) receive Four-Party Service, where they are one of four parties on a Four-Party line. Over fifty percent of these 4300 customers enjoy service where they are the only party on a four-party line.

NET proposes to contact its existing customers of Four-Party Service by direct mail and ask them to select a type of single-party service and to select an interLATA carrier. Those customers who fail to respond to the direct mailing and who NET cannot subsequently reach by telephone would be assigned to Measured Service-4E Low Usage Residence Service (MS-4E). In the Harrisville and Westmoreland exchanges, customers would be assigned Low Use Measured Service because MS-4E is not currently available there. Customers would continue with their existing interLATA carrier until they notify the Company of a change. The Service and Equipment charge to change the class of service, to make one change in the interLATA carrier selection and, if technically required, the telephone set modification charge would be waived for these customers.

On December 29, 1994, the Office of the Consumer Advocate (OCA) filed a letter with the Commission taking issue with the Company's request to assign customers who do not respond to NET's inquiries regarding the MS-4E service option (Low Use Measured Service in the Harrisville and Westmoreland exchanges). The OCA requested that the Commission require that NET issue several notices of the pending changes in the tariff, including one by registered mail with examples of typical phone bills under both the single-line basic exchange service rates and the MS-4E service rates. In addition, the OCA requested that NET switch customers to MS-4E service only after several notices have gone unanswered, and that customers have a six month period in which to choose another form of service without incurring a charge to do so.

Staff initiated a review and discussion of the filing and, on December 23, 1994, issued data requests to the Company. NET furnished written responses on January 9, 1995. NET requested timely approval of this filing to allow sufficient time to notify customers of the proposed changes.

[1] While eliminating Four-Party Service in most areas, NET proposes to retain Four-Party Service in the Alstead Exchange until August 1995 and in identified pockets of certain exchanges until such time as facilities permit the availability of single-party service. Four-Party Service has been available only to existing customers at present locations in the same or lesser quantities. Staff's initial investigation has raised the concern that NET's ANI/ALI enhancement

will not be available to all Four-Party customers until sometime in 1996, and possibly later. It appears that in some exchanges adequate plant facilities do not exist to upgrade

**Page 27**

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all existing Four-Party customers to single-party service and NET's construction program does not support the July 1, 1995 target date for statewide E911. In certain exchanges, relief facilities may not be constructed until year-end 1996, and perhaps beyond.

The Petition, therefore, confronts the Commission with two separate issues related to the proper and timely implementation of the E911 system. It is without controversy that Four Party Service cannot survive the implementation of E911. However, while NET proposes to limit customer choice to some form of single party service, it is not clear that single party service, even Low Use Measured Service, would be the preferred option for all former Four Party Service customers. We will therefore set the matter of the feasibility of customer options, including Two Party Service, for hearing. The hearing will also explore the issue of customer notification raised by the OCA.

Meanwhile, we expect NET to use prudent efforts to prepare its network and its customers for the forthcoming enhancement of emergency services to the public. We share Staff's concern that adequate facilities are not available to upgrade all Four Party customers to a single party service. We believe a firm schedule for the completion of the construction of the necessary facilities for this important public good should be established. We direct the Staff to investigate fully their concerns regarding the exclusion of certain exchanges or portions thereof.

Based upon the foregoing, it is hereby

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

NHPUC - No. 75

Part A - Section 5 -

Twenty-third Revision of Page 8

Eighteenth Revision of Page 9

Sixteenth Revision of Page 9.1;

and it is

FURTHER ORDERED, that Staff schedule technical sessions with the Company to resolve further concerns regarding the exclusion of certain exchanges or portions thereof; and it is

FURTHER ORDERED, that following technical sessions with Staff, the Company submit within twenty days of the date of this Order a firm schedule for the completion of the construction of the necessary facilities in each of the exchanges where adequate facilities do not exist today that is acceptable to Staff. If the Company and Staff do not concur, then each will file a proposed schedule and a position statement in support of their proposal within twenty days of the date of this Order; and it is

FURTHER ORDERED, that a hearing on the merits regarding the types of service that



would be feasible for current Four Party customers and on customer notification, will be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on February 14, 1995, at 10:00 a.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, NET notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order of Notice no later than January 31, 1995, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before February 14, 1995; and it is

FURTHER ORDERED, that in accordance with N.H. Admin. Rules, Puc 1601.05(j), NET serve a summary and explanation of its proposal to eliminate Four Party Service on affected customers by first class U.S. Mail, postmarked no later than January 31, 1995. That summary must include the date and time of the hearing, and advise customers that they may submit written comments to the Commission by that same date if they cannot attend the hearing.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 1995.

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NH.PUC\*01/17/95\*[80810]\*80 NH PUC 29\*Executone Information Systems, Inc.

[Go to End of 80810]

80 NH PUC 29

**Re Executone Information Systems, Inc.**

DE 94-228

Order No. 21,503

New Hampshire Public Utilities Commission

January 17, 1995

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

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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 services. p. 29.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 29.

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BY THE COMMISSION:

ORDER

[1, 2] On August 23, 1994, Executone Information Systems, Inc. (Executone), a Virginia 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.

Executone 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 Executone 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. Executone 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, Executone shall notify the Commission of the change.
5. Executone 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. Executone shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Executone 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. Executone 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. Executone 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. Executone shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Executone 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 Executone 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.

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 Executone to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Executone 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 January 27, 1995, and an affidavit proving publication shall be filed with the Commission on or before February 14, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, *et seq.*, Executone 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 Executone

**Page 30**

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shall file a compliance tariff with Commission on or before January 31, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective February 16, 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 seventeenth day of January, 1995.

Notice of Conditional Approval of  
EXECUTONE INFORMATION SYSTEMS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 23, 1994, Executone Information Systems, Inc. (Executone) a Virginia 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. 21,503, issued in Docket No. DE 94-228, the Commission granted Executone conditional approval to operate as of February 16, 1995, subject to the right of the public and interested parties to comment on Executone 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 Executone's petition to do business in the State should submit written comments no later than February 13, 1995, 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\*01/18/95\*[80811]\*80 NH PUC 31\*Beaver Village Realty Trust

[Go to End of 80811]

80 NH PUC 31

### **Re Beaver Village Realty Trust**

DE 92-226  
Order No. 21,504

New Hampshire Public Utilities Commission

January 18, 1995

ORDER acknowledging that, after three years of operating under receivership with no discernible progress, there was no choice but to direct a substandard community water system to abandon service, forcing customers to resort to installation of private wells.

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#### 1. RECEIVERS, § 1

[N.H.] Operation of water utility under appointed receiver — Dissolution of receivership — Factors — Unwillingness of receiver to continue — No discernible progress in three years of receivership — Concomitant abandonment of service. p. 34.

#### 2. SERVICE, § 251

[N.H.] Abandonment or discontinuance of service — Substitution of facilities — Formal abandonment of substandard community water system — Necessity of customers to resort to private wells. p. 34.

#### 3. SERVICE, § 239

[N.H.] Abandonment or discontinuance — Efforts to avoid abandonment — Three-year receivership plan — Effect of failure to make progress — Dissolution of receivership —

**Page 31**

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Formal abandonment of service — Water utility. p. 34.

4. SERVICE, § 277

[N.H.] Abandonment or discontinuance — By substandard community water system — Necessity of customers to resort to private wells — Financial assistance — Options — Proceeds from fines assessed utility for environmental noncompliance. p. 34.

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BY THE COMMISSION:

ORDER

I. BACKGROUND

In March of 1992 this Commission was notified by the New Hampshire Department of Environmental Services, Water Supply and Pollution Control Division (DES) that an investor owned community water system serving approximately 80 customers was being operated in a housing development known as Porcupine Park Village (Porcupine Park) in the Town of Salem.

In response to this information, our engineering department Staff contacted Mr. William Dickey, the individual DES believed owned the community water system. The Staff's letter informed Mr. Dickey that the community water system was subject to the jurisdiction of this Commission pursuant to RSA 362:2, and requested that he file for authority to operate as a water utility.

In a letter received on March 31, 1992, Mr. Dickey responded that he merely managed the water system for the Beaver Village Realty Trust (Trust or Utility), that the Trust had filed for bankruptcy protection, and that the community water system, an asset of the Trust, was under the control of a trustee of the United States Bankruptcy Court.

On December 7, 1992 our Consumer Assistance Department was notified by a resident of Porcupine Park that the residents of Porcupine Park had received a notice from Granite State Electric Company informing them that electric service to the water utility (used to pump water) would be disconnected due to the failure of the customer of record, Mr. Dickey, to pay the electric bill since July of 1992. *See* N.H. Admin. R., Puc 303.08 (c)(1). At Staff's request Granite State Electric continued to provide electric service to the water utility while their investigation continued.

On December 17, 1992, the Commission issued Order No. 20,703 ordering the Trust, its trustee(s) and beneficiaries to appear at a hearing on December 29, 1992, pursuant to RSA 374:47-a (Supp. 1992) to show cause why the water utility should not be placed in receivership. The Commission further ordered that a copy of the order be served upon each of the Trust's customers.

At the December 29, 1992 hearing, Mr. William Dickey appeared for the Trust and informed the Commission that he had not served a copy of the order upon any of the customers, that the water utility was still an asset in bankruptcy, that he was operating the system and would pay the electric bill, and that he believed the Commission should name a receiver to operate the system.

Because the customers were not provided with a copy of the Commission's Order, they were not represented at the December 29, 1992 hearing. Thus, Staff requested an opportunity to meet with the customers before the appointment of a receiver to inform them of the system's physical condition and legal status, and to determine if the customers, as a group, had any interest in managing the system as the Commission's receiver.

At the Commission's direction, Staff held an informational hearing in the Town of Salem with the customers, a representative of the DES, and the municipal agents of the Town of Salem. Staff also contacted the Trustee in Bankruptcy concerning the status of the water utility as an asset in bankruptcy and the Trustee's responsibilities under federal law (Safe Drinking Water Act) relative to the water system.

On February 8, 1993 the Trustee in Bankruptcy filed a Notice of Intent to abandon the water utility assets with the Bankruptcy Court. The abandonment occurred on February 23,

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1993 and the water utility assets returned to the control of the Trust.

After two informational hearings with the system's customers in Salem, Staff recommended that the Commission appoint a professional operator in the business of operating water utilities to act as receiver.

At the request of the Commissioners, Staff contacted four public water utilities and one private operator and requested bids to operate the system as its receiver pursuant to RSA 374:47-a (Supp. 1992). The extent of the receiver's responsibilities, as set forth in the requested bids, was to: 1) visit the system on a weekly basis to ensure its proper operation; 2) pay the monthly electric bill estimated at \$300, to be reconciled on a monthly basis; 3) conduct monthly bacteriological tests of the system's water supply; 4) bill the customers for its services; 5) provide 24 hour coverage for emergencies; and 6) generally provide management for the system.

In response to these requests, Staff received three proposals to operate the system and recommended that the Commission appoint the owners of Lancaster Farms Water System (a.k.a. Lewis Builders) as the system's receiver. Staff based this advice on the fact that, although all three bids were monetarily similar, Lewis Builders operated a system known as Lancaster Farms which is located approximately 500 feet from Porcupine Park. Thus, the Staff believed that the proximity of the two systems and Lewis Builders' familiarity with the area would provide certain synergies in the operation of the systems and certain intangible benefits to the customers of Porcupine Park. Staff also indicated that Lewis Builders might purchase the system and operate it and Lancaster Farms as an integrated, interconnected system.

On July 8, 1993 the Commission received a letter from Lewis Builders stating that it had no interest in taking title to the water system because it was not economically feasible to make the "necessary improvements to bring the system into compliance...". On September 20, 1993 Lewis

Builders again contacted the Commission reiterating its position that it was not economically feasible to acquire the system, even though it could be obtained at no cost, due to the necessary capital additions required to bring it into compliance with DES regulations and that Lewis Builders, who had accepted interim responsibility to operate the system, would no longer serve as receiver as of October 31, 1993.<sup>1(8)</sup>

A thorough search by our Staff of water utility operators in southern New Hampshire produced only one qualified operator, Consumers New Hampshire Water Company, Inc, formerly known as Southern New Hampshire Water Company, Inc. (Consumers), willing to act as receiver for the system. On November 30, 1993 we appointed Consumers receiver of the system by Order No. 21,048.

In mid-November the Commission was contacted by Consumers and informed that as of November 30, 1994 it would withdraw as receiver of the water system because the Company was losing too much money, and operating this system was damaging the Company's reputation as a purveyor of water service. Specifically, Consumers informed the Commission that customers were not paying their bills (\$10 per month), the system had been installed in a manner that prevented disconnection of water service for non-payment, the owner of the lot upon which the community well is located would not allow the Company on her property to service the system, and a boil water order had been issued by DES because of bacteria in the system which could only be resolved with a significant capital investment in a chlorination system.

Subsequently, the Commission requested Consumers continue as receiver until June of 1995 at which time the Commission would order the abandonment of the system if no other resolution had been reached. On November 28, 1994 Consumers agreed to continue to operate the system until June of 1995. By Order No. 21,474 issued December 22, 1994, the Commission directed its Staff, with Consumers as its agent, to carry out the duties of a receiver until June 30, 1995.

On January 5, 1995 the Commission held a duly noticed public hearing in the Town of Salem to discuss the future of the water system with the customers.<sup>2(9)</sup> Comments at that hearing made it apparent that the only viable option was

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the abandonment of the community water system and the installation of private wells for each residence. The residents seemed to accept this fact, but expressed concern relative to the financial ability of some of the residents to bear this cost. They also expressed concern relative to each lot's capability to meet DES requirements for private wells.

Mr. Richard Skarinka represented DES at the hearing. Mr. Skarinka informed those present that the development had originally been designed for individual or private wells and, therefore, he foresaw no obstacles to the installation of wells on each lot. Mr. Skarinka also informed the Commission and the residents that waivers might be obtained in certain circumstances should a lot not meet DES requirements.

Mr. Skarinka explained that, prior to the Commission involvement in this matter, DES had made several attempts to remedy the problems with this community water system. In June of 1988, DES issued an administrative order requiring William Dickey to bring the community



water system into compliance with the plans he filed with the agency, in accordance with State regulations. *Administrative Order No. WSPCD 88-12*, (June 1, 1988). Specifically, the Administrative Order required Mr. Dickey, as manager of the community water system and the builder of the Porcupine Park subdivision<sup>3(10)</sup>, to construct a walk-in pump station with adequate storage facilities and an alarm system, reconstruct improperly installed mains, hire a certified operator to manage and operate the system and file the actual "Record" plans of the system. Mr. Dickey complied with none of these requirements. On November 16, 1988 DES filed a "Petition for Permanent Injunction and Civil Penalties" against Mr. Dickey for, among other things, his failure to comply with the Administrative Order involving Porcupine Park.

Subsequently, the Trust filed for the protection of the United States Bankruptcy Court.

DES, through the Department of Justice, again took affirmative action against Mr. Dickey early in 1994 and entered into an Interim Consent Order on April 26, 1994, whereby Mr. Dickey agreed to interconnect the water system with the municipal distribution system of the Town of Salem by September 1, 1994. Mr. Dickey failed to comply with this Order.

Thereafter, DES filed a motion with the Superior Court seeking to enforce the Interim Consent Order. After an evidentiary hearing held on October 7, 1994, the Court issued an Order finding that Mr. Dickey had failed to comply with the Interim Consent Order and set out a series of affirmative steps, with dates certain, which Mr. Dickey was to accomplish in order to bring the community water system up to State standards and assure its potability. Mr. Dickey has failed to comply with any of the deadlines set out in that Order.

In October of 1994 Consumers detected the presence of bacteria in the community water system and a Boil Water Order was placed on the community water system to prevent any possible infection by anyone drinking the water<sup>4(11)</sup>. See Appendix A. By this time approximately half of the residents of Porcupine Park had constructed and were served by private wells.

## II. COMMISSION ANALYSIS

**[1-4]** The issue for our consideration herein is whether or not to continue the operation of this community water system. The water system has been under our receivership for approximately three years as attempts have been made to find an economically viable resolution to this situation which would allow for the long term provision of potable water to customers.

RSA 374:47-a provides for Commission receivership on a "temporary" basis to assure continued service. Given the length of our receivership, we can no longer categorize the receivership as temporary. Moreover, given the failure to find a long-term solution to the water system design and construction flaws, the unavailability of a third party to permanently acquire and maintain the system in accordance with DES requirements and the abandonment of the system by over half of its customers, we are forced to order the abandonment of this community water system pursuant to RSA 374:28

by June 1, 1995.

We respectfully recommend to the Department of Justice that any civil sanctions collected

against Mr. Dickey as part of the DES action in Superior Court be used to provide financial assistance to the residents of Porcupine Park for the construction of private wells.

We also respectfully request the Town of Salem to take whatever affirmative actions it deems appropriate to provide assistance to these homeowners. Such assistance could take the form of direct assistance or a request for a Community Block Grant.

The residents of Porcupine Park should contact DES, the Office of State Planning, the FHA if they are in need of financial assistance. We further urge any homeowner that is unable to construct a private well, for whatever reason, prior to June 1, 1995 to contact this Commission immediately.

As is apparent from the history set forth above Mr. Dickey has created a most unfortunate, inconvenient and costly situation for these homeowners. New Hampshire law provides that no public water utility shall be constructed until this Commission has determined that the construction of that utility is in the public good. RSA 374:22 and 26. This Commission grants a petition pursuant to RSA 374:22 and 26 only after it determines that the system has been approved by DES, that the municipality has no objection to the construction of the facilities, and that the owner and operator have the financial, managerial and technical expertise to operate a water utility. Unfortunately, this Commission was not aware of this utility's existence until four years after its construction when the electricity was due to be disconnected.

Although we have the statutory authority to issue fines and refer these matters to the Attorney General for criminal prosecution, these actions would be duplicative here given the exhaustive judicial procedures already pursued by that agency and DES.

Based upon the foregoing, it is hereby

ORDERED, that the Beaver Village Realty Trust public water utility shall be abandoned as of June 1, 1995; and it is

FURTHER ORDERED, that the Commission shall provide a copy of this order to each resident of Porcupine Park, the Town of Salem and the Department of Environmental Services and a copy of information from DES about wells to each resident.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of January, 1995.

#### FOOTNOTES

<sup>1</sup>Both Lewis Builders and Consumers New Hampshire Water Company, Inc. estimated that it would cost approximately \$100,000 to bring the system into compliance with DES regulations. They also indicated the distribution system was constructed by the developer either without easements or outside of easements which would require obtaining from the necessary easements from homeowners, some of which had abandoned the system for private wells. *See e.g.*, Transcript, December 14, 1993, at 6.

<sup>2</sup>The Town was notified of this hearing but did not attend. It is noteworthy that the Town has offered to supply water to the distribution system on a wholesale basis but has refused to take title to or maintain the distribution system.

<sup>3</sup>The entire subdivision and the community water system was constructed under the label of the "Beaver Village Realty Trust" which appears to be nothing more than Mr. Dickey's "alter ego". *See eg*, Transcript December 29, 1992.

<sup>4</sup>The bacterial contamination of a community water system can be caused by any number of factors, many of which are caused by the construction and design of the system and are not the fault of the operator. In any case, the bacterial infestation of this water system is in no way related the manner in which Consumers has operated the system. The problem is easily resolved through chlorination, but such a capital investment can not be justified by an interim receiver.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 20,703, 77 NH PUC 797, Dec. 17, 1992. [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. 21,474, 79 NH PUC 715, Dec. 22, 1994.

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NH.PUC\*01/23/95\*[80812]\*80 NH PUC 36\*Connecticut Valley Electric Company

[Go to End of 80812]

80 NH PUC 36

### **Re Connecticut Valley Electric Company**

DR 92-082

Order No. 21,506

New Hampshire Public Utilities Commission

January 23, 1995

ORDER adopting stipulation as to an electric utility's 1992 integrated least-cost resource planning procedures. The utility agrees to expand its forecasts of its own operations separate and apart from those of its parent company, although it is deemed reasonable for the utility's resource planning to rely largely on consolidated operations.

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#### 1. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Forecasts of fuel alternatives — On consolidated basis with parent company — Purchased power as alternative to construction of additional generating plant — Short- versus long-term resource acquisitions — Slowing of pace of demand-side management programs — Diverse generation mix — Refinements to forecasting methods — Stipulation. p. 37.

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APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) its 1992 Least Cost Integrated Resource Plan (LCIRP) and supporting testimony and exhibits. On May 1, 1992 at a duly noticed prehearing conference, CVEC and Commission Staff (Staff) agreed to a procedural schedule that would conclude with hearings on May 17, 1993. There were no intervenors; Public Service Company of New Hampshire and the Air Resources Division of the State Department of Environmental Services, however, were placed on the Commission's Service List 2 as interested parties. Report and Order No. 20,533 (July 6, 1992).

On October 8, 1993, Staff filed the Joint Testimony of George R. McCluskey, Chester A. Kokoszka and Scott W. Harrold. CVEC, on December 17, 1993, filed Rebuttal Testimony of Bruce W. Bentley and on January 3, 1994, Staff filed Surrebuttal Testimony of George McCluskey.

The procedural schedule was amended a number of times, at the request of CVEC and the Staff. See, Order No. 20,869 (June 15, 1993) and Order No. 21,008 (October 27, 1993). Because of delays in finalizing the 1992 LCIRP, CVEC requested a waiver of the filing date on its 1994 LCIRP. The Commission stated that while it could not waive the statutory filing requirement, it would not object to a late filing of the 1994 LCIRP under the given circumstances.

CVEC and the Staff reached a settlement of outstanding issues which was filed December 6, 1994 and presented to the Commission on December 30, 1994. CVEC filed its 1994 LCIRP the day of the hearing and advised that the 1994 LCIRP incorporates the recommended changes and additions addressed in the Stipulation Agreement. CVEC is prepared to amend the LCIRP if the Commission rejects the recommendations contained in the Stipulation Agreement.

### II. POSITIONS OF THE PARTIES AND STAFF IN PREFILED TESTIMONY

#### A. CVEC

## Page 36

[1] The Stipulation Agreement contained a detailed summary of CVEC and Staff's positions in their prefiled testimony. As noted therein, CVEC's 1992 LCIRP identified no need for additional resources until well into the next decade. CVEC uses the avoided costs of the consolidated loads and resources of CVEC and its parent company, Central Vermont Public Service (CVPS), which reflect the current and expected soft power market as well as lower costs for future new generation.

CVPS has reduced power surpluses and costs, sold back essentially all of its share of the

Hydro Quebec/Vermont Joint Owners power contract through 1996, and notes that a proposed 50 megawatt project has been stopped. Reductions have been proposed in the pace of demand side management (DSM) programs in Vermont and New Hampshire until the need for and value of those resources increase substantially. In CVEC's view, these actions demonstrate the value of a diversified portfolio of resources and reflect the strategy of the 1990 LCIRP (minimize power surpluses, lower operating costs and reduce expenditures on DSM). CVPS plans to acquire 25% of its additional resources through short term contracts.

CVEC advocated use of the consolidated company's avoided costs for resource planning and pricing and opposes a move to wholesale rates as a basis for resource decisions. In CVEC's view, such a move would over-value DSM and non-utility purchases and therefore would not be in the public interest.

CVEC supported Staff's suggestion to estimate avoided costs by using power system simulation studies instead of the proxy unit approach, and use of simulation studies in determining costs of alternative environmental compliance strategies.

#### *B. Staff*

As noted in greater detail in the Stipulation Agreement, Staff found much of the 1992 LCIRP to be sufficient but recommended improvements for the 1994 filing. These include inclusion of a peak demand forecast for CVEC and revised demand forecasting equations as previously ordered by the Commission. Staff also recommended that because CVEC's resource evaluation and selection process for acquisition of DSM resources did not ensure a least cost resource mix for CVEC, CVEC should evaluate and select DSM resources based on the avoidance of wholesale power charges rather than the avoided costs of the consolidated company (as advocated by CVEC). It also recommended that the 1994 supply-side report identify the recommended generation resource plan and explain how other criteria such as rate impact and financial performance are factored into the resource evaluation and selection process. Staff recommended that the 1994 report on DSM resources include a long term plan, a rate impact analysis and description of new programs in the plan.

Staff recommended that future transmission planning address CVEC's design criteria, plans and budgets for installation of low loss transformers and the planning implications of the 1992 Energy Policy Act. Staff also recommended that when estimating long term avoided costs, CVEC should use its recommended generation resource plan instead of proxy units and recommended that rates paid to small power producers on short term schedules and standard offer contracts include an allowance for avoided transmission and distribution costs.

### III. STIPULATION AGREEMENT

The Stipulation Agreement recommends the following changes or additions to the 1994 LCIRP:

#### *A. Resource Planning*

As a result of negotiations in DR 93-151, CVEC's 1993 Conservation and Load Management (C&LM) docket, CVEC and Staff are concluding negotiations to redesign CVPS's RS-2 wholesale rate such that the wholesale charges would better reflect the true costs incurred by CVPS in meeting CVEC's power supply needs. Until the negotiations are complete, CVEC and

Staff agreed to refrain from recommending particular positions. Mr. McCluskey testified that negotiations are moving forward and anticipated final terms would be filed with the

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Commission by January 31, 1995.

Small power producer standard offer contracts will include an allowance for estimated avoided transmission and distribution costs and for those small power producers not paid under standard offer contracts. The avoided transmission and distribution costs will be determined by negotiations based on specific circumstances of each project.

*B. Forecasting*

The 1994 LCIRP will include a non-coincident long range peak demand forecast for CVEC and description of how that forecast was determined.

*C. Resource Need*

The 1994 LCIRP will include detailed information regarding CVEC's analysis of resource need. This will include an expanded probability analysis and discussion of CVEC's preference for probability analysis rather than deterministic analysis when designing a resource strategy that accommodates uncertainty.

*D. Evaluation and Selection Criteria*

The 1994 LCIRP will discuss how other planning criteria (in addition to cost effectiveness) are incorporated in the resource evaluation and selection process, specifically current and future environmental regulations, which potentially could be stricter, rate impacts and financial performance. Rate impacts and financial performance concerns would diminish, however, if wholesale rate restructuring is achieved.

*E. Generation Resource Acquisition Strategy*

The 1994 LCIRP will discuss CVEC's generation resource acquisition strategy, including purchased power as an alternative to construction of new plant and the appropriate balance between short, medium and long term resources in the generation resource mix.

*F. Generation Resource Plan*

The 1994 LCIRP will include a long-term generation plan that meets projected future need (net of C&LM) at least cost. While this plan is a sound estimate rather than a commitment, it should, at a minimum, address the type, size and timing of uncommitted additions, retirements of existing and committed resources, the anticipated mix of fuels to be used over the planning period and an assessment of the plan's diversity.

*G. Transmission and Distribution*

The 1994 LCIRP will address the design criteria for transmission planning, plans and budgets for the installation of low loss transformers, the impact of the Energy Policy Act on transmission planning and policy issues resulting from competition in transmission services.

*H. Conservation and Load Management Resource Plan*

The 1994 LCIRP will include a long-term C&LM resource plan which, in addition to the annual kilowatts/megawatts saved and projected budgets, will discuss the assumptions behind projected spending levels, the economics of the DSM resource, new programs expected to be developed, the reliability of the DSM resource and CVEC's DSM evaluation process.

#### IV. COMMISSION ANALYSIS

We have considered the testimony of CVEC and Staff, as well as the Stipulation Agreement. We find the terms of the Stipulation Agreement to provide a sound basis for the 1994 LCIRP and are an appropriate resolution of the 1992 filing. We will approve, therefore, the 1992 LCIRP and the Stipulation Agreement. We are particularly pleased that CVEC has agreed in the 1994 LCIRP to provide expanded forecasts regarding CVEC's operations, in addition to those of CVPS. Finally, we await the final terms in the RS-2 wholesale rate negotiations, growing out of Docket DR 93-151.

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Based upon the foregoing, it is hereby

ORDERED, that the Stipulation Agreement between CVEC and Staff regarding CVEC's 1992 Least Cost Integrated Resource Plan is APPROVED; and it is

FURTHER ORDERED, that CVEC's 1992 Least Cost Integrated Resource Plan is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of January, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 92-082, Order No. 21,008, 78 NH PUC 589, Oct. 27, 1993.

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NH.PUC\*01/24/95\*[80813]\*80 NH PUC 39\*Inacom Communications, Inc.

[Go to End of 80813]

80 NH PUC 39

### **Re Inacom Communications, Inc.**

DE 94-229

Order No. 21,508

New Hampshire Public Utilities Commission

January 24, 1995

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

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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 services. p. 39.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 39.

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BY THE COMMISSION:

ORDER

[1, 2] On September 23, 1994, Inacom Communications, Inc. (Inacom), a Nebraska 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.

Inacom 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 Inacom 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. Inacom 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, Inacom shall notify the Commission of the change.

5. Inacom 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. Inacom shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. Inacom 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. Inacom 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. Inacom 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. Inacom shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Inacom 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 Inacom 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.

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

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

FURTHER ORDERED, that Inacom shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than February 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before February 20, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Inacom 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 Inacom shall file a compliance tariff with Commission on or before February 7, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective February 23, 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 twenty-fourth day of January, 1995.

Notice of Conditional Approval of  
INACOM COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On September 23, 1994, Inacom Communications, Inc. (Inacom), a Nebraska 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. 21,508, issued in Docket No. DE 94-229, the Commission granted Inacom conditional approval to operate as of February 23, 1995, subject to the right of the public and interested parties to comment on Inacom 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 Inacom's petition to do business in the State should submit written comments no later than February 20, 1995, 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\*01/24/95\*[80814]\*80 NH PUC 41\*Unidial, Inc.

[Go to End of 80814]

80 NH PUC 41

### **Re Unidial, Inc.**

DE 94-204  
Order No. 21,509

New Hampshire Public Utilities Commission

January 24, 1995

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

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#### 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 services. p. 42.

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## 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 42.

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BY THE COMMISSION:

### ORDER

[1, 2] On August 30, 1994, Unidial, Inc. (Unidial), a Kentucky 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.

Unidial 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 Unidial 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. Unidial 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, Unidial shall notify the Commission of the change.
5. Unidial 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. Unidial shall maintain its books and records in accordance with Generally Accepted

## Accounting Principles.

7. Unidial 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. Unidial 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. Unidial 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. Unidial shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Unidial 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 Unidial shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g. (4) below.

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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.

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 Unidial to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Unidial shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than February 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before February 20, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Unidial 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 Unidial shall file a compliance tariff with Commission on or before February 7, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective February 23, 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 twenty-fourth day of January, 1995.

Notice of Conditional Approval of  
UNIDIAL, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 30, 1994, Unidial, 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

**Page 43**

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intrastate long distance telecommunications services.

In Order No. 21,509, issued in Docket No. DE 94-204, the Commission granted Unidial conditional approval to operate as of February 23, 1995, subject to the right of the public and interested parties to comment on Unidial 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 Unidial's petition to do business in the State should submit written comments no later than February 20, 1995, 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\*01/24/95\*[80815]\*80 NH PUC 44\*AT&T of New Hampshire, Inc.

[Go to End of 80815]

80 NH PUC 44

**Re AT&T of New Hampshire, Inc.**

DE 94-266  
Order No. 21,510

New Hampshire Public Utilities Commission

January 24, 1995

ORDER authorizing an interexchange telephone carrier to change from monthly to bi-monthly billings for certain low-usage customers.

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1. PAYMENT, § 20

[N.H.] Billings and collections — Billing period — Change from monthly to bi-monthly billings — For certain low-usage customers — Interexchange telephone carrier — Waiver from state code requirements. p. 44.

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BY THE COMMISSION:

ORDER

On November 1, 1994, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T of New Hampshire, Inc. (AT&T) requesting a waiver from the New Hampshire Code of Administrative Rules PART Puc 403.07 (a) (NH Admin. Rule Puc 403.07 (a)).

[1] With the waiver request, AT&T is proposing to implement a bi-monthly billing program under which certain low-usage customers would be billed every other month for AT&T long distance calls. Customers may elect to continue to be billed on a monthly basis, if they prefer, by notifying AT&T of their preference.

NH Admin. Rule Puc 403.07 (a) requires bills to be rendered at regular intervals that end on the corresponding day of each month. In order to implement its proposal, AT&T would maintain a regular billing interval but the interval would end on the corresponding day every other month.

According to AT&T, less than one percent of customers who were billed bi-monthly on a trial basis, opted for a monthly bill.

Because customers will have the option of maintaining a monthly billing cycle and the information that suggests most low-usage customers are not troubled by bi-monthly billing, AT&T's waiver request appears reasonable. We will therefore, grant AT&T's request for a waiver from NH Admin. Rule Puc 403.07 (a) but will allow any interested party to comment on AT&T's proposal before it becomes effective.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that AT&T's request for

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a waiver from NH Admin. Rule Puc 403.07 (a) is granted; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule, 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 February 3, 1995 and to be documented by affidavit filed with this office on or before February 20, 1995; 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 20, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before February 7, 1995, in accordance with N.H. Admin. Rule, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 23, 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 twenty-fourth day of January, 1995.

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NH.PUC\*01/24/95\*[80816]\*80 NH PUC 45\*New England Telephone and Telegraph Company

[Go to End of 80816]



80 NH PUC 45

**Re New England Telephone and Telegraph Company**

DR 94-304

Order No. 21,511

New Hampshire Public Utilities Commission

January 24, 1995

ORDER authorizing a local exchange telephone carrier to effectuate proposed tariff provisions relative to the offering of a new "Phonesmart" feature, "call return," as well as to institute both per-activation and monthly charges for "repeat dialing" service.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — "Phonesmart" options — Proposed new feature — Call Return — Adequate handling of privacy concerns vis-a-vis Caller ID blocking service. p. 45.

2. RATES, § 553

[N.H.] Telephone rate design — Special service — "Phonesmart" features — Call Return — Repeat Dialing — Billing options — Per-activation and monthly charges. p. 45.

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BY THE COMMISSION:

ORDER

[1, 2] On December 16, 1994, New England Telephone Company (NET or Company) filed proposed revisions to its Phonesmart tariff for effect January 15, 1995 and for implementation February 7, 1995. NET proposes to introduce Call Return, a feature which enables the subscriber to automatically redial the telephone number of the most recent incoming call except for calls from PBX lines, DID lines, lines that have activated per call blocking and lines that are equipped with line blocking. NET proposes to offer this feature on a monthly and a per activation basis.

In addition, NET proposes the addition of a per activation billing option to the Repeat Dialing feature and the addition of a new feature package including both Call Return and Repeat Dialing. This filing also removes the restriction which prevents line blocking from being provisioned on PBX trunks and makes Call Trace generally available on all non-subscribing customer lines in areas where Phonesmart service is available.

Staff requested that the proposed tariff pages be suspended to allow for a thorough review of the filing and the accompanying supporting material. On January 4, 1995, the Commission issued Order No. 21,486 suspending the proposed revisions.

The Call Return feature which NET proposes to introduce allows a customer to return a call to the last incoming number. Responding to privacy concerns, the Company withdrew the Call Return feature from its filing at the time Phonesmart Service was introduced (DR 91-105). Recent technological improvements allow the Call Return feature to be disabled if the calling customer's number is blocked. This prevents the automatic recall from occurring and protects the customer who has blocked his number from having his number revealed. Staff believes this protection adequately addresses safety and privacy concerns.

The guidelines for Phonesmart Services set out in DR 91-105, required NET to offer Line Blocking at no charge to all customers in the Phonesmart Service area for the period from 30 days prior to introduction to 60 days following the introduction of Phonesmart Services in that area. When Phonesmart Services are introduced to an area, Line Blocking also becomes technically feasible. Consequently, Staff requested and NET has agreed to make an administrative text change removing the phrase "when technically feasible" from Part A, Section 6.9.1.E.

Following a review of the filing and the accompanying materials, Staff recommended that the proposed tariff revisions be approved and that the public be afforded an opportunity to respond in support of or in opposition to Call Return.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following tariff pages of New England Telephone and Telegraph Company are approved:

NHPUC No. 75

Part A - Section 6 -

Third Revision of Page 14

Second Revision of Page 15

Fourth Revision of Page 16

and it is

FURTHER ORDERED, that NHPUC No. 75, Part A, Section 6, First Revision of Page 14.1 be approved subject to the condition that the phrase "when technically feasible" from Section 6.9.1.E. is deleted; 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 February 3, 1995 and to be documented by affidavit filed with this office on or before February 20, 1995; and it is

FURTHER ORDERED, that NET 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 February 3, 1995 and shall be documented by affidavit with the Commission on or before February 20, 1995; 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 20, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before February 7, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04 (b).

FURTHER ORDERED, that this Order *Nisi* shall be effective as of February 23, 1995, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of January, 1995.

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BETH OSLER  
NEW ENGLAND TEL CO  
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EXCEPT FOR DISCOVERY FILINGS,  
AN ORIGINAL & 8 COPIES TO:

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PURSUANT TO PUC RULE 204.03(C), DISCOVERY FILINGS SHOULD BE SENT TO  
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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 94-304, Order No. 21,486, 80 NH PUC 11, Jan. 4, 1995.

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NH.PUC\*01/30/95\*[80817]\*80 NH PUC 48\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80817]

80 NH PUC 48

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 94-305  
Order No. 21,512

New Hampshire Public Utilities Commission

January 30, 1995

ORDER authorizing a local exchange telephone carrier to proceed with its plan of notification as to elimination of four-party residential service statewide, and allowing it to process resulting service change requests, even though not all service alternatives had yet been determined.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of four-party residential service — Customer notification — Processing of service change orders — Need for alternative service options — Both single- and two-party service. p. 49.

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BY THE COMMISSION:

ORDER

On December 16, 1994, New England Telephone Company (NYNEX or Company) filed with the New Hampshire Public Utilities Commission (Commission) proposed revisions to its Basic Exchange tariff seeking to remove Four-Party Service in anticipation of the July 1, 1995 availability of Enhanced 9-1-1 (E911). NYNEX had proposed to retain Four-Party Service which has been "grandfathered" since DR 89-10 in the Alstead Exchange and in identified pockets of certain exchanges until such time as facilities permit the availability of Single-Party Service. By Order No. 21,502, (January 16, 1995) the Commission suspended NYNEX's filing, recognizing two separate issues related to the proper and timely implementation of the E911 system.

On one track the Commission ordered Staff and the Company to conduct technical sessions, and required the Company to file a firm schedule for the completion of the construction of facilities necessary to permit NYNEX to offer Single-Party Service. On the second track the Commission ordered a hearing on the merits regarding the types of service that would be feasible for current Four-Party customers (including Two-Party Service), and on customer notification. The hearing was set for February 14, 1995, at 10:00 a.m. at the Commission offices in Concord. The Commission ordered NYNEX to serve a summary and explanation of its proposal to eliminate Four-Party Service on affected customers by first-class U.S. Mail postmarked no later than January 31, 1995, including notification of the hearing and solicitation of written comments.

On January 25, 1995, NYNEX filed a petition in response to Order No. 21,502. NYNEX proposes that prior to the hearing and subsequent order, that it be permitted to continue with its implementation plan. The Company outlines the logistics of accomplishing the 2150 dispatches of field technicians to complete the necessary rewiring modifications inside the premises of the Four Party ("tip side") customers. Customer notification and computerized service order writing necessarily precede any field work. The Company states it is "concerned that the requirement for a hearing will introduce a delay in our implementation schedule that will jeopardize the scheduled completion date of July 1, 1995."

NYNEX proposes that if additional options become available to customers, such as Two-Party Service, as a result of the Commission deliberations, NYNEX will recanvass the

Four-Party customers. The Company further

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offers to waive any charge to change a customer's service again, should the customer later choose an option made available pursuant to Commission directive, such as Two-Party Service. The Company has intended to change the billing for all Four-Party customers on July 1, 1995. Therefore no billing adjustment would be required by this petition. Lastly, NYNEX states: "Without such relief we will not be able to guarantee completion prior to the Enhanced 9-1-1 cutover date."

Staff has reviewed the Company's petition and discussed the filing with Company representatives. Staff does not necessarily concur that the delay imposed by the public hearing is as threatening as the Company portrays. The Company commands substantial resources to overcome such a delay. Nonetheless, in balancing the totality of the interests, Staff recommends approval of the relief sought. However, additional costs incurred as a result of the Company's offer to change a customer's service an additional time should be borne by the stockholders.

[1] The Commission takes notice of the Company's heightened focus on guaranteeing completion by the Enhanced 9-1-1 cutover date on July 1, 1995. The petition asserts that the public hearing jeopardizes the timely completion of network preparations for this enhancement of emergency services to the public. The responsibility for completion of these preparations lies squarely with the Company. The Company is aware of the Commission's policy of providing an opportunity for the public and interested parties to be heard, and should have planned accordingly.

Notwithstanding the preceding, allowing NYNEX to notify Four-Party customers of the uncontested elimination of Four-Party service, commencing service order writing, and dispatching field technicians contributes significantly to the smooth and timely implementation, which is in the public good. In consideration of the Company's commitments to serve further notice to customers if additional options become available as the result of Commission deliberations, to waive any charge associated with further changes to a customer's service and to postpone the effective billing date until July 1, 1995, we believe that the proposal poses little harm to customers.

Based upon the foregoing, it is hereby

ORDERED, that the Company may immediately proceed, at its own risk, with its implementation plan for the notification of Four-Party customers, service order writing, and field dispatch, subject to modification pending the outcome of the hearing on February 14, 1995; and it is

FURTHER ORDERED, the costs, if any, incurred as a result of the Company's offer to waive any charge to change a customer's service an additional time during implementation be borne by the stockholders.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of January, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 94-305, Order No. 21,502, 80 NH PUC 26, Jan. 16, 1995.

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NH.PUC\*01/31/95\*[80818]\*80 NH PUC 49\*Belleau Lake Corporation

[Go to End of 80818]

80 NH PUC 49

**Re Belleau Lake Corporation**

Additional applicant: Beverly Hills Water Association, Inc.

DC 92-231

Order No. 21,513

New Hampshire Public Utilities Commission

January 31, 1995

ORDER finding that a homeowners' association, as successor in interest to a small community water system, is exempt from commission regulation and is not a public utility, its provision of service to three nonmembers notwithstanding. Commission notes that the association is not-for-profit and that the nonmembers will pay the same rates and receive the same quality

**Page 49**

of service as members, making regulation by the commission as to those three nonmembers unnecessary.

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1. PUBLIC UTILITIES, § 51

[N.H.] Regulatory status — Homeowners' association — Exemption from commission jurisdiction — Service to members only as a factor — Nonpublic service — Nonprofit status as a factor — Water system. p. 51.

2. PUBLIC UTILITIES, § 58

[N.H.] Regulatory status — Mutual association — Exemption from commission jurisdiction — Service to nonmembers as a factor — No impact on regulatory exemption — Incidental service to very small number — No difference in rates or service level — Water system. p. 51.

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BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

In the fall of 1991 Lakes Region Water Company, Inc., a franchised public water utility in the State of New Hampshire, filed a petition to acquire the Belleau Lake Water System (Belleau Lake). Belleau Lake is a community water system constructed and owned by the Belleau Lake Corporation to service a development of seasonal homes on Belleau Lake in the Town of Wakefield. Subsequently, the petition was withdrawn.

On October 30, 1992, the Commission Staff (Staff) contacted Belleau Lake and informed it that it must apply for permission to operate in the State of New Hampshire. RSA 374:22 and 26. The October 30, 1992 letter also informed Belleau Lake that it could not charge rates without prior Commission review and approval. RSA chapter 378.

On December 18, 1992, the Commission received a copy of correspondence sent to customers from Belleau Lake informing them that their annual rates had increased to \$130 per year, and that the Company would be abandoning the system and that customers had eight months to make arrangements for an alternative source of service. In order for any public utility to abandon a franchise, it must first obtain approval of the Commission. RSA 374:28.

Consequently, the Commission issued Report and Order No. 20,711 requiring Ernest J. Belleau, Jr. as the agent and owner of Belleau Lake to show cause why he should not be fined or subject to criminal prosecution for failure to abide by State law relative to utility operations (Report and Order No. 20,711 was superseded by Report and Order No. 20,725 which changed the date of the hearing to February 11, 1993.)

On February 11, 1993, the Commission held a duly noticed hearing at which time Mr. Belleau and a number of customers appeared. Mr. Belleau indicated that he was not interested in owning the water system and merely wanted to sell the system to his customers. The customers in attendance indicated that they were interested in purchasing the system but could not make a commitment to do so without the approval of their fellow customers, many of whom reside out of State during the winter months.

Therefore, both Mr. Belleau and the customers in attendance requested that the Commission continue any hearings until the end of the summer months and that Mr. Belleau be allowed to charge each customer \$55 for six months of service and as consideration for the transfer of the water system.

During the summer of 1993 Staff met with a group of the customers in Wakefield and advised them of the options that were open to them relative to the community water system. Subsequently, the customers notified the Commission that they were interested in forming a not-for-profit corporation to own, operate and manage the water system on their own behalf. The customers requested time to establish the corporation.

On January 27, 1994, the Commission received a letter from one of the customers

informing it that on August 23, 1993 a majority of the customers served by the water system filed Articles of Agreement for a nonprofit corporation known as the Beverly Hills Water Association, Inc. (Corporation). The articles of agreement state that the purpose of the Corporation is to provide and maintain water to the customers of Belleau Lake, and that membership is open to all customers of the system. The letter further stated that the Association had purchased the community water system from Belleau Lake on November 6, 1993.

The Association indicated that all but three customers had agreed to membership in the Corporation and they requested that the Commission withhold any action until the summer months when these three customers could be contacted. Subsequently, Staff contacted the Association and requested a copy of the bill of sale of the water system, a copy of the articles of incorporation and a copy of the bylaws. On August 4, 1994 the Corporation provided the Commission with the articles of agreement and the bylaws, and indicated that all but three customers were members of the Corporation.

## II. COMMISSION ANALYSIS

This Commission has general regulatory powers over, *inter alia*, the rates and quality of service of:

every corporation ... owning operating or managing any plant or equipment or any part of the same ... for the manufacture or furnishing of ... water to the public ... .

RSA 362:2 (Supp. 1994)

Thus, any corporation providing water to the "public" is subject to our jurisdiction. The issue for our consideration, then, is whether the Corporation is providing water service to the public and, therefore, is subject to our jurisdiction.

In an opinion authored by the Department of Justice at the request of this Commission on January 31, 1980 the Attorney General stated that:

[w]here residents of a subdivision have bound themselves together into an ... association for the purposes of owning and operating a water system for the provision of water only to themselves, no public utility has been formed. In such an association each of the members of the association owns a percentage interest in the water system. In such an association all of the consumers of the water service are also all of the providers of water service. The rates to be charged, if any, the quality of service to be provided, the extent of the plant and equipment in existence, indeed the entire control of the provision of the water service is vested in the consumers of the service. *Thus, there is no entity providing water to the public. Rather, it is a group of people providing water to themselves.* (emphasis added).

Opinion of the Office of the Attorney General, at 2, (January 31, 1980).

**[1, 2]** In the case at hand, we have a nonprofit corporation, the membership of which is open to all of the users of the water system, providing service to its members. *See*, Articles of Incorporation, Corporate Bylaws. Pursuant to the analysis set forth above the Corporation would not be a public utility subject to our jurisdiction if all of the users were members of the Corporation because it would constitute one entity providing service to itself.

Three of the households entitled to membership in the Corporation, however, have chosen not to exercise that right

1(12) . Therefore, to the extent the Corporation provides water service to these non-member households it is a public water utility subject to our jurisdiction pursuant to RSA 362:2.

The Corporation, in recognition of this fact, has requested exemption from regulation pursuant to RSA 362:4,I. RSA 362:4,I provides, in pertinent part, that if a corporation providing water service to the public:

shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission may exempt any such water ... company from any and all

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provisions of this title whenever the Commission may find such exemption consistent with the public good.

RSA 362:4,I (Supp. 1994)

As set forth above, we find the Corporation is providing service to itself and three additional consumers. Therefore, it qualifies for exemption from regulation pursuant to RSA 362:4,I provided we find such an exemption to be in the public good.

In evaluating whether such an exemption is in the public good we will first assess the benefits of regulation by this Commission to the three households. Initially, we must identify any of the benefits of regulation.

One of this Commission's principal regulatory powers is the setting of just and reasonable rates to ensure a fair return on prudently invested capital to the utility while at the same time protecting consumers from extortionate rates. RSA 378:28. In this case, the Corporation is nonprofit, and, therefore, will not seek a return on its invested capital. Furthermore, if any of the non-member households believe that the rates are excessive they are free to become members of the Corporation and vote to lower the rates. Bylaws, Article V. In addition, we construe Article VI, Section 10 of the bylaws to provide that non-member customers will pay the same rates as members plus any additional costs incurred by the Corporation because it is serving these non-members. We find this method of rate assessment equitable and consistent with this Commission's cost allocation methodologies. *Cf.*, RSA 362:4,III (Supp. 1994).

Another regulatory responsibility of this Commission and potential benefit of regulation is the assurance of quality service to the consumer. Given that all of the members have the same interest in quality service as the non-members we see no need for regulation in this area.

Our consumer protection rules and the benefits that they provide to customers are another significant regulatory responsibility of this Commission, as it relates to this type of utility. One of the most significant of these rules relates to customer disconnection, N.H. Admin. R., Puc 603.08, and is adopted by reference of the by-laws of the Corporation, Article VI, Section 10, paragraphs d and e.

In conclusion, in evaluating all of the circumstances surrounding the providing of water service to the customers of the Belleau Lake, we can discern no concrete benefit to the non-member customers of Commission regulation of this water system. We, therefore, find that the Corporation is exempt from our regulation.

Based upon the foregoing, it is hereby

ORDERED, that Beverly Hills Water Association, Inc., a nonprofit corporation providing water service in the Town of Wakefield, New Hampshire on the shores of Belleau Lake, is exempted from the regulation of this Commission.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1995.

#### FOOTNOTES

<sup>1</sup>It has been orally represented to our Staff that there are currently only two households that have chosen not to become members of the Corporation. Given that the number of households that are not members of the Corporation is less than ten, the actual number of households does not affect our analysis and we will assume that there are still three households that are not members of the Corporation in the absence of more reliable evidence. *See*, RSA 362:4 (Supp. 1994) *infra*.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Belleau Lake Corp. dba Belleau Lake Water System, DC 92-231, Order No. 20,711, 77 NH PUC 805, Dec. 23, 1992. [N.H.] Re Belleau Lake Corp. dba Belleau Lake Water System, DC 92-231, Order No. 20,725, 78 NH PUC 17, Jan. 13, 1993.

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NH.PUC\*02/06/95\*[80819]\*80 NH PUC 53\*Public Service Company of New Hampshire

[Go to End of 80819]

80 NH PUC 53

### **Re Public Service Company of New Hampshire**

DR 94-172

Order No. 21,514

New Hampshire Public Utilities Commission

February 6, 1995

ORDER granting an electric utility protective treatment as to the names of individuals receiving special compensation under a key employee incentive program, which is yet to be examined as part of the utility's most recent fuel and purchased power adjustment clause filing.

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## 1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special employee incentive compensation plan — Nondisclosure of individual employee names — Identification by title only — Electric utility. p. 53.

## 2. EXPENSES, § 105

[N.H.] Payroll and employee compensation — Bonuses and extra benefits — Special key employee incentive plan — Protective treatment — Nondisclosure of individual employee names — Matching of incentive payments to titles only — Electric utility. p. 53.

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BY THE COMMISSION:

## ORDER

On August 8, 1994, Public Service Company of New Hampshire (PSNH) filed a Fuel and Purchased Power Adjustment Clause for December 1, 1994, through May 31, 1995 with the New Hampshire Public Utilities Commission (Commission).

[1, 2] By Order No. 21,446 issued December 1, 1994, the Commission approved a settlement agreement between the parties and Commission Staff (Staff) which resolved all but two remaining issues. *See* Order No. 21,446. The two outstanding issues are consideration of a proposal regarding extraordinary measures, now scheduled to be heard March 22, 1995, and an audit by Staff. The audit requests, among other things, evaluation of the Key Employee Incentive Program (Incentive Program). On December 22, 1994, PSNH filed a redacted version of the Incentive Program, accompanied by a Motion for Protective Order stating that public disclosure would be an invasion of privacy of the employees and that the information is an internal personnel practice and therefore is exempt from disclosure under RSA 91-A:5. PSNH has redacted the names of the employees but retained the titles of eligible positions. Neither the Office of the Consumer Advocate (OCA) nor Staff objected to the Motion.

We are persuaded that the redacted materials fit within the standards for exemption from public disclosure set forth in RSA 91-A:5, the Right to Know Law. In the event further information is required for full analysis by the Staff or Parties, however, we will entertain requests for additional disclosure, at which time PSNH would have full opportunity to respond.

Based upon the foregoing, it is hereby

ORDERED, that the Commission finds the redacted information relative to the Seabrook Key Employee Incentive Program is exempt from disclosure, pursuant to N.H. Admin. Rule Puc 204.08 (b)(4)(c) and RSA 91-A:5 and, therefore, PSNH's Motion for Protective Order is hereby granted.

By order of the Public Utilities Commission of New Hampshire this sixth day of February, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-172, Order No. 21,446, 79 NH PUC 660, Dec. 1, 1994.

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NH.PUC\*02/06/95\*[80820]\*80 NH PUC 54\*Cable and Wireless New Hampshire, Inc.

[Go to End of 80820]

80 NH PUC 54

**Re Cable and Wireless New Hampshire, Inc.**

DR 95-003

Order No. 21,515

New Hampshire Public Utilities Commission

February 6, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which, among other things, increase the minimum billing increment from six seconds to 18 seconds and introduce various enhanced business 800 and travel card services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — Change in minimum billing increment — Enhanced 800 and calling card service options — Interexchange carrier. p. 54.

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BY THE COMMISSION:

ORDER

[1] On January 10, 1995, Cable and Wireless New Hampshire, Inc., d/b/a Cable & Wireless, Inc. (CWI) filed a petition with the New Hampshire Public Utilities Commission (Commission) for authority to replace its tariff NHPUC No. 1 with NHPUC No. 2.

Revisions to NHPUC No. 1 that are included in NHPUC No. 2 include an explanation of timing of calls, (i.e., when charges begin to accrue on a particular call), a change in the minimum increment for EXCEL and VNS service from 6 to 18 seconds, various rate changes, introduction of Dialed Number Identification Service (DNIS), Venture, Cable & Wireless Simplicity and Cable & Wireless Simplicity Direct, and Business First services.

DNIS identifies the 800 number dialed when a location receives inbound calls from more than one 800 number. Venture is a unified service for single and multi-location companies using

switched, dedicated, and travel card origination. It combines outbound, inbound, calling card and conference calling usage for volume discounts. Cable & Wireless Simplicity and Simplicity Direct are similar services to Venture with different discount options. Business First aggregates various usage (e.g. toll, 800, calling card) and applies a discount based on a customer's usage commitment.

The proposed changes are in the public good in that they 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. Therefore, the Commission will authorize CWI's tariff, NHPUC No. 2.

Based on the foregoing, it is hereby

ORDERED, that CWI's tariff NHPUC No. 2 is approved for effect as filed; and it is

FURTHER ORDERED, that CWI file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of February, 1995.

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NH.PUC\*02/06/95\*[80821]\*80 NH PUC 54\*Public Service Company of New Hampshire

[Go to End of 80821]

80 NH PUC 54

**Re Public Service Company of New Hampshire**

DR 94-309

Order No. 21,516

New Hampshire Public Utilities Commission

February 6, 1995

ORDER approving an electric utility's special rate contract with CE-KSB Pump Company, under which service rates are discounted in exchange for the customer agreeing to accept

**Page 54**

interruptible power.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Interruptible service — Via special rate contract — Discounted demand charges — Extension of contract term. p. 55.

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BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH), on December 19, 1994, filed with the New Hampshire Public Utilities Commission (Commission) Special Contract No. NHPUC-103, between PSNH and CE-KSB Pump Company (CE-KSB) superseding Contract No. NHPUC-79 (Docket No. DR 92-232) that has been in effect since the Commission approved it in Order *Nisi* No. 20,744 on February 5, 1993.

The terms of Special Contract No. NHPUC-103 are similar to Special Contract No. NHPUC-79 except that Special Contract No. NHPUC-103 extends the termination date to December 31, 2004. Either PSNH or CE-KSB may request that any of the terms and conditions be adjusted on the ground that conditions of the agreement have changed materially. If PSNH and CE-KSB are unable to reach agreement on an adjustment within three months, the matter may be referred to the Commission for a decision. CE-KSB has been rendered service under a special contract for interruptible power since 1978.

[1] Service rendered under this Special Contract consists of PSNH providing interruptible power to CE-KSB. The interruptible power is priced at a reduced rate to the demand charge under Rate LG in PSNH's tariff. PSNH intends to treat CE-KSB Pump's Interruptible Load as Type 2 NEPOOL DISPATCHABLE LOAD in accordance with *NEPEX Criteria, Rules and Standards No. 16* thereby providing some benefit to ratepayers during periods of capacity shortages or emergencies. PSNH has the ability to interrupt service provided under NHPUC-103 without any notice to CE-KSB Pump. Under Operating Procedure No. 4 (O.P. 4), CE-KSB will be interrupted upon implementation of Action 5 under O.P. 4 by NEPEX. NEPEX has implemented Action 5 under O.P. 4 in New Hampshire twenty-five separate days since July 1987, and on twelve separate occasions since the in-service date for Seabrook Station.

The Commission finds that Special Contract No. NHPUC-103 provides some benefit to PSNH's system load factor as well as retaining a proven interruptible load for PSNH's future capacity needs. Thus, the Commission finds the benefits of Special Contract No. NHPUC-103 between PSNH and CE-KSB to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-103 between PSNH and CE-KSB Pump is approved as filed; and it is

FURTHER ORDERED, that PSNH notify the Commission if CE-KSB Pump was not interrupted during NEPEX Operating Procedure No. 4, Action 5, as well as the reasons why interruption did not take place; 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 February 17, 1995 and to be documented by affidavit filed with this office on or before March 6, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 8, 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 sixth day of February, 1995.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-232, Order *Nisi* No. 20,744, 78 NH PUC 82, Feb. 5, 1993.

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NH.PUC\*02/06/95\*[80822]\*80 NH PUC 56\*Public Service Company of New Hampshire

[Go to End of 80822]

80 NH PUC 56

**Re Public Service Company of New Hampshire**

DR 94-255

Order No. 21,517

New Hampshire Public Utilities Commission

February 6, 1995

MOTION by electric utility for approval of a special rate contract with an industrial customer, Anheuser-Busch, Inc.; granted, with the commission citing to the ratepayer benefits emanating from such load retention devices.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special rate contract — Discounted energy and demand charges — Designed to assure load retention — Viability of customer's self-generation capabilities as a factor — Long-term contract. p. 56.

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BY THE COMMISSION:

ORDER

[1] Public Service Company of New Hampshire (PSNH), on October 31, 1994, filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract, Special Contract No. NHPUC-99 (NHPUC-99) between PSNH and Anheuser-Busch, Inc. (Anheuser-Busch). Anheuser-Busch is a Missouri corporation that operates a brewery located in Merrimack, New Hampshire.

NHPUC-99 is designed to retain the provision of electric service from PSNH to Anheuser-Busch at its Merrimack location for a period of ten years from the effective date of NHPUC-99. PSNH contends and Anheuser-Busch confirms that Anheuser-Busch would, absent this special contract, install and utilize its own generation to serve a significant portion of its electric energy requirements. Anheuser-Busch currently operates cogeneration facilities at breweries in several other states.

PSNH is proposing to provide discounted electric service to Anheuser-Busch's Merrimack facility in the form of discounted energy and demand charges for a ten-year period. Anheuser-Busch agrees that PSNH will continue to be its only provider of electric service for a period of ten years subject to certain provisions that allow either party to terminate NHPUC-99 prior to the end of its scheduled term but no sooner than five years from the effective date.

PSNH believes that NHPUC-99 will accomplish its goals of pricing energy closer to marginal cost, reducing the incentive of Anheuser-Busch to self-generate, and providing PSNH with a stable revenue stream. By retaining service to Anheuser-Busch, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers. Anheuser-Busch 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.

The Commission agrees with PSNH's characterization of NHPUC-99 as a load retention application. As such, the primary benefits of NHPUC-99 during the Fixed Rate Period accrue to PSNH shareholders. However, over the long term, this load retention contract also benefits ratepayers and therefore the Commission finds that NHPUC-99 is in the public interest. The Commission further finds that NHPUC-99 may provide Anheuser-Busch with a competitive advantage over other brewers in New Hampshire, unless similar special

**Page 56**

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contracts are made available to other New Hampshire brewers in PSNH's service territory.

Based upon the foregoing, it is hereby

ORDERED *NSI*, that Special Contract No. NHPUC-99 between PSNH and Anheuser-Busch is approved as filed; and it is

FURTHER ORDERED, that PSNH work with the Department of Resources and Economic Development to identify other New Hampshire brewers, including so called micro-breweries, in PSNH's service territory; and it is

FURTHER ORDERED, that PSNH file with the Commission by February 20, 1995 a statement indicating whether PSNH is willing to offer similar special pricing conditions to other

New Hampshire brewers, and if PSNH is not willing to offer other brewers similar terms and conditions, to explain why it is not willing to do so; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-99, 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 Anheuser-Busch in Special Contract No. NHPUC-99; 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 February 17, 1995 and to be documented by affidavit filed with this office on or before March 6, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 8, 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 sixth day of February, 1995.

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NH.PUC\*02/06/95\*[80823]\*80 NH PUC 57\*Granite State Electric Company

[Go to End of 80823]

80 NH PUC 57

**Re Granite State Electric Company**

DR 94-235

Order No. 21,518

New Hampshire Public Utilities Commission

February 6, 1995

ORDER adopting a settlement agreement with respect to an electric utility's 1995 conservation and load management program. A budget of \$2.5 million is approved, of which approximately two-thirds is earmarked for commercial and industrial customers and one-third for residential customers. The utility is authorized to introduce pilot programs for heat pump water heaters and electric thermal storage.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Settlement agreement — 1995 budget — Treatment of carryover projects — Possible restructuring of customer co-payments — Payback period and criteria — Introduction of new pilot programs. p.

60.

## 2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management programs — Settlement terms — New annual budget — Treatment of carryover projects — Possible restructuring of customer co-payments — Payback period and criteria — New pilot programs — Heat pump water heaters and electric thermal storage. p. 60.

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APPEARANCES: Steven E. Thomas, Esq. and David J. Saggau, Esq. on behalf of Granite State Electric Company; Ann B. Weeks, Esq. and Cort Richardson for the Conservation Law

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Foundation; Kenneth E. Traum for the Office of Consumer Advocate on behalf of residential ratepayers; and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

**ORDER**

**I. PROCEDURAL HISTORY**

On October 3, 1994, Granite State Electric Company (GSEC) filed adjustments to its prior year 1994 Conservation and Load Management (C&LM) Program which had been approved February 28, 1994 by Order No. 21,143.

At the duly noticed prehearing conference on December 1, 1994, the Conservation Law Foundation (CLF) sought full intervention without objection. The proposed procedural schedule, delineated in the order of notice, was agreed to by GSEC, CLF, the Office of Consumer Advocate (OCA) and Commission Staff (Staff). At the prehearing conference, the Parties and Staff presented the Interim Settlement by which GSEC'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. According to the Interim Settlement, if after full review and final order of the Commission there were no 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 GSEC 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 GSEC against loss if the programs were to change after full review. In the week after this announcement GSEC, with the concurrence of the Parties and Staff, submitted on December 14, 1994 a new proposal.

GSEC's new proposal requested implementation of its 1995 C&LM programs effective January 1, 1995 with continuation of its currently approved 1994 C&LM factor, pending final review and approval of the 1995 programs and C&LM factor. If the Commission should order changes in programs, however, GSEC 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 final order required reduction in the amount of the factor, GSEC would collect less in the remainder of the year, so that it would not overcollect the amount ultimately ordered by the Commission.

On December 20, 1994, the Commission issued Order No. 21,468, approving the proposed procedural schedule and granting CLF full intervention. It also approved the new proposal for implementation of the 1995 C&LM programs and approved the continuation of the existing 1994 C&LM factor in its rates, both subject to modification after full review and final order of the Commission.

Following data requests by the OCA and Staff, a technical session was held on January 4, 1995 to discuss outstanding issues of concern. Staff had three concerns: 1) should GSEC be allowed to decouple carryover costs on the C&I program; 2) should the payback period be adjusted; and 3) should the two residential pilot programs be approved.

On January 23, 1995, the Parties and Staff submitted a Settlement Agreement (Exhibit 7) and supporting documents that resolved all issues in the case. The Commission held a hearing on January 23, 1995, at which GSEC presented testimony and exhibits in support of the Settlement Agreement.

## II. POSITIONS OF THE PARTIES AND STAFF

The positions described herein relate only to the issues that generated substantive discussion during the course of this proceeding. As signatories to the Settlement Agreement, the Parties and Staff recommend approval of the GSEC filing, as revised.

### A. *Granite State Electric Company*

In its filing, GSEC proposed to continue

**Page 58**

implementation in 1995 of the seven 1994 C&LM programs and implement two residential pilot programs, only one of which is proposed to be funded through the C&LM factor. GSEC proposed a budget of \$2,681,400, of which \$652,000 is for the residential programs and \$2,029,400 is for the commercial and industrial (C&I) programs. The proposed 1995 budget is \$418,600 lower than the 1994 budget of \$3,100,000. The reduction is primarily due to decreased spending in the C&I programs and a small reduction in residential spending.

GSEC sought change in the treatment of carryover dollars on the C&I programs. Carryover dollars result from projects which GSEC has agreement for in the current program year, but the customer will not implement until the next calendar year. GSEC proposed that carryover dollars be "decoupled" from the 1995 new business budget. In other words, if carryover projects are not implemented, the dollars would be eliminated rather than added to the new business budget, unless increased opportunities in the Design 2000 and Energy Initiative programs were to result in spending that exceeded the new business budget.

Beginning in 1993, the reduction in Energy Initiative (EI) rebates has increased C&I customer co-payments by 50% to 100%. GSEC claims that such payments have become a significant barrier to participation, as the higher co-payments often require approval from upper

management. In addition, some C&I customers have found that they are capital constrained or that their internal investment criteria limit them to a one year payback for capital investments as opposed to the two year payback incorporated in EI. Finally, GSEC stated that in some instances even the financing and leasing options were insufficient to elicit customer participation. Therefore, GSEC requested permission to increase C&I customer subsidies, on a case by case basis, such that a one year versus a typical two year payback would be provided.

GSEC also proposed two residential pilot programs for 1995, the Heat Pump Water Heater Program and the Electric Thermal Storage Heat Program. The Heat Pump Water Heater Program is part of an ongoing New England Power Service Company research and development effort to gather comparative efficiency data between various models of heat pump water heaters and electric resistance water heaters. GSEC proposed to install and monitor the performance of 30 new heat pump water heater units at a cost of \$32,700. Customers would not have to make any financial contribution to participate; however, cost recovery of the \$32,700, through the 1995 residential factor, was proposed.

The Electric Thermal Storage Heat Program is designed for research purposes and is not proposed to be funded through the conservation factor. Thus, there would be no impact on the residential budget or incentive calculation. GSEC seeks to determine demand and energy savings, installation and other costs, customer acceptance, unit reliability as well as whether widespread electric thermal storage availability will be cost effective in New Hampshire.

#### *B. Conservation Law Foundation*

CLF participated in all aspects of this proceeding, supporting the continued implementation of the seven previously approved C&LM programs as described in the filing. CLF supported GSEC's continued focus on enhancing its ability to effectively implement the Design 2000 and Energy Initiative programs and efforts to achieve the programs' goals during 1995.

#### *C. Office of Consumer Advocate*

OCA participated in all aspects of this proceeding, supporting GSEC's efforts to improve residential customer participation in C&LM. With regard to the pilot Heat Pump Water Heater Program, OCA encouraged GSEC, to the extent possible, to solicit low income customers to participate in the pilot. However, GSEC acknowledged that one of the pilot's primary objectives was not to provide significant cost savings but to test the operational effectiveness of these units under various conditions.

#### *D. Staff*

Staff has indicated to us that in the technical

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session it did not favor decoupling (i.e. eliminating) C&I carryover dollars from the 1995 new business budget, in that reduction to the 1995 new business budget carries with it a related reduction to the 1995 dollar savings. Staff suggested instead that both costs and savings be agreed upon at the outset for the 1995 program year. For instance, the 1994 C&LM program (DR 93-188, approved in Order No. 21,143) includes a performance threshold of 50% of total year budgeted dollar savings. That is, GSEC must achieve 50% of its total year budget dollar savings

in order to become eligible to earn financial incentives. If GSEC were to decouple and eliminate C&I carryover costs, the savings value associated with these decoupled costs would change its threshold test, making it difficult to establish GSEC's threshold level to be used in determining financial incentives.

Staff noted that when the threshold test was initially established, it included carryovers. It was understood that it would be relatively easy for GSEC to achieve the threshold in the early years but as the programs matured, it would be relatively more difficult. For instance, in 1991, GSEC met the savings threshold, and earned financial incentives amounting to \$1,018,724. In 1992, GSEC again met the threshold test but earned financial incentives amounting to \$354,475. In 1993, GSEC did not meet the threshold test and earned no financial incentives. In 1994, GSEC met the threshold test for its residential programs only and the Settlement Agreement provides an estimate for financial incentives amounting to \$48,413.

By opposing GSEC's request for decoupling, Staff has not harmed in any way GSEC's ability to recover all costs incurred on C&LM programs. Staff continues to support the full recovery of all C&LM costs incurred to achieve the C&LM benefits to ratepayers over the long term.

Regarding the reduced payback period, GSEC's filing did not contain any criteria to demonstrate that specific C&I customers were in fact so financially constrained that they could not participate. Therefore, Staff proposed that GSEC develop sufficient safeguards to avoid customer abuse of the one year payback option.

Subsequent discussions among the Parties and Staff resulted in GSEC proposing the following criteria a customer must meet to obtain a reduced payback:

1. why GSEC financial offerings are not viable options; and
2. demonstration of an internal corporate payback policy of less than two years;
3. Demonstration that a one year payback was applicable to all facilities within the organization.

Following a determination of eligibility, GSEC would submit this information to the Commission for their review and decision. GSEC also proposed that, in any given program year, the availability of the one year payback option be limited to no more than five customers or \$500,000, whichever is reached first. Finally, GSEC proposed to provide updates regarding customer participation in its semi-annual C&LM reports.

Staff supported the criteria established by GSEC, but encouraged GSEC to market all existing financing and programmatic options prior to offering a higher subsidy to elicit customer participation.

With respect to the two residential pilot programs, specifically with respect to the Electric Thermal Storage Heat Program, Staff encouraged GSEC to investigate the potential for joint utility cooperation with New Hampshire utilities that have ongoing electric thermal storage programs. Given the cost savings potential of heat pump water heaters, Staff also supported GSEC's efforts to research the cost effectiveness and operations of such units.

### III. SETTLEMENT AGREEMENT

[1, 2] At the hearing, the Commission marked into evidence Exhibit 7, the Settlement



Agreement between the Parties and Staff, that resolves all issues in this case. In the Settlement Agreement, GSEC agreed to withdraw its request for decoupling and to update 1994 carryover to 1995 based on actual results through November, 1994 and estimated results through December, 1994. The updated cost of

**Page 60**

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carryover projects represent \$198,000. This update has been included in the 1995 C&LM budget of \$2,504,500, the C&I incentive threshold and the C&I conservation cost factor for 1995.

The Parties and Staff agreed that GSEC's proposed 1995 C&LM program shall be effective February 1, 1995, and that the 1996 C&LM program shall be filed on or about October 1, 1995.

The Parties and Staff agreed to set the 1995 C&LM budget at \$2,504,500, of which \$652,100 is for residential programs and \$1,852,400 is for C&I programs. The C&LM adjustment factors are \$0.00179 per kilowatt hour for the residential class and \$0.00105 per kilowatt hour for the C&I class, effective February 1, 1995. The Residential C&LM factor includes a preliminary 1994 incentive of \$48,413, an estimated 1994 year end C&LM fund balance of \$246,766 and estimated January, 1995 revenues of \$66,976. The C&I factor includes an estimated 1994 year end fund balance of \$1,357,286 and estimated January, 1995 revenues of \$64,891. Any differences between these preliminary estimates and actuals will be accounted for through the C&LM adjustment fund mechanism, with interest applied.

GSEC agreed to implement alternative rebates with a one-year payback criteria only when certain conditions are met. GSEC will also continue to look for opportunities to increase participation in the Energy Initiative program by enhancing marketing to medium-sized customers and continuing efforts to maximize available financing to assist customers in meeting co-payment requirements.

With respect to the two residential pilot programs, the Parties and Staff support GSEC's efforts to research and introduce new residential conservation measures and technologies.

#### IV. COMMISSION ANALYSIS

We have reviewed the record in this case and the modifications outlined in the Settlement Agreement. We find that the Settlement Agreement provides for continuation of seven programs approved in Order No. 21,143, the addition of two residential pilot programs and a change in the C&I programs to allow for increased rebates to certain customers. We accept GSEC's pilot proposal of \$32,700 for its Heat Pump Water Heater Program and understand that GSEC is also initiating a pilot Electric Thermal Storage Heat Program. The thermal storage heat program is for research purposes only and will be conducted through New England Power Service Company. It will not be funded through the GSEC conservation factor and therefore will have no effect on the residential budget or incentive calculation.

We recognize the reasons for GSEC's proposal for higher rebates to Design 2000 and Energy Initiative customers and accept GSEC's plan to offer alternative rebate criteria to certain qualified applicants. We find that GSEC's filing, as modified in the Settlement Agreement is reasonable and in the public good.



Based upon the foregoing, it is hereby

ORDERED, that the proposed Settlement Agreement is just and reasonable and is hereby approved; and it is

FURTHER ORDERED, that the Settlement Agreement be effective as of February 1, 1995 with implementation and billing in effect as soon as practicable; and it is

FURTHER ORDERED, that Granite State Electric Company file tariff pages in compliance with this order within twenty days of the date of issuance of this order.

By order of the New Hampshire Public Utilities Commission this sixth day of February, 1995.

#### 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. [N.H.] Re Granite State Electric Co., DR 94-235, Order No. 21,468, 79 NH PUC 694, Dec. 20, 1994.

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NH.PUC\*02/07/95\*[80824]\*80 NH PUC 62\*Lakeview Water Company, Inc., fka Bachelor Mountain Estates, Inc.

[Go to End of 80824]

80 NH PUC 62

### **Re Lakeview Water Company, Inc., fka Bachelor Mountain Estates, Inc.**

DR 91-194  
Order No. 21,519

New Hampshire Public Utilities Commission

February 7, 1995

ORDER establishing a procedural schedule for conferences and hearings relative to a water utility's application for authority to increase rates by 203.1%.

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#### 1. RATES, § 649

[N.H.] Procedure — Hearings and conferences — Establishment of schedule — Water rate case. p. 62.

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BY THE COMMISSION:

## ORDER

[1] On December 1, 1994, Lakeview Water Co., Inc. (Lakeview), filed with the New Hampshire Public Utilities Commission (Commission) proposed permanent rate schedules which would result in a 203.1% increase in its present annual revenues and which would affect those customers which it serves in the Alton/Gilford service area. The Commission issued Order No. 21,456 on December 12, 1994 suspending the proposed tariff. A duly noticed prehearing conference was held on January 9, 1995 before Staff Hearing Examiner, Robert J. Frank, at which the Commission Staff and Lakeview presented a proposed procedural schedule and Robert and Mary Ann Roy and Bachelor Mountain Lot Owners Association (Association) sought intervention, without objection. The Staff and Parties agreed to the following proposed procedural schedule:

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

Technical Session	February 9, 1995 10:00 a.m.
Settlement Conference	March 14, 1995
Hearing on Merits	April 5, 1995 10:00 a.m.

They further agreed that if, after the technical session on February 9, 1995, either the Staff or the parties believes that discovery is necessary, the procedural schedule will be amended.

The proposed procedural schedule is reasonable and we approve it without modification. The Association and Robert and Mary Ann Roy have sufficiently established an interest in this proceeding, and we grant both requests for full intervention.

Based on the foregoing; it is hereby

ORDERED, that the foregoing procedural schedule is hereby approved; and it is

FURTHER ORDERED, that the requests for intervention filed by Bachelor Mountain Lot Owners Association and by Robert and Mary Ann Roy are hereby granted.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

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NH.PUC\*02/07/95\*[80825]\*80 NH PUC 62\*Public Service Company of New Hampshire

[Go to End of 80825]

80 NH PUC 62

**Re Public Service Company of New Hampshire**

DR 94-301

Order No. 21,520

New Hampshire Public Utilities Commission

February 7, 1995

ORDER approving an electric utility's special contract with the Nottingham School Board, providing for reduced extension charges associated with construction of an upgraded, three-phase overhead distribution line.

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1. SERVICE, § 188

**Page 62**

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[N.H.] Extensions — Burden of cost — Special contract arrangements — Discounts from standard tariffed rates — Factors — Upgraded electric distribution lines for service to school facilities — Contribution to cost — Adjustments for future customers. p. 63.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Public Service Company of New Hampshire (PSNH), on December 15, 1994, filed Special Contract NHPUC-102 (Special Contract) between PSNH and the Nottingham School Board (Nottingham). The subject of the Special Contract is construction of 3.2 miles of aerial plant, adding two phases to existing single-phase facilities, to serve the Nottingham School, on Route 152, in Nottingham, New Hampshire.

The Special Contract is necessary because the PSNH standard line extension policy is applicable only to customers taking service under the residential service rates or General Service Rate G. Nottingham will be taking service under Primary General Service Rate GV.

The Special Contract covers a monthly surcharge toward the cost of the line extension, for a five year period. The income that PSNH has estimated that it will receive from energy sales to Nottingham under the Company's applicable Rate GV is not sufficient to warrant the expenditure necessary to supply electric energy properly to the Nottingham's premises.

The monthly surcharge is calculated to generate a contribution of \$418 for a period of 60 months. This \$418 monthly surcharge is determined by amortizing the required contribution of \$22,134 over 60 months at an annual interest rate of 5.0%. The required contribution (\$22,134) is calculated by deducting the amount that PSNH's rates will support as PSNH's share of the cost of the line extension (\$107,393) from the estimated cost of the line extension (\$129,527). The 5.0% is a negotiated rate, based on the expected interest Nottingham would realize if it sought financing for the contribution amount.

The Customer Surcharge will be adjusted downward if any customer requiring three-phase service takes service during the first 60 months from the three-phase, line extension constructed to serve Nottingham. Customers taking single-phase service (from either of the two additional phases constructed) along the line extension do not qualify Nottingham for an adjustment of the Customer Surcharge, as PSNH had adequate capacity before the construction to accommodate single-phase growth.

Based upon the foregoing, it is hereby

ORDERED, that approval of Special Contract NHPUC-102, as filed, is granted.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

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NH.PUC\*02/07/95\*[80826]\*80 NH PUC 63\*Public Service Company of New Hampshire

[Go to End of 80826]

80 NH PUC 63

**Re Public Service Company of New Hampshire**

DR 94-311

Order No. 21,521

New Hampshire Public Utilities Commission

February 7, 1995

MOTION by electric utility for approval of a special rate contract with an industrial customer, Nashua Corporation; granted, with the commission citing to the ratepayer benefits emanating from such load retention devices.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special rate contract — Designed to assure load retention — Viability of customer's resource alternatives as a factor. p. 64.

**Page 63**

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BY THE COMMISSION:

**ORDER**

The Petitioner, Public Service Company of New Hampshire (PSNH or Company), filed on December 23, 1994 a request for approval of a special contract, Special Contract No. NHPUC-104 (NHPUC-104) between PSNH and Nashua Corporation (Nashua). Nashua is a Delaware corporation that primarily manufactures toner and coated papers at facilities located in Nashua and Merrimack, New Hampshire.

NHPUC-104 is designed to retain the provision of electric service from PSNH to Nashua at its Nashua and Merrimack locations for a period of ten years from the effective date of NHPUC-104. PSNH contends and Nashua confirms that Nashua would, absent this special

contract, actively pursue alternative lower cost supplies of electricity at its facilities in Nashua and Merrimack and/or relocate a significant portion of its production outside of New Hampshire. PSNH does not believe that all of Nashua's alternatives are legally or technically viable, but does concede that Nashua is committed to actively pursuing alternatives to reduce its cost of electricity. Nashua has pursued cost cutting measures such as energy conservation, restructuring efforts including the sale of a division, and labor force reductions of 850 people to enhance its competitive position.

PSNH is proposing to provide discounted electric service to the Nashua and Merrimack facilities in the form of discounted energy and demand charges for a ten-year period. Nashua agrees that PSNH will continue to be its only provider of electric service for a period of ten years subject to certain provisions that allow either party to terminate NHPUC-104 prior to the end of its scheduled term but no sooner than five years from the effective date.

PSNH asserts that NHPUC-104 is necessary to ensure that Nashua remains a full-requirements customer of PSNH during the next ten years. By retaining service to Nashua, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers. PSNH also contends that NHPUC-104 may provide further benefits to the residents of New Hampshire by ensuring that the jobs provided by Nashua remain in the State, and also provide for the opportunity for future expansion to be located in the State, thereby providing for the possibility of creating new jobs.

[1] The Commission agrees with PSNH's characterization of NHPUC-104 as primarily a load retention application with the primary benefits of NHPUC-104 accruing to PSNH shareholders during the Fixed Rate Period. The Commission, because of the limited information before it concerning the viability of Nashua's alternatives, recognizes that while NHPUC-104 will enhance Nashua's competitive position, Commission approval of this special contract should not be construed as a determination on the legal or regulatory issues PSNH and Nashua dispute. Nonetheless, the Commission finds Special Contract No. NHPUC-104 between PSNH and Nashua is in the public interest given that over the long term load retention benefits ratepayers.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract NHPUC-104 is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-104, 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 Nashua in Special Contract No. NHPUC-104; 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 February 17, 1995 and to be documented by affidavit filed with this office on or before March 7, 1995; 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 7, 1995; and it is

FURTHER ORDERED, that this Order

*Nisi* shall be effective March 9, 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 seventh day of February, 1995.

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NH.PUC\*02/07/95\*[80827]\*80 NH PUC 65\*Public Service Company of New Hampshire

[Go to End of 80827]

80 NH PUC 65

**Re Public Service Company of New Hampshire**

Additional applicants: Northern Utilities Inc.; EnergyNorth Natural Gas, Inc.; Exeter and Hampton Electric Company; Concord Electric Company; Granite State Electric Company

DR 95-009

Order No. 21,522

New Hampshire Public Utilities Commission

February 7, 1995

ORDER certifying participation by a group of energy utilities in the "Neighbor Helping Neighbor Fund," which uses abandoned deposits and other unclaimed monies as a source for providing ratepayer assistance to low-income persons.

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1. RATES, § 125

[N.H.] Factors affecting reasonableness — Ability to pay — Low-income customers — Utility-sponsored ratepayer assistance — Administration by charitable organization — "Neighbor Helping Neighbor Fund" — Use of proceeds from abandoned deposits and other unclaimed monies — Energy utilities. p. 65.

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BY THE COMMISSION:

ORDER

[1] On January 17, 1995 Public Service Company of New Hampshire filed with the New Hampshire Public Utilities Commission (Commission) a Joint Petition for Certification of Participation in the Neighbor Helping Neighbor Fund, Inc. (Fund) under RSA 471-C:8 (Petition) on behalf of itself, Northern Utilities Inc., EnergyNorth Natural Gas, Inc., Exeter and Hampton Electric Company, Concord Electric Company and Granite State Electric Company (the Utility

Fund Members). The Petition seeks that the Commission certify the Fund as a charitable organization eligible to receive eighty-five percent of the presumed abandoned deposits, prepayments and credit balances that would otherwise be turned over to the State Treasurer as the Administrator of Abandoned Funds. Each Utility Fund Member also individually filed a Request for Certification that it is a participant in the Fund.

RSA 471-C:8 requires that an organization eligible to receive eighty-five percent of the abandoned deposits, prepayments and credit balances that a utility would otherwise turn over to the State Treasurer, must be a financial assistance program that assists the utility's low income and disadvantaged customers with their utility bills. The Fund is a nonprofit corporation whose purpose is to provide energy assistance to customers of participating gas and electric utilities who are experiencing some sort of hardship, are in danger of termination of service, and cannot obtain assistance from another traditional source of support. The Utility Fund Members have pledged to abide by the requirements of RSA 471-C:8 *et seq.* in that they will continue to file reports of abandoned property as required by RSA 471-C:19, to remit fifteen percent of the customer funds presumed abandoned to the administrator to compensate it for the costs of notice and publication under RSA 471-C:20, and to reimburse the administrator upon notification of a claim paid attributable to abandoned funds that had been deposited with the Fund.

The Commission has reviewed the Fund in light of the provisions of RSA 471-C:8 *et seq.* and finds that the Fund is the type of financial assistance program contemplated by the 1994 amendments. We have also reviewed the

**Page 65**

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representations of the Utility Fund Members and find them consistent with the remaining provisions of the statute.

Based upon the foregoing, it is hereby

ORDERED, that the Commission certifies the Fund as an eligible financial assistance program under RSA 471-C:8; and it is

FURTHER ORDERED, that the Commission certifies that Public Service Company of New Hampshire, Northern Utilities Inc., EnergyNorth Natural Gas, Inc., Exeter and Hampton Electric Company, Concord Electric Company and Granite State Electric Company are participating in the Fund and may therefore deposit eighty-five percent of customer deposits presumed abandoned in the Fund in accordance with RSA 471-C:8.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

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NH.PUC\*02/07/95\*[80828]\*80 NH PUC 66\*Union Telephone Company

[Go to End of 80828]

## Re Union Telephone Company

DE 95-011

Order No. 21,523

New Hampshire Public Utilities Commission

February 7, 1995

ORDER authorizing a local exchange telephone carrier to eliminate four-party residential service, so as to facilitate interstate equal access as well as emergency 911 calling, neither of which is compatible with multi-party service.

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### 1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of four-party residential service — Grandfathering of two-party services — Factors — Facilitation of interstate equal access — Facilitation of emergency 911 dialing capabilities. p. 66.

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BY THE COMMISSION:

### ORDER

[1] On January 20, 1995 Union Telephone Company (UTC or Company) filed tariff revisions seeking to discontinue Four-Party Residence Main Telephone Exchange Service, Two-Party Business Main Telephone Exchange Service in the Gilmanton Iron Works Exchange and to grandfather Two-Party Residence and Business Main Telephone Exchange Service by making it available to existing customers at present locations only in the same or lesser quantities, for effect February 20, 1995.

According to UTC, the number of multi-party customers has declined steadily in recent years. By the end of 1994, the Company had no customers of Four-Party Service, two customers of Two-Party Business Main Telephone Exchange Service, 381 customers of Two-Party Residence Main Telephone Exchange Service and no Two-Party Business customers in the Gilmanton Iron Works exchange. UTC asserts that Four-Party service is not compatible with the proposed state-wide Enhanced 911 system scheduled for implementation on July 5, 1995 nor is it compatible with the modernization of the telephone network and the provision of high quality service to end-users.

Although many of UTC's Two-Party customers are the only party on the line, they do not receive the full benefits of single-party service: multi-party customers are not offered many existing vertical services nor can they presubscribe to an interexchange carrier.

The Commission Staff has reviewed this filing and recommended its approval noting that the proposed revisions will not change the class of service, the rates of any current customers nor the revenues of the Company. In addition, Four-Party Service cannot survive the implementation of the proposed state-wide Enhanced 911 system.



We have reviewed the submissions of UTC and the Staff and agree with Staff's recommendation that Four-Party Main Telephone Exchange Service and Two-Party Business Main Telephone Exchange Service in the Gilmanton Iron Works Exchange should be

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discontinued and that Two-Party Main Telephone Exchange Service (Residence and Business) be grandfathered such that it remain available to existing customers at present locations only in the same or lesser quantities. We find, therefore, that UTC's petition is in the public good and will approve it as filed.

Based upon the foregoing, it is hereby

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

- NHPUC No. 7
- Tariff Check Sheet Page 1
- Part II - Local, Section 1, Page 1, First Revision
- Part II - Local, Section 1, Page 3, Ninth Revision

and it is

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

FURTHER ORDERED, that UTC file a compliance tariff with the Commission on or before February 21, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

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NH.PUC\*02/07/95\*[80829]\*80 NH PUC 67\*Claremont Gas Corporation

[Go to End of 80829]

80 NH PUC 67

**Re Claremont Gas Corporation**

DE 94-056

Order No. 21,524

New Hampshire Public Utilities Commission

February 7, 1995

ORDER clarifying Order No. 21,483 (80 NH PUC 4, *supra*) with respect to the commission's ongoing authority to act as the final arbiter as to a previous directive requiring a natural gas local distribution company to employ a third-party technician acceptable to commission staff to oversee and monitor the company's abandonment of service and associated purging of residual gas from a pipeline.

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1. SERVICE, § 65

[N.H.] Commission jurisdiction — As to abandonment and discontinuance of service — Collateral issues — Selection and appointment of person to oversee abandonment procedures — Concurrence of commission staff as a factor — Commission's role as final arbiter — Gas utility. p. 67.

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BY THE COMMISSION:

ORDER

On January 3, 1995 we issued Order No. 21,483 (Order) which addressed several areas of disagreement between Claremont Gas Corporation (Claremont) and the Commission Staff (Staff) relative to the abandonment of Claremont's underground pipeline system in Claremont, New Hampshire. This Order followed a November 29, 1994 hearing during which we heard testimony regarding Staff's concerns about the adequacy of the supervisory personnel whom Claremont had designated to oversee the pipeline abandonment. Among other things, the Order directed Claremont to retain an experienced individual, who is acceptable to Staff, responsible for on-site supervision of the abandonment process. Claremont responded to our Order with a January 11, 1995 Motion to Clarify and Modify Order No. 21,483 (Motion). Staff filed a written response to Claremont's Motion on January 19, 1995.

Staff Attorney, Robert J. Frank, shortly thereafter advised the Commission by a January 23, 1995 letter that Staff and Claremont intended to file a joint submission which would considerably narrow the scope of the relief sought in Claremont's Motion. On January 26, 1995, Claremont filed the Joint Submission of Claremont Gas Corporation and Staff (Joint Submission).

[1] The Joint Submission asks the Commission to issue a supplemental order which clarifies the Commission's role in the event that Claremont and Staff are unable to reach an

Page 67

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agreement with regard to the supervisory personnel who will direct the abandonment project. Although we directed Claremont to seek Staff's approval of its designee to direct the abandonment project, Claremont and Staff agree that we retain the ultimate authority to adjudicate a dispute regarding this matter. The Joint Submission provides that if this aspect of the Order is clarified, there is no need to address the other issues raised in Claremont's Motion or in Staff's response.

Though not explicitly stated in our directive to Claremont to seek Staff's approval of a project supervisor, we retain the authority to adjudicate this or any other matter which is within the Commission's jurisdiction relative to the abandonment of Claremont's franchise. If Claremont is unable to reach agreement with Staff regarding the supervisory personnel whom Claremont designates for the abandonment, we expect that Claremont will bring this to the Commission's

attention.

With that clarification, we deem the remainder of Claremont's Motion withdrawn. The Joint Submission is approved.

We remained concerned, however, that the abandonment project should proceed as expeditiously as possible in a manner which does not compromise the public safety. If Claremont seeks an extension of any the deadlines imposed by Order No. 21,483, we direct Claremont to seek Staff's concurrence and to file a request setting forth the dates by which it will (a) designate a project supervisor and (b) complete the abandonment project.

Based on the foregoing; it is hereby

ORDERED, that the Joint Submission of Claremont Gas Corporation and Staff is approved, and Commission Order No. 21,483 is clarified as set forth above; and it is

FURTHER ORDERED, that Claremont shall forthwith file with the Commission any request to extend the completion deadlines set forth in Order No. 21,483; and it is

FURTHER ORDERED, that the remainder of Order No. 21,483 remains in full force and effect.

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Claremont Gas Corp., DE 94-056, Order No. 21,483, 80 NH PUC 4, Jan. 3, 1995.

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NH.PUC\*02/07/95\*[80830]\*80 NH PUC 68\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80830]

80 NH PUC 68

**Re AT&T Communications of New Hampshire, Inc.**

DE 95-002

Order No. 21,525

New Hampshire Public Utilities Commission

February 7, 1995

ORDER authorizing an interexchange telephone carrier to rename its "PRO WATS" service as "PRO WATS/Plan Q" service, so as to consolidate rate schedules and simplify billing procedures.

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## 1. RATES, § 234

[N.H.] Schedules and procedure — Consolidation and renaming of schedules — So as to reduce customer confusion — Simplification of billing practices — Interexchange telephone carrier. p. 68.

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BY THE COMMISSION:

## ORDER

[1] On January 9, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to restructure its AT&T PRO WATS service and rename it AT&T PRO WATS/Plan Q service for effect February 8, 1995.

The purpose of the revision is to consolidate PRO WATS rate schedules in order to

**Page 68**

simplify billing and avoid customer confusion, nationally. Existing PRO WATS customers in New Hampshire will be transferred to AT&T PRO WATS/Plan Q service which has the same rates as PRO WATS but includes additional discount options.

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. Therefore, the Commission will authorize AT&T to restructure AT&T PRO WATS and rename it AT&T PRO WATS/Plan Q.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, PUC NO. 4 are approved for effect February 8, 1995:

*Table of Contents*

5th Revised Page 7 in lieu of 4th Revision

*Section 3*

2nd Revised Page 2 in lieu of 1st Revision

1st Revised Page 3

1st Revised Page 4

2nd Revised Page 5

4th Revised Page 6

2nd Revised Page 7

1st Revised Page 8

1st Revised Page 9

1st Revised Page 10

2nd Revised Page 11

1st Revised Page 12  
1st Revised Page 13 in lieu of Original  
1st Revised Page 14 in lieu of Original;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of February, 1995.

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NH.PUC\*02/08/95\*[80831]\*80 NH PUC 69\*Granite State Electric Company

[Go to End of 80831]

80 NH PUC 69

## Re Granite State Electric Company

DR 94-234

Order No. 21,526

New Hampshire Public Utilities Commission

February 8, 1995

ORDER approving an electric utility's updated forecasts of both short- and long-term avoided costs to be used as a benchmark for determining a commercial or industrial customer's eligibility for rate credits under a cooperative interruptible service program.

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### 1. RATES, § 339

[N.H.] Electric rate design — Commercial and industrial customers — Cooperative interruptible service — Customer credits — Measures of eligibility — Benchmark costs — Updated forecasts — Short- and long-term avoided costs. p. 69.

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BY THE COMMISSION:

### ORDER

[1] Granite State Electric Company (GSEC), on September 30, 1994, filed with the New Hampshire Public Utilities Commission (Commission) an update of both the short-term and long-term value of capacity used to calculate customer credits in GSEC's Cooperative Interruptible Service (CIS) Program. The Company's CIS program provides credits to large

commercial and industrial customers based on the customers' ability and willingness to interrupt load as requested by GSEC during capacity shortages. GSEC is required to file updated short-term and long-term avoided costs on or before October 1st of each year to reflect its current estimates of avoided costs.

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GSEC's currently effective CIS Program was approved in Order No. 20,684 in Docket No. DR 92-188, based upon a settlement agreement between GSEC and Commission Staff (Staff). There are two different types of credits, the "committed" CIS-1 credit or the "uncommitted" CIS-2 credit, available to customers. Under each credit, there are three options which differ in frequency, duration and notification period for interruptions.

In its September 30, 1994 filing, GSEC proposed both short-term and long-term avoided cost calculations to be used in establishing credit levels in GSEC's 1994/95 CIS program. GSEC proposed no changes to the current program, and provided updated avoided costs based upon the methodology established in DR 92-188 to determine the credits for the CIS program. GSEC did change the wording of the CIS Service Agreements to be more consistent with actual program guidelines.

Credits under the CIS-1 program are based on New England Power Company's (NEP) long-run avoided costs, while credits under the CIS-2 program are based on a short-term capacity value. NEP's current estimate of its long-run capacity cost is \$65.10 per KW, while the short-term capacity value is \$12.06 per KW. GSEC proposes the following credits dependent upon which option the customer chooses:

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

Total Annual \$/Kw of Credited  
Interruptible Load

	<i>CIS-1</i>	<i>CIS-2</i>
Option 1	\$50.00	\$ 5.28
Option 2	\$55.00	\$ 5.81
Option 3	\$38.00	\$ 3.96

We are satisfied that GSEC's ongoing CIS program provides value to GSEC and its ratepayers in both the short-term and the long-term. We believe the updated avoided costs and the resulting credits are reasonable and in the public good. We are convinced that the changes to the wording of the CIS Service Agreements are consistent with the program guidelines as previously approved by the Commission.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that GSEC's request for approval of its updated CIS-1 and CIS-2 credits is granted; and it is

FURTHER ORDERED, that the proposed changes in the CIS Service Agreements be implemented; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, GSEC 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 February 22, 1995 and to be documented by affidavit filed with this office on or before March 8, 1995; and it is

FURTHER ORDERED, that GSEC serve a summary of its proposed rate change and a copy of this Order *Nisi* on all current CIS-1 and CIS-2 customers by first class U.S. Mail, postmarked no later than February 22, 1995; 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 8, 1995; and it is

FURTHER ORDERED, that GSEC file a compliance tariff with the Commission on or before February 22, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* be effective March 10, 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 eighth day of February, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 92-188, Order No. 20,684, 77 NH PUC 745, Nov. 30, 1992.

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NH.PUC\*02/08/95\*[80832]\*80 NH PUC 71\*West Coast Telecommunications, Inc.

[Go to End of 80832]

80 NH PUC 71

**Re West Coast Telecommunications, Inc.**

Additional applicant: Frontier Corporation

DE 94-287  
Order No. 21,527

New Hampshire Public Utilities Commission

February 8, 1995

ORDER authorizing West Coast Telecommunications, Inc., to transfer its own operating authorities plus those of a subsidiary to its parent company, Frontier Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Factors affecting approval — Intercorporate transfers — Transfer of operating

authority to parent company — Concomitant assumption of control of subsidiary — Greater sharing of financial resources — Telecommunications carrier. p. 71.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Frontier Corporation (Frontier) formerly Rochester Telephone Corporation (RTC), WCT Communications, Inc. (WCT), and WCT's wholly-owned subsidiary West Coast Telecommunications of New Hampshire, Inc. (West Coast) collectively filed with the New Hampshire Public Utilities Commission (Commission) on December 2, 1994, a petition (Petition) requesting "Commission approval of a transaction whereby RTC [now Frontier] will acquire operating control of WCT, and, in turn, West Coast." The Petitioner further sought approval prior to February 15, 1995.

In Docket DE 93-117, by Order No. 20,983 (October 1, 1993) the Commission granted West Coast authority to conduct business as a telecommunications utility in New Hampshire. West Coast's authority granted in the above order also included waivers from NH Admin. Rules, Puc 406.03 Accounting Records; 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies. The Petitioner requests that the waivers granted to West Coast be continued and that West Coast be permitted to continue to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP).

West Coast evidenced its technical, managerial, and financial competence in the record of DE 93-117. After the transfer of control, West Coast expects that its capabilities will be enhanced by the ability to draw upon the resources of its new parent company, Frontier.

Frontier Corporation, formerly Rochester Telephone Corporation prior to January 1, 1995, is a publicly held New York corporation. Frontier is also the parent of Long Distance North of New Hampshire, Inc. and another long-distance subsidiary, RCI Long Distance, Inc.

After completion of the transaction described in the Petition, Frontier will be the ultimate corporate parent of both WCT and West Coast. West Coast will continue to provide service under the same name and pursuant to its tariff currently on file with the Commission.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Petition to transfer control of West Coast Telecommunications of New Hampshire, Inc. to Frontier Corporation is granted; 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 February 22, 1995, and to be documented by affidavit filed with this office on or before March 8, 1995; 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 8, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before February 22, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 10, 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 eighth day of February, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re West Coast Telecommunications of New Hampshire, Inc., DE 93-117, Order No. 20,983, 78 NH PUC 556, Oct. 1, 1993.

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NH.PUC\*02/08/95\*[80833]\*80 NH PUC 72\*WorldTel Services, Inc., dba Northeast WorldTel Services

[Go to End of 80833]

80 NH PUC 72

**Re WorldTel Services, Inc., dba Northeast WorldTel Services**

DE 94-205

Order No. 21,528

New Hampshire Public Utilities Commission

February 8, 1995

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

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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 services. p. 72.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 72.

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BY THE COMMISSION:

## ORDER

[1, 2] On August 29, 1994, WorldTel Services, Inc., d/b/a Northeast WorldTel Services (NEWTS), a California 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.

NEWTS 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 NEWTS 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.

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3. NEWTS 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, NEWTS shall notify the Commission of the change.

5. NEWTS 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. NEWTS shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. NEWTS 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. NEWTS 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. NEWTS 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. NEWTS shall compensate the appropriate Local Exchange Company for all originating and terminating access used by NEWTS 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 NEWTS 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.

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 NEWTS to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that NEWTS shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than February 22, 1995, and an affidavit proving publication shall be filed with the Commission on or before March 8, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. NEWTS 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 NEWTS shall file a compliance tariff with Commission on or before February 22, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 10, 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 eighth day of February, 1995.

Notice of Conditional Approval of  
WORLDTEL SERVICES, INC. d/b/a NORTHEAST WORLDTEL SERVICES

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 29, 1994, WorldTel Services, Inc. d/b/a Northeast WorldTel Services (NEWTS), a California 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. 21,528, issued in Docket No. DE 94-205, the Commission granted NEWTS conditional approval to operate as of March 10, 1995, subject to the right of the public and interested parties to comment on NEWTS 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 NEWTS's petition to do business in the State should submit written comments no later than March 8, 1995, 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\*02/14/95\*[80834]\*80 NH PUC 74\*Public Service Company of New Hampshire

[Go to End of 80834]

80 NH PUC 74

**Re Public Service Company of New Hampshire**

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

DR 93-092

Order No. 21,530

New Hampshire Public Utilities Commission

February 14, 1995

ORDER accepting stipulation as an amendment

**Page** 74

to a memorandum of understanding approved in Order No. 21,090 (79 NH PUC 5) relative to certain entitlements in the Seabrook nuclear generating plant as between various energy entities.

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1. RATES, § 321

[N.H.] Electric rate design — Base rate adjustments — Relative to Seabrook nuclear generating entitlements — Amendment to memorandum of understanding — Changes in base assumption factors. p. 75.

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BY THE COMMISSION:

ORDER

[1] On May 12, 1993 Public Service Company of New Hampshire (PSNH), Northeast Utilities Service Company (NUSCO), North Atlantic Energy Corporation (NAEC) and the Office of the Attorney General (State) filed with the New Hampshire Public Utilities

Commission (Commission) a petition requesting the establishment of temporary and permanent base rate adjustments, approval of accounting treatments, an increase in Seabrook entitlement and approval of various Rate Agreement amendments. Following a hearing on May 26, 1993, prior to Commissioner Geiger's appointment, the Commission issued Order No. 20,857 in which we approved a temporary adjustment to base rates. The docket was subsequently consolidated with DE 93-114 which had been opened to address a petition by the Vermont Electric Generation and Transmission Cooperative, Inc. (VEG&T) for approval of an agreement to transfer VEG&T's interest in Seabrook to NAEC.

PSNH, NUSCO, NAEC, the State, VEG&T, the Office of the Consumer Advocate (OCA) and the Staff of the Commission (Staff), reached agreement on all of the various issues set forth in the approved scope of the proceedings. Their agreement was presented at the hearing on the merits held on December 2, 1993 as a Stipulation and Recommendation for Commission Order (Stipulation). Exhibit 21. The Stipulation recommended that the Memorandum of Understanding (MOU) executed on May 6, 1993 by PSNH, NUSCO, NAEC and the State and the Third Amendment to the Rate Agreement, both as modified by the Stipulation, should be approved. The MOU also contemplated that a Fourth Amendment to the Rate Agreement to effectuate certain changes to the Base Assumptions (BA) factor incorporated in base rates would soon be filed by PSNH. On January 3, 1994, the Commission issued Report and Order No. 21,090 approving the MOU as amended and the Transfer of the VEG&T Seabrook interest to NAEC.

On September 26, 1994, PSNH filed the Fourth Amendment to the Rate Agreement (Fourth Amendment). The Fourth Amendment adopted new values for the BA factor for the remainder of the fixed rate period from June 1, 1994 through May 31, 1997. The BA factor was revised to reflect the understanding between NUSCO and the State, as agreed in the Stipulation at page 5, that the acquisition by NAEC of the VEG&T Seabrook interest would not, under the reference assumptions, increase rates to PSNH customers. The Fourth Amendment was executed by NUSCO and the State, subject to the approval of PSNH creditors and the Commission.

The Commission deliberated on this filing at its public meeting on October 3, 1994. Having reviewed the Fourth Amendment, we found that it was consistent with and contemplated by our Order No. 21,090 which had approved the MOU as modified by the Stipulation and the transfer of the VEG&T interest. On October 11, 1994, PSNH confirmed by letter that the creditors had consented to the Fourth Amendment.

Based upon the foregoing, it is hereby

ORDERED, that the Fourth Amendment to the Rate Agreement filed on September 26, 1994 is approved.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February.

[N.H.] Re Public Service Co. of New Hampshire, DR 93-092, Order No. 20,857, 78 NH PUC 275, May 28, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 93-092, Order No. 21,090, 79 NH PUC 5, Jan. 3, 1994.

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NH.PUC\*02/14/95\*[80835]\*80 NH PUC 76\*RCI Long Distance, Inc.

[Go to End of 80835]

80 NH PUC 76

**Re RCI Long Distance, Inc.**

DE 95-001

Order No. 21,532

New Hampshire Public Utilities Commission

February 14, 1995

ORDER taking note of a telecommunications carrier's change in corporate name, from RCI Long Distance, Inc., to Frontier Communications International, Inc.

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1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Telecommunications carrier — No change in management or corporate structure. p. 76.

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BY THE COMMISSION;

**ORDER**

[1] RCI Long Distance, Inc. (RCI or Petitioner) a Delaware corporation, filed with the New Hampshire Public Utilities Commission (Commission) on January 6, 1995, a petition (Petition) requesting approval to change the name of RCI Long Distance, Inc. to Frontier Communications International, Inc. (Frontier). There are no corporate structural changes, no management changes, and no rate or service changes as a direct result of this name change.

In Docket DE 94-171, by Order No. 21,445 (November 30, 1994), the Commission granted RCI authority to conduct business as a telecommunications public utility in the state of New Hampshire. Frontier Communications International, Inc. is a subsidiary of Frontier Corporation, formerly Rochester Telephone Corporation prior to January 1, 1995, a publicly held New York corporation.

Frontier will provide service pursuant to its proposed tariff, which is functionally identical to RCI's tariff currently on file with the Commission. The Petitioner anticipates achieving marketing advantages from approval of the Petition. Fostering competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the

effects of competition, is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to change the name of RCI Long Distance, Inc. to Frontier Communications International, Inc. is granted; and it is

FURTHER ORDERED, that the Petitioner shall notify in writing its customers of record, via U.S. Mail postmarked no later than one month following the effective date of this Order, of the name change; and it is

FURTHER ORDERED, that Frontier's tariff, NH PUC No. 1, is approved, as filed; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before February 28, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re RCI Long Distance, Inc., DE 94-171, Order No. 21,445, 79 NH PUC 657, Nov. 30, 1994.

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NH.PUC\*02/14/95\*[80836]\*80 NH PUC 77\*Long Distance North of New Hampshire, Inc.

[Go to End of 80836]

80 NH PUC 77

**Re Long Distance North of New Hampshire, Inc.**

Additional applicant: Frontier Communications of New England, Inc.

DE 95-004

Order No. 21,533

New Hampshire Public Utilities Commission

February 14, 1995

ORDER authorizing Long Distance North of New Hampshire, Inc., to transfer its operating authorities to its parent company, Frontier Communications of New England, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Factors affecting approval — Intercorporate transfers — Transfer of operating authority to parent company — Retention of existing personnel, financial status, and technical facilities — Telecommunications carrier. p. 77.



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BY THE COMMISSION:

ORDER

[1] Long Distance North of New Hampshire, Inc. (LDN) a New Hampshire corporation, and Frontier Communications of New England, Inc. (Frontier New England) a Delaware corporation, jointly filed on January 13, 1995, a petition (Petition) requesting that the New Hampshire Public Utilities Commission (Commission) authorize the transfer, to Frontier, of the certificate of Authority to Conduct Business as a Telecommunications Public Utility granted to LDN. LDN received its certification in DE 87-249, by Order No. 20,039 (January 21, 1991), as modified by subsequent Orders.

LDN evidenced its technical, managerial, and financial competence in the record of DE 87-249. After the transfer of authority, Frontier New England represents it will maintain the same management and staff as currently used by LDN, utilize the same network and technical capabilities, maintain the same financing and financial position, adhere to all statutes and administrative rules relating to telecommunications service including tariffing rates and services, and maintain the same rates and features currently on file with the Commission by LDN. Frontier New England filed a copy of its Certificate of Authority granted by the New Hampshire Secretary of State.

Frontier New England is a subsidiary of Frontier Corporation, formerly Rochester Telephone Corporation prior to January 1, 1995, a publicly held New York corporation. Frontier Corporation is also the parent of another long-distance subsidiary, RCI Long Distance, Inc. RCI Long Distance, Inc. has filed to change its name to Frontier Communications International, Inc. in docket DE 95-001.

Frontier New England anticipates achieving marketing advantages from approval of the Petition. Fostering competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, is in the public good.

Based upon the foregoing, it is hereby

ORDERED that the Petition, to transfer to Frontier New England the certificate of Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire held by LDN, is granted; and it is

FURTHER ORDERED, that the tariff of Frontier Communications of New England, Inc. NHPUC No. 1, is approved as filed; and it is

FURTHER ORDERED, that Frontier New England shall file a compliance tariff with the Commission on or before February 28, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 20,039, 76 NH PUC 56, Jan. 21, 1991.

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NH.PUC\*02/14/95\*[80837]\*80 NH PUC 78\*WilTel Inc.

[Go to End of 80837]

80 NH PUC 78

**Re WilTel Inc.**

DR 95-005

Order No. 21,534

New Hampshire Public Utilities Commission

February 14, 1995

ORDER approving an interexchange telephone carrier's proposal for offering a customized greeting option to customers using prepaid calling card plans. The carrier also is allowed to delete references to split minutes, which occur when a call is initiated in one rate period but ends in another.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Prepaid calling card plans — New customized greeting option — Elimination of separate rate schedule for split minute calls occurring during overlapping rate periods — Interexchange carrier. p. 78.

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BY THE COMMISSION:

ORDER

[1] On January 13, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from WilTel Inc. (WilTel) for authority to introduce Customized Greeting and to delete reference to a split minute, for effect February 17, 1995.

A Customized Greeting option is being added to WilTel's prepaid calling card service. The greeting will be heard by callers using the prepaid card, after dialing the 800 access code associated with the card.

Reference to the effective rate for a minute that is split between two rate periods (e.g. around 5:00 on a weekday) is being eliminated. Rather, the rate in effect in each rate period will apply to the portion of the call occurring within that rate period.

In addition, the filing includes a rate increase for the switched end to end option of Network Service and a rate decrease for the dedicated originating, switched terminating option of Network Service. Since Order No. 20,566 (August 5, 1992), the Commission has allowed companies authorized to provide competitive services to change their rates by filing a schedule of such rates within one day after offering service. 77 NHPUC 418. *See* RSA 378:3.

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. Therefore, the Commission will authorize WilTel to revise its tariff as outlined above.

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:

- 10th Revised Page 1
- 1st Revised Page 19
- 2nd Revised Page 55
- 1st Revised Page 63.8
- 1st Revised Page 63.9
- 1st Revised 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 as required by N.H. Admin. Code Puc 1601.05 (k).

**Page 78**

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

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NH.PUC\*02/14/95\*[80838]\*80 NH PUC 79\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80838]

80 NH PUC 79

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-006  
Order No. 21,535

## New Hampshire Public Utilities Commission

February 14, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, to provide for the introduction of residential 800 service and "Sprint Sense" service, which allows for flat-rate, nondistance-sensitive calling. Minimum commitment levels under "Sprint Sense" service for business customers also are modified.

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## 1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — Change in minimum commitment levels for package plans — Introduction of residential 800 service and flat-rate, nondistance-sensitive service options — Interexchange carrier. p. 79.

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BY THE COMMISSION:

## ORDER

On January 13, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) for authority to revise its tariff PUC No. 4 for effect February 13, 1995.

[1] The revisions include the introduction of two new services: Sprint Sense and Complementary Residential 800 Service. Sprint Sense offers customers a flat rated calling plan which is non-distance sensitive for direct dialed outbound calls and FONCARD calls. The charges are time of day sensitive; that is, they are reduced between 7:00 pm and 6:59 am.

Complementary Residential 800 Service provides residential customers of local exchange carriers (LECs) a seamless service for intrastate, interstate and international calling. Customers must subscribe to the 800 service of a participating LEC.

The filing adds language to the Terms and Conditions section that states if Sprint is taxed, it will pass the tax on to customers in the area from which the tax is levied.

Proposed revisions clarify that rates in effect at the time an Instant FONCARD (Sprint's debit card) is purchased, remain in effect until the card expires.

Several changes are proposed for Business Sense. The \$25, \$100 and \$500 commitment levels and the three year term are grandfathered. A \$50 commitment level is being introduced. The Dial-1 Business Sense rates and the FONCARD Business Sense rates at the \$200 commitment level are being increased, while the 800 Business Sense rates for both the \$25 and \$200 commitment levels are being reduced.

The Real Solutions term commitments are being changed from a monthly commitment to an annual commitment. The proposed annual commitment is 12 times the monthly commitment and the respective discounts remain the same. An additional annual commitment level of \$480,000 is being added with a corresponding discount.

The VPN and VPN Premiere Off-Net to Off-Net surcharges are being increased. Finally, the filing proposes some minor text changes.

Since Order No. 20,566 (August 5, 1992), the Commission has allowed companies authorized to provide competitive service to change their rates by filing a schedule of such rates within one day after offering service. 77 NHPUC 418. *See* RSA 378:3.

The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competitive entry and competition in the

**Page 79**

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New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, which is in the public good. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based on the foregoing, it is hereby

ORDERED, that the following pages of Sprint's Tariff PUC No. 4 are approved for effect as filed:

11th Revised Page 1  
 2nd Revised Page 9  
 1st Revised Page 11  
 Original Page 11-A  
 1st Revised Page 34  
 Original Page 35-A  
 1st Revised Page 43  
 3rd Revised Page 45  
 3rd Revised Page 46  
 1st Revised Page 47  
 1st Revised Page 51  
 2nd Revised Page 60  
 1st Revised Page 71-A  
 Original Page 73-C  
 1st Revised Page 78  
 2nd Revised Page 84  
 2nd Revised Page 101  
 1st Revised Page 103-A  
 2nd Revised Page 103-B  
 1st Revised Page 103-C  
 2nd Revised Page 103-D  
 1st Revised Page 103-E  
 1st Revised Page 103-F  
 1st Revised Page 103-G  
 2nd Revised 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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

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NH.PUC\*02/14/95\*[80839]\*80 NH PUC 80\*Equal Net Communications, Inc.

[Go to End of 80839]

80 NH PUC 80

**Re Equal Net Communications, Inc.**

DE 95-019

Order No. 21,537

New Hampshire Public Utilities Commission

February 14, 1995

ORDER taking note of a telecommunications carrier's change in corporate name, from Equal Net Communications, Inc., to EqualNet Corporation.

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1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Telecommunications carrier — No change in actual corporate structure. p. 80.

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BY THE COMMISSION:

**ORDER**

[1] EqualNet Corporation, a Texas corporation, formerly Equal Net Communications, Inc. (Equal Net Communications or Petitioner), filed with the New Hampshire Public Utilities Commission (Commission) on February 1, 1995, a petition (Petition) for a name change of Equal Net Communications, Inc. to EqualNet Corporation. There are no corporate structural changes, no management changes. There are substantial textual changes, as well as increases and decrease in rates in the Petition.

Since Order No. 20,566 (August 5, 1992), the Commission has allowed companies authorized to provide competitive service to change their rates by filing a schedule of such rates within one day after offering service. 77 NHPUC 418. *See* RSA 378:3.

In Docket De 94-181, by Order No. 21,395 (October 18, 1994), the Commission

granted Equal Net Communications authority to conduct business as a telecommunications public utility in the state of New Hampshire. EqualNet Corporation petitions to provide service pursuant to its proposed tariff, which is functionally identical to Equal Net Communications' tariff currently on file with the Commission. EqualNet Corporation has filed its Amended Certificate of Authority issued by the New Hampshire Secretary of State.

The petitioner anticipates that it will be able to achieve marketing advantages from approval of the Petition. Fostering competitive entry and competition in the New Hampshire intrastate toll market, while allowing the Commission to analyze the effects of competition, is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to change the name of Equal Net Communications, Inc. to EqualNet Corporation is granted; and it is

FURTHER ORDERED, that the Petitioner shall notify in writing its customers of record, via U.S. Mail postmarked no later than one month following the effective date of this Order, of the name change; and it is

FURTHER ORDERED, that EqualNet Corporation's tariff, New Hampshire PUC Tariff No. 1, is approved, as filed; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before February 28, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Equal Net Communications, Inc., DE 94-181, Order No. 21,395, 79 NH PUC 580, Oct. 18, 1994.

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NH.PUC\*02/14/95\*[80840]\*80 NH PUC 81\*Dunbarton Telephone Company

[Go to End of 80840]

80 NH PUC 81

### Re Dunbarton Telephone Company

DR 95-024

Order No. 21,538

New Hampshire Public Utilities Commission

February 14, 1995

ORDER authorizing a local exchange telephone carrier to eliminate four-party residential service, so as to facilitate interstate equal access as well as emergency 911 calling, neither of which is compatible with multi-party service.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of four-party residential service — Factors — No existing four-party customers — Facilitation of interstate equal access — Facilitation of emergency 911 dialing capabilities. p. 81.

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BY THE COMMISSION:

ORDER

[1] On February 2, 1995 Dunbarton Telephone Company (DTC or Company) filed tariff revisions seeking to discontinue Four-Party Residence Main Telephone Exchange Service in anticipation of the implementation of the proposed statewide Enhanced 911 (E911) system.

Currently, DTC has no customers of Four-Party Service: all Dunbarton customers subscribe to either one party residential or business service.

The Commission Staff has reviewed this filing and recommended its approval noting that the proposed revisions will not change the class of service, the rates of any current customers, nor the revenues of the Company. In addition, Four-Party Service is incompatible with the

**Page 81**

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implementation of the proposed state-wide E911 system.

We have reviewed the submissions of DTC and the Staff and agree with Staff's recommendation that Four-Party Main Telephone Exchange Service should be discontinued. We find, therefore, that DTC's petition is in the public good and will approve it as filed.

Based upon the foregoing, it is hereby

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

NHPUC No. 5

Tariff Check Sheet Page 1

Section 2 - Ninth Revised Sheet 1

Superseding Eighth Revised Sheet

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 DTC file a compliance tariff with the Commission on or before February 28, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 1995.

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NH.PUC\*02/15/95\*[80841]\*80 NH PUC 82\*Target Telecom Inc.

[Go to End of 80841]

80 NH PUC 82

**Re Target Telecom Inc.**

DE 94-273

Order No. 21,539

New Hampshire Public Utilities Commission

February 15, 1995

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

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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 services. p. 82.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 82.

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BY THE COMMISSION:

ORDER

[1, 2] On November 15, 1995, Target Telecom, Inc. (TTI), a New Jersey 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.

TTI 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 TTI 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:

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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. TTI 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, TTI shall notify the Commission of the change.
5. TTI 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. TTI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. TTI 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. TTI 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. TTI 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. TTI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by TTI 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 TTI 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 TTI to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that TTI shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than February 27, 1995, and an affidavit proving publication shall be filed with the Commission on or before March 15, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. TTI 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 TTI shall file a compliance tariff with Commission on or before March 1, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 17, 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 fifteenth day of February, 1995.

Notice of Conditional Approval of  
TARGET TELECOM, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On November 15, 1994, Target Telecom, Inc. (TTI) a New Jersey 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. 21,539, issued in Docket No. DE 94-273, the Commission granted TTI conditional approval to operate as of March 17, 1995, subject to the right of the public and interested parties to comment on TTI 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 TTI's petition to do business in the State should submit written comments no later than March 15, 1995, 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\*02/17/95\*[80842]\*80 NH PUC 84\*New England Telephone and Telegraph Company

[Go to End of 80842]

80 NH PUC 84

**Re New England Telephone and Telegraph Company**

DR 95-039

Order No. 21,541

New Hampshire Public Utilities Commission

February 17, 1995

ORDER approving, on an interim basis only, a local exchange telephone carrier's proposed special contract for the furnishing of a fiber distributed digital interface for a business

**Page 84**

customer, Cabletron Systems, Inc.

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1. SERVICE, § 435

[N.H.] Telephone — Equipment and facilities — Untariffed service — Special contract arrangements — Fiber distributed digital interface — Interim approval. p. 85.

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BY THE COMMISSION:

**ORDER**

[1] The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed a special contract for a Fiber Distributed Digital Interface (FDDI) between NYNEX and Cabletron Systems, Inc. on February 17, 1995 at 2:55 PM and requested the Commission review and approve the contract that same day.

Although the contract filed with the Commission included billing and service details, NYNEX filed no supporting cost information. In its transmittal letter, NYNEX explains that this special contract resulted from Cabletron's desire to expedite the installation of one segment of a larger FDDI special contract that is currently being negotiated. NYNEX asserts that it is Cabletron's position that without this FDDI segment in place, "R&D development at the identified facilities will come to a halt".

Our Staff has responded to NYNEX's request to expedite the review of this special contract. Having reviewed the contract submitted by the Company, the Staff noted concerns, particularly with regard to paragraph 8.3 and certain information in Appendices A and B. Staff recommended that if the Commission approved this special contract, such approval should be granted on an

interim basis only and that if, after reviewing supporting cost information still to be filed, the contract rates are found to be below their incremental costs, NYNEX stockholders be held fully responsible.

The Commission recognizes that NYNEX has entered into this special contract in an attempt to provide its customer in a prompt manner with a currently untariffed service. The Commission, however, is disturbed that the Company would request such expedited approval of a contract, yet file no supporting cost information. We accept Staff's recommendation that this contract be granted interim approval pending further review.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's special contract with Cabletron Systems, Inc. is granted interim approval pending further Commission review; and it is

FURTHER ORDERED, that NYNEX address Staff concerns regarding paragraph 8.3, the material in Appendices A and B and any other concerns Staff might have by March 17, 1995; and it is

FURTHER ORDERED, that the parties are hereby put on notice that the Commission will review NYNEX's analysis of the costs associated with this contract and the entire contract itself, and if after such review, the Commission finds that the contract rates are below their incremental costs or that the contract itself for any reason is not in the public interest the Commission will take appropriate action which may include modification or rescission of approval.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of February, 1995.

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NH.PUC\*02/22/95\*[80843]\*80 NH PUC 85\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80843]

80 NH PUC 85

**Re AT&T Communications of New Hampshire, Inc.**

DE 95-014

Order No. 21,543

New Hampshire Public Utilities Commission

February 22, 1995

ORDER authorizing an interexchange telephone carrier to provide an add-on service

**Page 85**

for those governmental customers that already subscribe to the carrier's interstate services, such that they now also can obtain intrastate switched voice communication service through the carrier.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Governmental subscribers of interstate services — New add-on service — Intrastate switched voice communication service — Interexchange telephone carrier. p. 86.

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BY THE COMMISSION:

ORDER

[1] On January 26, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to introduce AT&T Government International Calling Service (GICS) for effect February 27, 1995.

The proposed service is for Government Agency customers of interstate AT&T GICS who have a requirement for intrastate switched voice communication within the state of New Hampshire. AT&T GICS is an add-on to the interstate service and requires that the customer's premises be connected to AT&T via standard local exchange company switched access.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T Government International Calling Service.

Based on the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, PUC NO. 1 are approved for effect as filed:

*Master Table of Contents*

Original Page 1.1

*Table of Contents*

Original Page 23

*Section 21*

Original Pages 1-4;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1995.

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NH.PUC\*02/22/95\*[80844]\*80 NH PUC 86\*One Call Communications, Inc., dba OPTICOM

[Go to End of 80844]

80 NH PUC 86

**Re One Call Communications, Inc., dba OPTICOM**

DR 95-015

Order No. 21,544

New Hampshire Public Utilities Commission

February 22, 1995

ORDER rejecting an interexchange telephone carrier's proposal to assess a property surcharge on all calls placed from customer-owned coin-operated telephones (COCOTs), finding that such a charge would cause the carrier's rates to exceed the state-imposed limit for intrastate toll calls from COCOTs, which is 20% above the dominant interexchange carrier's rates.

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1. RATES, § 565

[N.H.] Telephone rate design — Coin telephone service — Customer-owned coin-operated telephones (COCOTs) — Toll service

**Page 86**

— Limits on intrastate toll COCOT rates — To no more than 20% above those of the dominant interexchange carrier. p. 87.

2. RATES, § 260

[N.H.] Surcharges — For property use — Associated with intrastate toll calls placed from customer-owned coin-operated telephones — Proposal by interexchange carrier — Rejection by commission. p. 87.

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BY THE COMMISSION:

**ORDER**

On January 27, 1995, One Call Communications, Inc. d/b/a OPTICOM, (Opticom) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authorization to introduce a payphone property surcharge for effect February 27, 1995.

Opticom's proposal is to bill and collect a property surcharge for use of customer premise equipment (CPE), i.e., a Customer Owned Coin-Operated Telephone (COCOT) which utilizes Opticom's services. Opticom incurs essentially no cost for the surcharge, but passes the revenue



collected from the property surcharge along to the aggregator for the use of its equipment. The proposed charge is \$1.00 per call and would be levied in addition to all other applicable charges set forth in Opticom's Tariff No. 1, section V.12.

[1, 2] The New Hampshire Code of Administrative Rules Puc PART 408 outlines rules which apply to COCOTs. Specifically, NH Admin. Rule Puc 408.08 limits rates for intrastate toll calls from COCOTs to 20 percent above the New England Telephone and Telegraph Company (NYNEX) approved rates. Because Opticom's rates are currently 20 percent above NYNEX's rates, approving an additional rate for a property surcharge would authorize a rate in violation of NH Admin. Rule Puc 408.08. As a result, we will deny the petition to introduce a property surcharge.

Based upon the foregoing, it is hereby

ORDERED, that Opticom's filing to introduce a property surcharge is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1995.

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NH.PUC\*02/22/95\*[80845]\*80 NH PUC 87\*Concord Electric Company

[Go to End of 80845]

80 NH PUC 87

## Re Concord Electric Company

Additional applicants: Exeter and Hampton Electric Company; UNITIL Power Corporation

DR 94-081

Order No. 21,545

New Hampshire Public Utilities Commission

February 22, 1995

ORDER accepting an electric utility group's 1994 integrated least-cost resource plan filing, even though finding it to be more modest than the commission would like. Commission states that, given the restructuring proposals that the electric industry faces, it is not unreasonable for a utility to rely on short-term contracts for purchasing power, but it does require the utility to submit more detailed guidelines of its procedures for selecting short- versus long-term supplies. Commission also determines that it should open an inquiry into competitive bidding procedures and whether qualifying facilities should be treated differently from other power suppliers.

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### 1. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Factors — Clean Air Act Amendment requirements — Provisions of the Energy Policy Act of 1992 — Short-versus long-term environmental and economic impacts. p. 91.

## 2. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Purchased power — Proportions of short- versus long-term contracts for such — No cap or limit on short-term purchases — Reasonableness vis-a-vis uncertainties associated with restructuring — Guidelines as to short- versus long-term power purchase commitments. p. 91.

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## 3. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Purchased power — Purchases from affiliates as a factor — Proposals for competitive bidding — Treatment of qualifying facilities differently from other power suppliers — Initiation of inquiry — Solicitation of comments. p. 92.

## 4. CONSERVATION, § 1

[N.H.] Electric utility — Integrated least-cost resource planning — Necessity of greater commitment to conservation and load management components — But no minimal requirement for demand-side management measures. p. 92.

## 5. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Purchased power — No examination of individual power purchases — Emphasis on planning and forecasting processes — Specific purchases reviewed within context of fuel and purchased power adjustment clause proceedings. p. 93.

## 6. RATES, § 360

[N.H.] Electric rate design — Within context of integrated least-cost resource planning proceeding — No change to existing seasonal rate structures. p. 93.

## 7. RATES, § 198

[N.H.] Unit for rate making — Multistate operations — Jurisdiction of two different regulatory commissions — Generation and construction issues settled through memorandum of understanding between the states — No need for such when a utility purchases power rather than generates its own. p. 93.

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APPEARANCES: LeBoeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. for Concord Electric Company and Exeter and Hampton Electric Company; Office of Consumer Advocate by Kenneth E. Traum for residential ratepayers; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 29, 1994, Concord Electric Company, Exeter & Hampton Company and UNITIL Power Corporation (collectively the UNITIL Companies or the Companies) filed with the New Hampshire Public Utilities Commission their 1994 Least Cost Integrated Resource Plan (LCIP). At a duly noticed prehearing conference, the UNITIL Companies and Commission Staff (Staff) established a procedural schedule for the duration of the case, which was approved by the Commission. There were no intervenors other than the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor in Commission cases. Report & Order No. 21,255 (June 7, 1994).

On August 12, 1994, the UNITIL Companies filed a Motion for Protective Order requesting confidential treatment of its responses to particular data requests made by the Staff. These responses included information about the UNITIL Companies analysis of bids submitted in response to an RFP, as well as copies of the bids, discussions on single system status, and discussions on pending contractual agreements. The Commission partially granted the request, ordering that the responses be granted

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confidential treatment and returned to the UNITIL Companies within 45 days of the date of final order, but also denied the request that Staff destroy notes or memoranda derived from the responses. Order No. 21,328 (August 24, 1994).

Staff, on October 21, 1994, filed joint testimony of George McCluskey, Scott Harrold, John Cutting and Chester Kokoszka. The UNITIL Companies, indicating that some of Staff's testimony referenced their confidential materials, on October 28, 1994 filed a Motion to Seal Testimony to protect confidential and commercially sensitive information contained in Staff's testimony. They also requested revision to the procedural schedule, except for the hearing dates, by adding three additional business days to the remainder of the schedule, arguing that the Staff testimony was not served on the UNITIL Companies' legal counsel. As part of this request the UNITIL Companies asked that the parties to the proceeding serve all pleadings on the other parties either by hand, facsimile or overnight mail. Staff, on November 4, 1994, concurred in the request to revise the procedural schedule, but suggested some different dates, with which the UNITIL Companies concurred. Staff did object to a change in the method of service, suggesting that the UNITIL Companies were requesting that a courtesy practice become a mandate and if that were to be the case such a proposal ought to be considered as a rulemaking. Staff proposed removing from its testimony the pages that contained confidential information and resubmitting redacted pages.

The Commission, on November 7, 1994, adopted Staff's proposal to resubmit redacted pages of its testimony, encouraging the UNITIL Companies and Staff to determine which sections should be sealed, and adopted Staff's schedule revision. In addition, the Commission denied the request to mandate a different method of service.

On December 5, 1994 the UNITIL Companies filed rebuttal testimony of James G. Daly, George R. Gantz and Paul Weiss. Staff on December 7, 1994 filed Surrebuttal Testimony of George McCluskey, Scott Harrold, John Cutting and Chester Kokoszka.

The Commission heard testimony on the 1994 LCIP on December 13 and 14, 1995. In

accordance with the post hearing schedule, the UNITIL Companies, OCA and Staff submitted briefs on January 16, 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *UNITIL COMPANIES*

The UNITIL Companies argued that their 1994 LCIP complied with all statutory and Commission requirements and that it was complete, comprehensive, integrated, feasible and adequate. To the extent anything has changed since the last LCIP filing, the UNITIL Companies argued, it is Staff's unarticulated criteria for assessing the UNITIL Companies' performance. The Companies further argued that the Commission has indicated in the past that the purpose of conducting a review of a company's resource planning process is to determine whether that process is adequate, not to micromanage the details of the process.

UNITIL went on to argue that it has provided reliable, least cost services to Concord Electric Company (Concord) and Exeter and Hampton Electric Company (Exeter), including low cost power supplies and minimal related administrative expenses. The proof of this, they argued, can be seen through a comparison of the rates achieved for customers with those of their previous power supplier and with other rates in New England.

The UNITIL Companies did not dispute the Commission's jurisdiction over evaluating the prudence of a retail company in selecting a particular wholesale supplier and argued that they had worked hard to comply with all of the Commission's requirements.

The Companies disagreed with Staff's suggestion that they should agree to a Memorandum of Understanding (MOU) like that entered into by New England Electric System (NEES) with the commissions in New Hampshire, Massachusetts and Rhode Island, arguing that their situation and NEES' were very different since, unlike NEES, they own no generation assets. They also argued that this type of arrangement would not offer any benefit to Concord and

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Exeter because they do not have direct contractual liability for their power supply outside of the System Agreement.

The Companies argued that the System Agreement in place now provides significant benefits to Concord and Exeter because UNITIL Power Company (UPC), the entity created to coordinate the retail companies joint resource portfolio, has negotiated and entered into power supply contracts under which Concord and Exeter customers receive the benefits of portfolio commitments without making an equity contribution or paying a risk premium.

The Companies went on to argue that their resource acquisition strategy appropriately balances price and risk and that it would provide reliable supplies in changing markets. As part of this argument the Companies disputed Staff's contention that they continue to be overly reliant on short term markets and contended that they had complied with Commission directives and concerns regarding the mix of long, medium and short term supplies.

The Companies also contended that their bidding and procurement procedures provide least cost supplies and appropriately subject affiliate transactions to market forces. They urged the

Commission not to adopt the blanket prohibition on affiliated companies having access to the bids of third parties in a competitive bidding process, arguing that it would result in higher cost for their customers and would be inconsistent with least cost planning principles.

In terms of Demand Side Management (DSM) programs, the Companies argued that their plan incorporated existing and planned resource commitments that were appropriate and argued there was no rational basis for the Commission to impose the 3% DSM spending target that Staff recommended.

With regard to some of the other issues, the companies argued that potential time of day and seasonal rates are not appropriate for their customers, that the Commission should not open an investigation into a potential consolidation involving Fitchburg Gas and Electric, and that qualifying facilities (QFs) contracts should be awarded on the basis of the lowest bid price determined as a result of a competitive bid process.

#### B. OCA

The OCA was concerned that the Companies might be making resource decisions without sufficiently examining the impacts on ratepayers. Nonetheless, the OCA was also worried about Staff changing the standards it uses to evaluate company LCIP filings and that this might force the Companies to spend an inordinate amount of time on a filing that would have the same impact on ratepayers.

The OCA indicated that while it was not concerned with the present mix of short and long term supply resources, it suggested that in future filings the Companies provide additional support for the mix. The OCA went on to say that the Commission should make it clear to management that the investors, not the ratepayers, would bear the financial burden of mistakes in judgment.

In terms of DSM, the OCA agreed with Staff that the Companies should give more attention to DSM in their LCIP and suggested the 3% guideline was a good starting point. The OCA did express concern, however, about the small size of the Companies and the need to avoid onerous administrative demands that would lead to increased costs to customers.

The OCA shared Staff's concerns that Fitchburg has an unfair advantage in the bidding process. While they thought that a "Chinese Wall" approach was impractical, they thought some type of sharing agreement might provide a solution. They thought the Companies should voluntarily submit any Fitchburg/UPC activities to the Commission's oversight. They suggested a separate docket should be established with regard to the potential affiliation between UPC and Fitchburg and thought that a structure similar to the NEES MOU was worth examining.

The OCA took the position that seasonal rates ought to be examined in the context of weighing cost savings against customer confusion, rate continuity, and the ability of customers to effectively respond to rate changes.

#### C. Staff

The Staff argued that it could not

determine whether the Companies' plan is least cost because the filing did not have adequate information to satisfy the statutory requirements. They claimed there was no evidence that the Companies did a thorough analysis of conservation and energy efficiency opportunities and consequently no integration of demand and supply side options. As a consequence of this the Staff recommended the Commission impose a 3% DSM spending target that was based upon the average of all New England utilities.

The Staff argued that the 1994 LCIP presents an unreasonable degree of risk to ratepayers because of the heavy reliance on short-term contracts. In so arguing the Staff contended that this reliance indicates that the Company ignored the Commission's directive in *Re Eastern Utilities Associates*, 76 NHPUC 236 (1991). The Staff argued that the percentage of long term contracts is smaller now than it was in 1991 and that it will grow progressively smaller unless the Commission takes action to arrest the decline. This is a cause for concern, the Staff argued, because this kind of supply portfolio exposes ratepayers to the risk of large rate increases because UPC's whole portfolio must be replaced over a period of only five to six years. Staff cited the automatic flow through of power costs to Concord and Exeter as insulating stockholders from the consequences of a what they consider to be a risky acquisition strategy. They recommended that the Commission order UPC to create a portfolio comprised of no more than 60% short-term contracts.

Staff also argued that the Commission should conduct a review of power supply costs as required by *Appeal of Sinclair Machine Products, Inc. & a.*, 126 NH 822 (1985). To approve an LCIP without inquiring into the reasonableness of entering into purchase transactions would abdicate the Commission's responsibility to ensure that only reasonable rates are approved. According to Staff the Commission should exercise its authority to require the retail companies, Concord and Exeter, to investigate alternative wholesale suppliers.

Staff also recommended that the Commission review the proposed consolidation of Fitchburg and UPC through a separate proceeding. In terms of affiliate transactions, Staff argued that they must be subject to the same rigorous market testing as other third party transactions and that the Commission should address this through a generic competitive bidding rulemaking.

Staff also argued that the Companies purchases from QFs under long-term contracts are not consistent with state or federal law and that it is not appropriate to treat all suppliers, QFs and non-QFs, equally. Staff asked the Commission to clarify its orders with regard to the appropriateness of competitive bidding to determine long term avoided costs.

### III. COMMISSION ANALYSIS

[1] We have reviewed the record of this proceeding and the briefs filed by the UNITIL Companies, OCA and the Staff. We find that the 1994 LCIP is adequate. There are a number of issues which must be addressed, however, in UNITIL's future filings. Before we discuss these issues, however, there is one preliminary point that we must address concerning RSA 378:38, the law which requires the electric utilities to file a LCIP with the Commission. This law was amended in 1994 to add three assessments to the plan: plan integration and impact on state compliance with the Clean Air Act Amendments of 1990, plan integration and impact on state compliance with the National Energy Policy Act of 1992, and long and short term environmental, economic and energy price and supply impact on the state. We read these new

plan components as being required for all plans filed after June 8, 1994 (the effective date of the amendments to RSA 378:38), but not for any plans, like the one before us now, that were filed before this date.

#### A. Power Mix

[2] Staff argues that the UNITIL Companies' power mix relies too heavily on short term contracts (that is, contracts of less than 10 years) and asks that we require the UNITIL Companies to be limited to no more than 60% short term power, in accordance with a directive given the UNITIL Companies in its case with

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Eastern Utilities Associates (EUA). In our 1991 order regarding EUA's attempt to take over the UNITIL Companies, we stated we were concerned that the UNITIL Companies held over 60% of its power in short term contracts and required that they submit to the Commission guidelines regarding their analysis of the proper mix of short, medium and long term power. *Re Eastern Utilities Associates*, 76 NHPUC 236, 256 (1991).

We do not read the language of the 1991 order to mandate a cap of 60% in short term power. In fact, we believe that the proper percentage of short term power is likely to change with circumstances of the economy, capacity and changing market conditions. Given the amount of discussion throughout the State and country regarding restructuring of the electric industry and potential for competitive provision of electric service in the future, we cannot say that 67% of power committed on a short term basis is improper.

However, we are concerned with the projections that short term power will comprise 80% of the UNITIL Companies' power mix by the year 2000. We direct the UNITIL Companies to evaluate their power supply and where possible, enter into longer term power contracts that are consistent with the dual goals of least cost planning and reliability.

We also require the UNITIL Companies to submit more detailed analysis of how they determine the proper balance between short, medium and long term power. The guidelines first submitted in response to our 1991 order were not greatly detailed. Although accepted at the time, we now find it necessary to evaluate more detailed analysis of the UNITIL Companies' power mix planning, particularly as the amount of short term power is projected to increase significantly in coming years. We order the UNITIL Companies, therefore, to file with the Commission no later than December 1, 1995 their guidelines regarding the proper blend of short, medium and long term power commitments, in order to facilitate our review of the 1996 LCIP.

#### B. Standards for Bidding with Affiliates and QFs

[3] There were a number of issues which involved bidding for power contracts: the terms under which affiliated companies should bid, whether there should be a rulemaking on competitive bidding processes, and whether QFs should be treated differently from other power suppliers. As to affiliated companies, in this case, Fitchburg bidding for a purchase by UNITIL Power Company, it is without question that there must be scrupulous efforts to prohibit any unfair advantage as a result of Fitchburg's affiliation with UPC and to ensure that least cost principles are not jeopardized. We believe it is possible to maintain the necessary separation by



erecting a "Chinese Wall". If it becomes apparent that efforts to insulate UNITIL Power Company from Fitchburg are done in a half-hearted way, or are vigorously pursued but nonetheless are unsuccessful, we will re-examine this issue and may impose greater restrictions on Fitchburg's bidding.

We are not yet prepared to open a docket on competitive bidding rules, as we believe the companies now undergoing competitive bidding are in the early stages of the process and we would all benefit from their experience before establishing rules for all companies to follow.

We do not find the record sufficient at this time to respond to the questions posed by Staff regarding QF bidding. (See page 15 of the Staff's brief.) We expect other electric utilities as well as QFs would have valuable input on these questions. For that reason, we will open a docket seeking written comments on these matters from all interested parties.

#### *C. Adequacy of DSM Programs*

[4] We cannot say on the basis of the record before us that the DSM component of the LCIP is inadequate. We have reviewed the requirements set forth in prior cases delineating what should be submitted in an LCIP, and on the basis of those orders, cannot say that the UNITIL Companies have made an inadequate filing. General standards are set forth in RSA 378:38 and have been supplemented in Commission Order No. 19,052, *Re PSNH*, 73 NHPUC 117 (1988) and Order No. 19,546, *Re*

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Granite State Electric Co., 74 NHPUC 325 (1989). If the Staff or any intervenor feels it needs additional information in order to evaluate an LCIP filing, those requirements should be explicitly stated prior to the filing of a plan. We encourage the Staff to develop further guidelines for LCIP submissions, which we will review and if appropriate, order for all companies.

Nonetheless, we want to reemphasize our commitment to the importance of a greater conservation and load management program (C&LM) than the modest one which the Companies had implemented in prior years and which they advocated ought to be continued in their last C&LM filing. In Order No. 21,248, we required that the Companies increase their program to the level recommended by Staff. In so doing we recognized that the goal of this program is to achieve financial and resource savings and denied the Companies' argument that when economic recovery is uncertain recovery should not be endangered by unnecessary mandated expenditures. In fact we found that effective C&LM programs actually assist those most affected by economic downturns and that the program as approved represented only a modest percent of the Companies' budget. We want to make sure that the Companies keep this in mind when they make future LCIP filings.

#### *D. Sinclair Analysis*

[5] Staff argues that a *Sinclair* analysis should be undertaken of the UNITIL Companies' purchases as part of the LCIP process. We disagree. While we are authorized and in fact mandated to evaluate the prudence of a wholesale purchase, *Appeal of Sinclair Machine Products*, 126 N.H. 822 (1985), we do not believe such an analysis is appropriate in the context of a planning docket. Our role in evaluating LCIP filings is not to scrutinize individual power



purchases, which is better left to the semi-annual Fuel Adjustment Clause and Purchased Power Cost Adjustment (FAC/PPCA) proceedings. In an LCIP we must determine if a company's planning process is sound and thorough enough to assure ourselves the company is seeking the least cost approach to its power supply. We do not construe that role to mean we conduct a prudence analysis on particular purchases when reviewing the LCIP. We do expect, however, that in coming FAC/PPCA proceedings, that if there are issues of prudence regarding particular wholesale transactions that they be brought to our attention by the Staff, OCA or other intervenor.

If, as a result of our review of future FAC/PPCA proceedings, we have reason to believe that the ratepayers of the retail companies are experiencing higher rates than they should because the Companies are not appropriately investigating other wholesale options, we have the authority to order that the retail companies investigate alternative wholesale suppliers.

#### *E. Seasonal Rates*

[6] Staff recommended moving to seasonal rates. We do not find an adequate basis in the record to order a change to seasonal rates, and are concerned that rate movement between seasons could be confusing to customers. We note the OCA's comments regarding continued study of seasonal rates, and we encourage the Parties and Staff to petition us in the future if further analysis of seasonal rates appears to be appropriate.

#### *F. MOU*

[7] There has been a suggestion that a mechanism similar to the Memorandum of Understanding (MOU) between the three states that regulate the retail companies of New England Power Company be developed for the two states regulating the UNITIL Companies. The MOU is primarily focused on generation and construction issues between the states which not apply to the UNITIL Companies. Because UPC is primarily a purchaser of power, we do not see the need for the development of an MOU for the UNITIL Companies at this time.

We expect, however, that should the two states find themselves pitted against one another or heading in opposite directions, that we be alerted immediately so that we can avoid conflict with our sister Commission. It is not in the interest of the regulatory bodies, the

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UNITIL Companies or their ratepayers to have commissions working at cross purposes. This does not yet appear to have been a problem, but should it become one, we will address the proper way in which to craft a regional approach that nevertheless satisfies the needs of each state.

#### *G. Merger with Fitchburg*

Staff recommended that we open an investigation to consider a potential consolidation involving Fitchburg. Although we see the potential for greater benefits to New Hampshire ratepayers from such a consolidation, we believe the most appropriate action at this point in time is to review the portion of the resource assessment action plan related to investigating further integration of the Fitchburg and UPC systems, which the Companies have indicated they intend to complete by the end of the first quarter of 1995. (See page 20 of the Companies' brief). We will therefore withhold judgment on whether to investigate this further until we have reviewed

this portion of the Companies' investigation, which we expect to be filed with us no later than April 1, 1995.

Based upon the foregoing, it is hereby

ORDERED, that the Unitil Companies 1994 Least Cost Integrated Resource Plan be approved subject to the conditions noted in this report; and it is

FURTHER ORDERED, that the Unitil Companies file with the Commission no later than December 1, 1995 their guidelines regarding the proper blend of short, medium and long term power commitments; and it is

FURTHER ORDERED, that a docket be opened seeking written comments with regard to competitive bidding and whether QFs should be treated differently than other power suppliers; and it is

FURTHER ORDERED, that the Companies file with the Commission no later than April 1, 1995 a copy of its investigation concerning further integration of UPC and Fitchburg.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re UNITIL Service Corp., DE 94-081, Order No. 21,255, 79 NH PUC 326, June 7, 1994.

[N.H.] Re UNITIL Service Corp., DE 94-081, Order No. 21,328, 79 NH PUC 461, Aug. 24, 1994.

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NH.PUC\*02/22/95\*[80846]\*80 NH PUC 94\*Utility Property Tax Abatements and Limitation of Expenses

[Go to End of 80846]

80 NH PUC 94

### **Re Utility Property Tax Abatements and Limitation of Expenses**

Petitioners: Town of Bow; Town of Hudson

DR 95-029

Order No. 21,546

New Hampshire Public Utilities Commission

February 22, 1995

ORDER setting a procedural schedule for receiving comments on a proposal by two municipalities for limits on rate-making expenses that can be claimed by utilities pursuant to utility property tax abatement actions.

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## 1. EXPENSES, § 109

[N.H.] Taxes — Property taxes — Abatement actions — Proposal for limits on associated expenses — Solicitation of comments — Schedule. p. 94.

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BY THE COMMISSION:

## ORDER

[1] The Town of Bow and the Town of Hudson *et al.* (the Towns), filed petitions (Petitions) on February 6, 1995 with the New Hampshire Public Utilities Commission

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(Commission) for the adoption of a rule for the limitation of expenses arising from utility property tax abatement actions. RSA 541-A:4 requires that the Commission grant or deny petitions for rulemaking within 30 days of filing. If such petitions are granted the formal rulemaking process commences immediately thereafter. We believe that it is inappropriate to move forward with the rulemaking process until all interested parties have had a full opportunity to respond to the issues presented in the Petitions and to provide us with whatever additional comments they believe are necessary. We therefore deny the Petitions at this time. However, since the Petitions raise important issues regarding the extent to which ratepayers should bear expenses related to property tax litigation, the Commission will entertain comments on whether it should initiate such a rulemaking.

Based upon the foregoing, it is hereby

ORDERED, that the Petitions for the commencement of a rulemaking are denied; and it is

FURTHER ORDERED, that the Commission will entertain comments in response to the Towns' Petitions on whether it should commence a rulemaking on the limitations of expenses arising from utility property tax abatement actions; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, the Towns notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order no later than March 3, 1995, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before March 10, 1995; and it is

FURTHER ORDERED, that the Towns serve a copy of their Petitions and this Order in accordance with N.H. Admin. Rules, Puc 1601.05(j), on the New Hampshire Telephone Association, the Association of New Hampshire Utilities and the New Hampshire Water Works Association by first class U.S. Mail, postmarked no later than March 3, 1995; and it is

FURTHER ORDERED, that any party wishing to comment on whether the Commission should commence a rulemaking on the issues described above shall submit to the Commission an original and eight copies of its comments with copies sent to the Towns and the Office of the Consumer Advocate on or before March 23, 1995; and it is

FURTHER ORDERED, that the Towns may file responsive comments by April 6, 1995; and it is

FURTHER ORDERED, that a hearing be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on April 13, 1995 at 10 a.m. for the purpose of hearing oral argument.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February.

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NH.PUC\*02/22/95\*[80847]\*80 NH PUC 95\*Integrated Water Systems, Inc.

[Go to End of 80847]

80 NH PUC 95

**Re Integrated Water Systems, Inc.**

DR 94-094

Order No. 21,547

New Hampshire Public Utilities Commission

February 22, 1995

APPLICATION by water utility for authority to increase rates by 156.8%; granted as modified, pursuant to stipulation, in the amount of a 36.8% increase. The increase is seen as justified given the new ownership of the utility and its commitment to making long-needed capital improvements, such as the installation of individual meters for all customers.

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1. RATES, § 595

[N.H.] Water rate design — Factors affecting need for increase — New ownership — Commitment to capital improvements — Transition to all-metered system — Infrequency of rate filings versus gradualism — Stipulation. p. 98.

2. SERVICE, § 473

**Page 95**

[N.H.] Water utility — Equipment and facilities — Need for capital improvements — Installation of individual meters — As condition for rate increase. p. 99.

3. EXPENSES, § 89

[N.H.] Rate case expense — Impact of extraordinarily high costs — Recovery via surcharge — Factors — New ownership — First-time case — Protracted settlement process — Water utility. p. 99.

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APPEARANCES: Gallagher, Callahan and Gartrell by John L. Pendleton, Esq. for Integrated Water Systems, Inc.; Joanne V. Heger for the Locke Lake Colony Association; the Office of the Consumer Advocate by James R. Anderson, Esq. for residential ratepayers; E. Barclay Jackson, Esq. and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On June 21, 1994, Integrated Water Systems, Inc. (Integrated) filed with the New Hampshire Public Utilities Commission (Commission) 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 (LLCA), 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 testimony on the temporary rate request and conducted a public hearing in Barnstead attended by over 100 customers. The Commission took comments from customers opposing rate increases in the magnitude requested by Integrated, though many acknowledged the need for some increases and upgrades to the system. OCA and Staff stated their recommendations for temporary rates in the amount of 9.2% and 44.4% respectively.

On September 23, 1994 Integrated filed a revised request for permanent rates which would increase revenues by 104.1%. Additionally, the Company requested minor changes to the approved procedural schedule to allow for discovery with respect to the revised filing while maintaining the previously approved settlement and hearing dates.

On September 28, 1994 the Commission issued Order No. 21,369 establishing temporary rates at a level sufficient to yield revenues of \$151,951, an increase of 12.1% over current revenues. This increase for temporary rates was authorized on a bills-rendered basis effective with the October 1, 1994 quarterly billing. The Commission also ordered Integrated to produce plans for metering, customer relations, and capital improvements as part of the permanent rate

proceeding. Order No. 21,369 also authorized the Company to convert to monthly billing of its customers effective November 1, 1994.

On October 12, 1994 the Company was

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notified by Dr. Sarah P. Voll, Commission Executive Director and Secretary, that at its public meeting on October 10, 1994 the Commission accepted the Company's revised financial data and rate request, and approved the modified procedural schedule. Dr. Voll also pointed out that the Commission would entertain a motion for an extension of the procedural schedule if the Staff or OCA required additional time for their analysis of the revised filing.

On November 23, 1994 the Staff filed a Motion for Extension of Procedural Schedule, which included a request for additional discovery. There were no objections from the parties, and the Commission at its November 28, 1994 meeting granted the motion. The hearing dates were changed to January 31 and February 1 and 2, 1995.

On January 4, 1995 the parties met to discuss the issues and to explore the possibility of settlement. On January 12, 1995 LLCA filed testimony of Joanne V. Heger, and OCA filed testimony of Thomas S. Lyle. On January 13 the Staff filed testimony of James L. Lenihan, Douglas W. Brogan, Jane A. Emerson, and Mark A. Naylor.

On January 18, January 20, and January 24 representatives of the Company, Staff, OCA and LLCA met to discuss all issues involved in the Company's rate increase request, the testimony of the Staff and parties, and to further explore the possibility of settlement.

At the hearing on February 2, 1995 the Staff, Integrated, OCA, and LLCA presented a Settlement Agreement for consideration by the Commission. A revised Agreement, which clarifies on pages 6 and 7 the issues with respect to the provision of documents to LLCA by the Company, was submitted by the parties and Staff subsequent to the hearing under separate cover. This Settlement Agreement (the Agreement), consists of 29 pages of text and financial attachments. Ex. 31.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Integrated Water Systems, Inc.*

Mr. Eugene Leone, the Company's CPA, supported the Agreement on behalf of Integrated. He described the process of settlement negotiations among the Staff and parties and indicated that the Company was satisfied with the resulting Agreement.

### B. *Locke Lake Colony Association*

Mrs. Joanne Heger spoke briefly at the hearing and indicated the Association's satisfaction with the Agreement.

### C. *OCA*

OCA did not offer comments at the hearing.

### D. *Staff*

Mr. Mark A. Naylor presented the Agreement at the hearing on behalf of the parties and

Staff. He indicated that the financial aspects of the Agreement were very similar to those contained in his prefiled testimony, and he highlighted the differences which accounted for the stipulated 36.8% increase in revenues from his prefiled recommendation of a 36.1% increase.

#### *E. Settlement Agreement*

The Agreement provides for the following:

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

Rate Base	\$308,439
Rate of Return	9.54%
Cost of Equity	10.06%
Net Operating Income	\$ 29,424
Revenue Requirement	\$196,279

The parties and Staff have agreed to retain the current rate structure of the Company, which is a fixture rate. Since miscellaneous service fees of \$5,985 (page 21 of the Agreement) were proformed into the revenue requirement as a result of a recently revised tariff (DR 93-164, Order No. 21,214 issued May 2, 1994), the Company will increase its water rates by 38.4% in order to realize its stipulated revenue requirement. Pursuant to Commission Order No.

#### Page 97

21,369, authorizing temporary rates, and the terms of the Agreement the Company has agreed to complete metering for all its customers on or before December 31, 1995. Once metering is complete, the parties and Staff agree that the Company shall be allowed to file a request for a Step Adjustment to its permanent rates in order to recover the prudently incurred costs of a) the capital costs associated with meters; b) pump testing the Company's wells, subject to agreement as to the cost recovery method; c) any portion of the \$16,212 Hydrosorce water study found by the Commission to benefit the Company's ratepayers through the procurement of additional supply; d) one year's depreciation expense of the meters; e) consideration of other direct operating expenses in connection with the meters; f) one-half year accumulated depreciation of the meters; and g) adjustment of the Company's cost of debt limited to adjustments for 1) the Community Bank and Trust Company's scheduled June 1995 adjustment to the interest rate on the Mortgage Debt and 2) if any further debt is incurred with respect to the meters. Also, at the time of the step increase request, the Company agrees to submit a metered rate for Commission approval.

The Agreement further provides for recoupment of the difference between the permanent rates and the temporary rates in accordance with RSA 378:29, such recoupment to be made by a surcharge to customer bills over a 30 month period. In addition, the Agreement provides for the recovery of \$85,500 in rate case expenses, also over a 30 month period by means of a surcharge.

In addition, the Agreement provides for the Company to work together with the parties and Staff to produce a business plan including appropriate financial projections. Further, the Agreement provides for meetings at least twice yearly between the Company and the LLCA's Board of Directors, and for the provision to the LLCA of all Company filings, annual reports, Forms E-22, etc., to the extent such items are public records, on an ongoing basis. The Company also agrees to participate in the LLCA's annual meeting, upon request of either party, in order to



discuss issues raised by LLCA members.

The Agreement also recognizes the Company's intention to file a new rate case based upon a test year ended not sooner than December 31, 1995, and that the Staff, OCA, and LLCA will not object to such filing on the basis of the two-year limitation set forth in RSA 378:7.

### III. COMMISSION ANALYSIS

[1] We have reviewed the record in this case and the Agreement submitted by the parties and Staff. We find the Agreement to be a fair resolution of Integrated's petition for a permanent rate increase, and we believe it results in just and reasonable rates for the utility's customers. We will approve the Agreement.

The Agreement will result in a permanent increase of 36.8% over the revenues realized in the Company's test year ending June 30, 1994. This is considerably higher than the rate approved in our Order No. 21,369 issued September 28, 1994 on a temporary basis. Because of this difference, there will be an adjustment to recover the difference between the temporary rate and permanent rate charged from July 1, 1994 to the date of this Order, since our Order on temporary rates provided for the temporary rate increase to be effective with bills rendered on October 1, 1994.

In accordance with the Agreement, there will also be an adjustment to monthly rates for Integrated to recover the costs of this proceeding. This adjustment will extend for 30 months. For an average customer, the annual rate will be \$316.93. This amount reflects the 38.4% permanent increase in water rates necessary for the Company to realize its full revenue requirement. When the estimated recoupment of the difference between the temporary rate increase of 12.1% and the permanent rate, and the recoupment of rate case expenses is added, a total average annual charge of approximately \$393.13 will result.

In reaching this decision, we have considered the need for a rate increase for a system that has been allowed to deteriorate in recent years. The customers in the Locke Lake franchise area have not seen an increase in rates

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since 1986. While an increase in water rates of 38.4% is significant, we believe it is reasonable in light of the many years under the existing rate, which was clearly insufficient to keep the system in adequate working order. Even with the overall 36.8% increase in revenues, Integrated customers face a lower rate than many of the state's water utility customers.

We want to commend Ms. Heger and all members of the Association for the conscientious and constructive role the Association played in this case. We seldom have as organized and well represented a group of customers before us, and we found the Association's input extremely helpful.

[2] In our order on temporary rates, we required Integrated to submit a plan on metering of all customers. We find the plan as submitted to be acceptable. The Agreement authorizes a step increase proceeding when metering of all customers is complete. We support the step adjustment mechanism in this case as a way to encourage a more efficient and less costly proceeding than a full rate case. We caution Integrated, however, that approving the step adjustment mechanism is



not a guarantee of full recovery of all costs it may incur regarding metering. At the step adjustment proceeding, we will evaluate the prudence of its efforts in metering and any imprudent costs will be disallowed.

[3] We are concerned at the extremely high rate case expenses in this proceeding but will nevertheless authorize recovery of them, as there is no demonstration that they were not prudently incurred. We believe, however, that the magnitude of expenses is in part the result of Integrated being a new utility, taking over the operations of another. We will not look favorably on future rate case expenses in this magnitude, and believe that as Integrated becomes fully organized its legal and accounting expenses should drop considerably.

We note with appreciation the efforts of Integrated to keep the Association better informed regarding its filings with this Commission and its on-going operations. The February 2, 1995 submission of a revised Agreement by the parties and Staff with respect to Integrated's provision of documents to the Association on a routine basis appears to resolve the concern raised at the hearing regarding the Association's need to stay apprised of significant Company efforts and activities.

We also find that the plant and equipment contained in Integrated's rate base is used and useful, and costs associated with it, as modified in the prefiled testimony of Staff witness Naylor, were prudently incurred.

As we noted at the permanent rate hearing, this is a case that started with the parties extremely far apart in what each felt was a fair result. We commend Integrated, the Association, OCA and Staff in working diligently through a difficult and at times acrimonious case, to reach what we believe is a just and reasonable result under the circumstances.

Based upon the foregoing, it is hereby

ORDERED, that the Revised Agreement is approved; and it is

FURTHER ORDERED, that Integrated Water Systems, Inc., is authorized to increase its water rates to realize a revenue requirement of \$196,279, based on the fixture rate currently in effect, in accordance with the Agreement; and it is

FURTHER ORDERED, that Integrated is authorized to recoup the difference between the temporary rate authorized in Commission Order No. 21,369 and the permanent rate authorized herein, said recoupment to be made by surcharge to each customer's bill over a 30 month period; and it is

FURTHER ORDERED, that Integrated is authorized to recover its rate case expenses of \$85,500 by surcharge to each customer's bill over a 30 month period; and it is

FURTHER ORDERED, that Integrated is authorized to file for a step increase adjustment to its rates at the conclusion of its metering of its customers, said step increase adjustment to be limited to those costs as outlined in the Agreement; and it is

FURTHER ORDERED, that Integrated submit a metered rate at the time of the step adjustment request for consideration by this Commission; and it is

FURTHER ORDERED, that the Company file compliance tariff pages reflecting the new permanent rate level, rate case expense

surcharge, and temporary rate recovery surcharge, with supporting calculations, within ten days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of February, 1995.

#### 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. [N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,287, 79 NH PUC 397, July 5, 1994. [N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,369, 79 NH PUC 541, Sept. 28, 1994.

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NH.PUC\*02/22/95\*[80848]\*80 NH PUC 100\*PowerNet Communications, Inc.

[Go to End of 80848]

80 NH PUC 100

### **Re PowerNet Communications, Inc.**

DE 94-269

Order No. 21,548

New Hampshire Public Utilities Commission

February 22, 1995

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

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#### 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 services. p. 100.

#### 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 100.

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BY THE COMMISSION:

ORDER

[1, 2] On November 7, 1994, PowerNet Communications, Inc. (PNC), an Oklahoma 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.

PNC 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 PNC 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. PNC shall file tariffs for new services and changes in approved services (other than

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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, PNC shall notify the Commission of the change.

5. PNC 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. PNC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. PNC 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. PNC 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. PNC 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. PNC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by PNC 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 PNC 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);

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and it is

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

FURTHER ORDERED, that PNC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than March 8, 1995, and an affidavit proving publication shall be filed with the Commission on or before March 22, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. PNC 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 PNC shall file a compliance tariff with Commission on or before March 8, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 24, 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 twenty-second day of February, 1995.

Notice of Conditional Approval of  
POWERNET COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On November 7, 1994, PowerNet Communications, Inc. (PNC), an Oklahoma 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. 21,548, issued in Docket No. DE 94-269, the Commission granted PNC conditional approval to operate as of March 24, 1995, subject to the right of the public and interested parties to comment on PNC 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 PNC's petition to do business in the State should submit written comments no later than March 22, 1995, 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\*02/23/95\*[80849]\*80 NH PUC 102\*State Line Plaza Water Company, Inc.

[Go to End of 80849]

80 NH PUC 102

**Re State Line Plaza Water Company, Inc.**

DR 94-292  
Order No. 21,549

New Hampshire Public Utilities Commission

February 23, 1995

ORDER establishing a procedural schedule for conferences and hearings relative to a water utility's application for authority to increase rates by 49.2%. The proposed rates are suspended for the interim.

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1. RATES, § 248

**Page 102**

[N.H.] Schedules and procedure — Interim suspension — Necessity of hearings and conferences — Establishment of schedule — Water rate case. p. 103.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 41

[N.H.] Purchased water clause — Proposal for — Due to volatile wholesale prices — For supplies purchased from nonjurisdictional municipality — Suspension. p. 103.

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BY THE COMMISSION:

## ORDER

[1, 2] State Line Plaza Water Company (State Line or Company), filed on February 3, 1995 with the New Hampshire Public Utilities Commission (Commission) proposed rate schedules and supporting documentation for effect on March 5, 1995 that if approved would result in a 49.2% increase in annual revenue. State Line provides water service to approximately 13 commercial customers in a shopping plaza in Plaistow, New Hampshire. The Company states that in January of 1995 the City of Haverhill, Massachusetts (Haverhill) increased its rate for purchased water retroactive to July 1994. Consequently, the Company has been paying more for water than they are allowed to charge their customers.

State Line also requested a mechanism be established whereby the Company can automatically adjust its rates when wholesale rates for purchased water from Haverhill change.

The filing raises, *inter alia*, issues related to whether the requested rate increase is just and reasonable, and whether a proposed mechanism to adjust rates to reflect increases in the cost of purchased water should be approved.

Based on the foregoing it is hereby

ORDERED, that NHPUC NO. 1, State Line Plaza Water Company, Inc., 1st revised page 7 be and hereby is suspended pending further investigation and decision thereon, and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the Commission, located at 8 Old Suncook Road, Concord, New Hampshire on March 23, 1995, at 10:00 a.m., at which each party will provide a preliminary summary of its position with regard to the Petition. Absent objection, the Prehearing Conference will be recorded on tape rather than by a stenographer; and it is

FURTHER ORDERED, that following the Prehearing Conference the Company, Staff of the Commission and Intervenors hold the First Technical Session to review the filing; and it is

FURTHER ORDERED, that the following schedule be proposed for the remainder of the proceeding:

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

Supplemental Company Testimony	March 16, 1995
Data Requests by Staff and Intervenors	March 30, 1995
Company Data Responses	April 11, 1995
Technical Session	April 13, 1995
Testimony by Staff and Intervenors	May 4, 1995
Data Requests by the Company	May 11, 1995
Data Responses by Staff and Intervenors	May 18, 1995
Settlement Conference	May 31, 1995
Filing of Any Settlement Agreement	June 15, 1995
Hearing	June 20, 1995;

and it is

FURTHER ORDERED, that State Line 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 Plaistow Town Clerk by first class U.S. Mail,

postmarked no later than February 27, 1995; 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 State Line and the Office of the Consumer Advocate on or before March 13, 1995, such

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Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 (a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before March 16, 1995; and it is

FURTHER ORDERED, that the Company shall prefile with the Commission and any party that has filed for intervention, on or before March 16, 1995, testimony and exhibits on the rate increase received from Haverhill in January 1995 and on its proposal to institute a mechanism that would automatically adjust rates to reflect increases in the cost of purchased water.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of February, 1995.

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NH.PUC\*02/28/95\*[80850]\*80 NH PUC 104\*MFS Intelenet of New Hampshire, Inc.

[Go to End of 80850]

80 NH PUC 104

**Re MFS Intelenet of New Hampshire, Inc.**

DR 95-018

Order No. 21,550

New Hampshire Public Utilities Commission

February 28, 1995

ORDER approving an interexchange telephone carrier's proposal for offering its "Total Solution" service plan, under which a customer can select among various discounted term plans when choosing switched or dedicated, inward or outward service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Total Solution" service — Customer options — Switched or dedicated service — Inward/outward arrangements — Discounted term plans — Interexchange carrier. p. 104.



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BY THE COMMISSION:

ORDER

[1] On January 31, 1995, MFS Intelenet of New Hampshire, Inc. (MFS) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authority to introduce its Total Solution Service and make minor text changes for effect March 2, 1995.

Total Solution is a service which allows customers to select switched or dedicated outward and inward service arrangements and obtain Term Plans. Total Solution Service is available on a month to month basis or at discounted Term Plan rates. Term Plans are subject to a minimum monthly usage level of \$500 after 90 days of initial service.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Total Solution Service and the minor text changes included in the petition.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS's Tariff NH PUC No. 1 are approved for effect as filed:

2nd Revised Page 1  
 1st Revised Page 2  
 1st Revised Page 23  
 Original Page 24.1  
 Original Page 24.2  
 Original Page 24.3  
 Original Page 24.4  
 2nd Revised Page 25  
 1st Revised Page 25.1  
 1st Revised Page 25.2  
 1st Revised Page 26  
 Original Page 27.1  
 Original Page 27.2  
 2nd Revised Page 28  
 1st Revised Page 28.1;

and it is

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FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order as required

by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1995.

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NH.PUC\*02/28/95\*[80851]\*80 NH PUC 105\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80851]

80 NH PUC 105

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-017

Order No. 21,551

New Hampshire Public Utilities Commission

February 28, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which would eliminate a 20% discount that had been provided for any calls placed between two business customers when both subscribed to the carrier's "Sprint Clarity The Most for Business" service plan.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — "Sprint Clarity The Most for Business" service plan — Special rates for calls between two customers that both subscribe to plan — Elimination of such discounts — Flexibility to respond to market forces as a factor — Interexchange carrier. p. 105.

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BY THE COMMISSION:

ORDER

[1] On January 3, 1995, Sprint Communications Company of New Hampshire, Inc. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting authority to eliminate the Sprint to Sprint discount for Sprint Clarity The Most for Business, effective March 1, 1995.

Sprint is proposing to eliminate the 20 percent discount for calls from its customers who subscribe to Sprint Clarity The Most for Business to other Sprint customers having switched access. Other discounts applicable to Sprint Clarity The Most for Business will remain in effect.

We find the petition in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market

and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's New Hampshire PUC Tariff No. 4 are approved for effect as filed:

- 12th Revised Page 1
- 2nd Revised Page 63
- 2nd Revised Page 94
- 2nd Revised Page 95;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1995.

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NH.PUC\*02/28/95\*[80852]\*80 NH PUC 106\*Granite State Electric Company

[Go to End of 80852]

80 NH PUC 106

**Re Granite State Electric Company**

DR 94-286

Order No. 21,553

New Hampshire Public Utilities Commission

February 28, 1995

ORDER authorizing a credit of 0.280 cents per kilowatt-hour as an updated purchased power cost adjustment rate for an electric utility, following recent action by the Federal Energy Regulatory Commission as to wholesale rates charged by the utility's supplier, New England Power. An oil cost adjustment rate of zero per kilowatt-hour is likewise adopted.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Updating of existing rate — To reflect federally approved settlement on wholesale rates — Credit mechanism — Electric utility. p. 107.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Oil cost adjustment factor — Updating — To reflect federally approved settlement on wholesale rates — Zero-rate mechanism — Electric utility. p. 107.

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BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On December 30, 1994, the Commission in its Order No. 21,479 approved a Purchased Power Cost Adjustment (PPCA) rate of a credit of (\$0.00177) per kwh and an Oil Conservation Adjustment (OCA) rate of \$0.00129 per kwh. These rates were based on the existing W-92(S) rates and the Commission ordered that, in the event that the Federal Energy Regulatory Commission (FERC) approved New England Power's (NEP) new W-95(S) filing, that Granite State Electric Company (Granite State) submit an updated filing of its PPCA and OCA. On February 8, 1995, FERC voted to adopt the Company's new W-95(S) rates. On February 9, 1995, Granite State filed supplemental testimony and schedules and updated PPCA and OCA rates incorporating FERC's order approving W-95(S) rates. The updated PPCA is a credit of (\$0.00280) and the updated OCA rate is zero.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. *Granite State*

Granite State proposes a PPCA credit of (\$0.00280) per kwh effective for usage on the day after the Commission issues a supplemental order in this proceeding. This updated rate includes the updated PPCA W-95(S) of (\$0.00106) and the reconciling adjustment of (\$0.00174) per kwh approved by the Commission in Docket No. 94-104 to refund Granite State's over recovered purchased power expense through February 1994. The current PPCA reconciling adjustment rate of (\$0.00174) per kwh expires on June 30, 1995. The combination of the W-95(S) PPCA rate of (\$0.00106) per kwh and the PPCA reconciling adjustment rate of (\$0.00174) per kwh produces a total PPCA factor of (\$0.00280) per kwh that will be in place until June 30, 1995. Granite State's updated PPCA is based on the FERC order approving W-95(S) rates to be effective January 1, 1995. The Company also adjusted for 1994 billing determinants. The original proposal was based on 1993 billing determinants.

The Company proposes to reduce Granite State's OCA factor to zero effective for usage on the day after the Commission issues a

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supplemental order in this proceeding. All OCA amounts collected from January 1, 1995 until the date of the Commission order in this proceeding will be refunded in the PPCA reconciling adjustment factor that the Company will file in June for the second half of 1995.

#### B. *STAFF*

Staff has reviewed the Company's updated PPCA rate. The updated W-95(S) PPCA rate of

(\$0.00106) per kwh is a decrease of \$0.00103 per kwh from the previously approved W-92(S) PPCA of (\$0.00003) per kwh. Staff states that the Company will adjust its collections for the difference between the previously approved PPCA and the updated PPCA. This difference will be refunded, with interest applied, in the Company's next PPCA reconciling adjustment factor to be filed in June 1995. Based on the above, Staff recommends that the Commission approve the total PPCA factor of (\$0.00280) per kwh.

Staff has reviewed the Company's updated OCA rate. The updated W-95(S) OCA rate of zero is a decrease of \$0.00129 per kwh from the previously approved W-92(S) OCA of \$0.00129 per kwh. Staff understands that the FERC's order approving W-95(S) provides for the cessation of the OCA surcharge as of January 1, 1995. Staff understands that all amounts already collected by Granite State commencing January 1, 1995 will be refunded, with interest applied, in the Company's next PPCA reconciling adjustment factor to be filed in June 1995. Based on the above, Staff recommends that the Commission approve the zero per kwh OCA factor effective January 1, 1995.

### C. COMMISSION ANALYSIS

[1, 2] The Commission has reviewed the supplemental filing by Granite State and its updated proposal of the W-95(S) PPCA of (\$0.00280) per kwh and the updated proposal of the OCA rate of zero per kwh. Based on our review, we believe that any differences between the rates previously approved in Order No. 21,479 and the current proposed rates should be reconciled, with interest applied, starting from January 1, 1995, the effective date of NEP's W-95(S) rate under the FERC order in Docket Nos. ER 95-267-000 and EL 95-25-000. The Commission understands that the reconciling amounts will be incorporated in the Company's next PPCA reconciling adjustment factor to be filed in June 1995. Based on the above and based on our review of the record in this case, we will approve the W-95(S) PPCA rate of (\$0.00280) per kwh and the OCA rate of zero per kwh effective January 1, 1995.

Based upon the foregoing, it is hereby

ORDERED, Granite State's PPCA factor for bills rendered for meters read for the period March 1, 1995 through June 30, 1995 shall be (\$0.00280) per kwh; and it is

FURTHER ORDERED, that the OCA factor for Granite State shall cease for bills rendered for meters read beginning March 1, 1995 and thereafter; and it is

FURTHER ORDERED, that the Company will refund, with interest applied, January and February 1995 OCA collections for bills rendered for meters read during the period January 1, 1995 through February 28, 1995; and it is

FURTHER ORDERED, that the Company will file its PPCA reconciliation adjustment by June 1, 1995; and it is

FURTHER ORDERED, that its PPCA reconciliation adjustment will include the true up-for January and February 1995 PPCA and OCA refunds mentioned above and any other refunds and adjustments that have occurred since February, 1994, the last month of the previous PPCA reconciliation adjustment period; and it is

FURTHER ORDERED, that Granite State file tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order. Tariff pages should specify cessation of

OCA surcharge effective January 1, 1995.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1995.

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NH.PUC\*02/28/95\*[80853]\*80 NH PUC 108\*Touchtone Network, Inc.

[Go to End of 80853]

80 NH PUC 108

**Re Touchtone Network, Inc.**

DE 94-242

Order No. 21,554

New Hampshire Public Utilities Commission

February 28, 1995

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

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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 services. p. 108.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 108.

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BY THE COMMISSION:

ORDER

[1, 2] On October 12, 1994, Touchtone Network, Inc. (TNI), a Florida 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.

TNI 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 TNI 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. TNI 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, TNI shall notify the Commission of the change.
5. TNI 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. TNI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. TNI 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. TNI shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service,

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disconnections, deposits and billing, except those specifically waived herein.

9. TNI 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. TNI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by TNI 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 TNI

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 TNI to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that TNI shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than March 14, 1995, and an affidavit proving publication shall be filed with the Commission on or before March 28, 1995; and it is



FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. TNI 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 TNI shall file a compliance tariff with the Commission on or before March 14, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective March 30, 1995, unless the

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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-eighth day of February, 1995.

Notice of Conditional Approval of  
TOUCHTONE NETWORK, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On October 12, 1994, Touchtone Network, Inc. (TNI), a Florida 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. 21,554, issued in Docket No. DE 94-242, the Commission granted TNI conditional approval to operate as of March 30, 1995, subject to the right of the public and interested parties to comment on TNI 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 TNI's petition to do business in the State should submit written comments no later than March 27, 1995, 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\*03/01/95\*[80854]\*80 NH PUC 110\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80854]

80 NH PUC 110

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 94-305

Order No. 21,555

New Hampshire Public Utilities Commission

March 1, 1995

ORDER authorizing a local exchange telephone carrier to eliminate four-party residential service statewide, in anticipation of the availability of interstate equal access as well as emergency 911 services, neither of which is compatible with multi-party service.

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1. SERVICE, § 452

[N.H.] Telephone — Party-line service — Elimination of four-party residential service — Factors — Facilitation of interstate toll carrier presubscription — Facilitation of emergency 911 services — Grandfathering of two-party service — Need for alternative service options — Both single- and two-party service. p. 112.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 16, 1994, New England Telephone Company (NYNEX or Company) filed proposed revisions to its Basic Exchange tariff for effect January 15, 1995 (the Petition). NYNEX sought to eliminate Four-Party service from its tariff in anticipation of the July 1, 1995, target date for the provision of state wide E911.

**Page 110**

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The Commission Staff (Staff) issued Data Requests on December 23, 1994, to which the Company responded on January 9, 1995. The Office of Consumer Advocate (OCA), on December 29, 1994, filed a letter with the Commission taking issue with elements of NYNEX's proposed method of reassigning Four-Party service customers to alternate service.

The Commission ordered a February 14, 1995, hearing on the merits regarding the types of alternate service that would be feasible for current Four-Party customers and the method that would be appropriate for notifying customers of the options available.

At the duly noticed hearing on the merits on February 14, 1995, the Commission heard

testimony from a representative of NYNEX and from a representative of the Commission's Engineering Department concerning the need for elimination of Four-Party service in order to effectuate state wide E911. A representative of the Consumer Assistance Department testified as to the public response received by the Commission regarding the proposed elimination. The Commission also heard comments from members of the public. Staff and NYNEX responded to questions raised by members of the public. The OCA participated fully.

## II. POSITIONS OF THE PARTIES

### A. NYNEX

NYNEX initiated the petition in order to meet the legislatively mandated requirement for state wide E911. Four-Party circuits do not provide Automatic Number Identification (ANI) and therefore are unable to permit E911 to automatically identify the service address of the caller and other pertinent information necessary for properly notifying the appropriate police, fire and/or emergency medical agencies.

NYNEX proposed to contact its existing customers of Four-Party service by direct mail and ask them to select a type of Single-Party service and to select an interLATA carrier. Those customers who fail to respond to the direct mailing and who NYNEX cannot subsequently reach by telephone would be assigned to Four Element Low Use Measured Service (4ELUM). If the customer later determined that 4ELUM was not the best choice because of a high level of usage on their line, NYNEX proposed to change them to Single-Party Unlimited Service (SP-U) without charge and to credit that customer for the charges incurred over and above the cost of SP-U.

NYNEX contended that the alternative service available to current recipients of Four-Party service is limited to the several Single-Party services, i.e., Single-Party Unlimited (SP-U), Four Element Low Use Measured (4ELUM), Measured Service Four Element Standard (MS-4E) and Low Use Message Unit (LUMU). NYNEX argued that the soon-to-be-former Four-Party customers cannot opt for new Two-Party service. This position stems from the Commission's Order No. 20,082 (76 NHPUC 150, 1991) which grandfathered existing Four- and Two-Party service customers but eliminated the Four- and Two-Party service as an option for new customers.

NYNEX suggested that a single direct mailing followed by an attempt to reach the customer by telephone to determine reassignment preference would be sufficient notice before assigning the customer to the default selection of 4ELUM. NYNEX objected to the OCA's request for multiple mailings, including one by registered mail. NYNEX stated that no harm would be incurred by the customer because of failure to respond because NYNEX will make any adjustments necessary to put the customer in the same position he or she would have been in had the customer responded to the initial mailing.

### B. Staff

A member of the Commission's Engineering Department, E. Christopher Nurse, testified that Four-Party service is technically incompatible with E911 and therefore supports the elimination of Four-Party service. Mr. Nurse supported the NYNEX proposal to convert existing Four-Party customers to Single-Party service as a reasonable program to address the problem.

Mr. Nurse discussed Two-Party service as another possible option and stated it is

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minimally compatible with E911. However, he pointed out that Two-Party service does carry technical detriments, being an obsolete network configuration. Mr. Nurse also pointed out that Two-Party service is no longer necessarily a cheaper service for NYNEX to provide than Single-Party service. In addition, although Two-Party service delivers ANI, and therefore the automatic identification of the caller's address necessary for E911, Two-Party service does not do so as reliably as Single-Party service. For Two-Party service, individual customers are distinguished based on the configuration of the customer's premises equipment (CPE). In a Two-Party service one customer's equipment is configured as the "tip" side of the circuit and the other customer's equipment as "ring." If a customer introduces new CPE which is not configured correctly then the incorrect ANI will be forwarded to E911. Thus, Staff argued, the public good approved and intended to be achieved by the Legislature's passage of state wide E911 could be impaired.

Staff's testimony referred to NYNEX's data response indicating that 93% of NYNEX's Two-Party customers are the only customers on the party line. Therefore, those customers are actually receiving Single-Party service with a dedicated local loop rather than a shared local loop.

A member of the Commission Consumer Assistance Department, Mary Anne Lutz, testified that 46 customers wrote letters to the Commission regarding elimination of Four-Party service. As there are 4,306 Four-Party customers in the state, the response represented 1.07% of the effected customers. Of those responding 30% wished to retain their Four-Party service; the majority of respondents were seasonal customers; no dominant alternate service option emerged.

The Consumer Assistance Department recommended that current Four-Party customers be offered both Single-Party and Two-Party service as alternate service options. This recommendation was made in order to provide customers with a choice that is closest to the customer's chosen, grandfathered, service. Ms. Lutz argued that NYNEX would not incur additional costs because the elimination of Four-Party service will pare operator costs and also increase the number of customers paying the higher Single- and Two-Party rates.

### *C. The OCA*

The OCA argued that the notice procedure proposed by NYNEX is inadequate. They take issue with the Company's request to place customers who do not respond to the NYNEX inquiries into the 4ELUM residence service and/or the MS4E (Harrisville, Westmoreland). Although the 4ELUM and the MS4E services include a low flat monthly rate in comparison to alternative services, such benefits could be easily offset by a user exceeding the monthly allotment of message units. The OCA also argued that Four-Party customers should be allowed to change their selected options at no charge with six months of the conversion of their Four-Party lines.

### III. COMMISSION ANALYSIS

[1] The increasingly sophisticated world of telecommunications provides an opportunity to

improve services with regard to public safety. The New Hampshire Legislature has recognized those opportunities and has mandated the provision of E911. As we stated in our Order No. 21,502, Four-Party service cannot survive the implementation of E911. Four-Party service must be eliminated because customers having Four-Party service cannot be identified and located by emergency service personnel who respond to E911 calls.

In making our decision to eliminate Four-Party service we have carefully considered the letters and comments of members of the public and weighed the testimony of NYNEX and Staff. We find that the goal of our earlier order "not to penalize existing multiparty customers" still exists. We also find that the principle of gradualism pertains to regulatory changes brought about by technological advancement. We find that Two-Party service has been effectively grandfathered in Order No. 20,082 to be available as a replacement option to current Four-Party service customers.

**Page 112**

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We recognize that Two-Party service may present possible technical problems for E911. We will order NYNEX to provide us with a report six months after the implementation date of E911 as to whether such problems exist. We will then consider whether reconsideration of Two-Party service is required. We note that uncontroverted evidence was presented that, in the past, NYNEX has provided Two-Party service to some customers over dedicated local loops rather than shared loops in order to make most effective technical use of the network. NYNEX may choose to continue this practice.

The default option proposed by NYNEX may not prove to be the most economical for all such customers. However, given the lack of evidence that an alternative default option would provide a more economical choice, or that harm would ensue from using that default option, we will approve Four Element Low Use Measured Service as the service assigned to all non-responding customers.

As proposed by NYNEX, non-responding customers would have the opportunity to change to another option if the default choice is unacceptable. Taking into account the fact that any of the current Four-Party customers, whether they change affirmatively or by default, may find the new service less than optimally economic, we will add to the NYNEX proposal a provision that all customers shall have one opportunity to change to another option within a six-month period commencing on the date of the actual changeover from Four-Party service. The customer shall be notified of the actual changeover date by the Company in a timely manner. Such one-time change to another option shall be provided at no charge to the customer.

The reasoning behind our approval of NYNEX's default option also applies to NYNEX's notice procedure. We find a direct mailing to all Four-Party customers followed by attempted telephone contact to be sufficient notice. We will direct NYNEX to insure that the notice clearly explains the options, as well as the time and method for selection by telephone or reply card and the opportunity to change selection within six months.

Based upon the foregoing, it is hereby

ORDERED, that Four-Party customers be given the option of Two-Party service in addition to the Single-Party options; and it is

FURTHER ORDERED, that NYNEX file a report six months after the implementation of E911 that identifies any problems created by Two-Party service within the operation of E911; and it is

FURTHER ORDERED, that NYNEX implement the notification process it proposed and assign customers who do not respond to NYNEX's direct mailing and attempts to contact by telephone, to Four Element Low Use Measured Service; and it is

FURTHER ORDERED, that NYNEX provide all customers affected by this change, one opportunity to change to another option within a six-month period from the date of the actual changeover from Four-Party service, at no charge to the customer; and it is

FURTHER ORDERED, that NYNEX's notification to customers includes a clear explanation of the options using exchange specific information, as well as the time and method for selection by telephone or reply card, the date on which the change will occur, and the opportunity to change selection within six months.

By order of the Public Utilities Commission of New Hampshire this first day of March, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 94-305, Order No. 21,502, 80 NH PUC 26, Jan. 16, 1995.

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NH.PUC\*03/06/95\*[80855]\*80 NH PUC 114\*Granite State Electric Company

[Go to End of 80855]

80 NH PUC 114

### **Re Granite State Electric Company**

DR 94-214

Order No. 21,556

New Hampshire Public Utilities Commission

March 6, 1995

ORDER approving an electric utility's proposal to offer those commercial and industrial customers meeting certain minimum demand requirements a 5% discount in base rates in exchange for a commitment not to cogenerate or purchase power from another supplier without first giving at least five years' notice.

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1. RATES, § 326

[N.H.] Electric rate design — Time-of-use rates — General service commercial and industrial customers — Antibypass measures — Optional new "service extension" rates — Discount of 5% in exchange for commitment to a minimum five-year additional term of service — Customer agreement not to cogenerate or purchase power elsewhere — Impact on affiliate's wholesale rates — Settlement — Quarterly customer participation reports. p. 116.

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APPEARANCES: David J. Saggau, Esq. and Steven E. Thomas, Esq. on behalf of Granite State Electric Company; Kenneth E. Traum for the Office of Consumer Advocate on behalf of residential ratepayers and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On September 12, 1994, Granite State Electric Company (GSEC) filed a petition with the New Hampshire Public Utilities Commission (Commission) to add a Service Extension Discount (SED) provision to its General Service Time-of-Use Rate G-1. The provision would grant customers a 5% discount on base rates in exchange for their agreement not to cogenerate or buy power from another supplier without five years prior notice (hereinafter SED Agreement). On October 6, 1994, the Commission issued an Order of Notice suspending the appropriate tariff pages, setting a prehearing conference on October 25, 1994 and ordering GSEC to prefile with the Commission and known parties all testimony and exhibits in support of the proposed tariff no later than October 21, 1994. On October 25, 1994, GSEC, the Office of Consumer Advocate (OCA) and the Staff of the Commission (Staff) agreed on a procedural schedule, which the Commission approved by Order No. 21,418. On January 23, 1995, GSEC, OCA and Staff signed an Offer of Settlement resolving all outstanding issues in this proceeding concerning GSEC's petition. On January 23, 1995, the Commission heard evidence in support of the Settlement Agreement.

At its public meeting on January 23, 1995 the Commission issued the following record requests to GSEC:

1. Are the provisions of the Service Extension Discount filed in New Hampshire precisely the same as those filed in Rhode Island and Massachusetts, in particular regarding the provisions in the circumstance where the customer elects to participate in the program, subsequently withdraws, and is required to take service at the full tariffed rate?
2. Did the approvals in Rhode Island and Massachusetts impose any special conditions, and if yes, what are they?
3. If available, provide the settlement agreement signed in Massachusetts.

GSEC responded on February 9, 1995.

### II. POSITIONS OF THE PARTIES AND STAFF

The positions described herein relate only to the issues that generated substantive discussion during the course of this proceeding.

A. *Granite State Electric Company*

GSEC proposed to add a new provision to its General Service Time-Of-Use Rate G-1 which would grant to customers a 5% discount on base rates if they sign a SED Agreement by which they commit not to cogenerate or buy power from another supplier without five years prior notice. The provision would be entirely optional and each qualifying customer would decide whether to take advantage of it. To qualify, the customer must be a commercial or industrial customer with an average annual demand of 200 kW or more. Granite State represents that it is not seeking a rate increase by this change, and that customer participation in the proposed SED provision is strictly voluntary. Furthermore, GSEC has recently received the approval from the Federal Energy Regulatory Commission (FERC) of its W-95(S) rates, which specify that New England Power (NEP) will not allocate any costs pertaining to the SED program to GSEC ratepayers, either through the NEP W-95(S) wholesale rate or through the GSEC retail rate for the period the NEP W-95(S) rate is in effect.

B. *OCA*

At the hearing, the OCA questioned whether the 5% SED discount to GSEC's largest customers is reasonable. GSEC indicated that the 5% SED will help GSEC and its all requirements power supplier, NEP, plan for the future needs of all GSEC customers. GSEC indicated that another reason for offering the 5% discount is to ensure that, as the market becomes more competitive, there is some protection for the other customers against "stranded investment".

C. *Staff*

Staff had two concerns: cost recovery and the Commission's jurisdiction to determine cost issues in the future. If the W-95(S) rate is changed and NEP seeks to impose costs on GSEC for the SED program, Staff argued cost recovery matters should be handled at this Commission, rather than allowing the FERC and leave this Commission only with the proper allocation of the cost. Staff believes that the cost of the SED program should not necessarily be included in wholesale or retail rates and that perhaps the costs should be absorbed by shareholders. The Settlement Agreement addresses these concerns.

### III. SETTLEMENT AGREEMENT

The Offer of Settlement was jointly submitted by GSEC, OCA and the Staff and resolves all issues among the participants in this proceeding concerning GSEC's proposal to include the 5% SED provision in Granite State's G-1 Rate as follows:

- 1) NEP has agreed to reimburse GSEC for all SED payments to retail customers and has also agreed not to include that reimbursement in its cost of service used to establish the W-95(S) wholesale rate to GSEC; and
- 2) Prior to filing any wholesale rate that supersedes the W-95(S) rate and that



proposes to include any recovery by NEP of its reimbursement of Service Extension Discounts to wholesale customers, GSEC and NEP shall consult with the OCA and the Commission. If directed by the Commission, GSEC and NEP shall either:

- (a) develop a filing that provides the Commission with direct authority over the cost recovery by GSEC of the SED's provided by GSEC to customers; or
- (b) waive such recovery by NEP or GSEC.

In the event that GSEC and NEP proceed under clause (a) above, the filing shall provide the Commission with unquestioned authority to grant or deny GSEC's recovery of the discounts provided by GSEC to G-1 customers, as well as determine the allocation of the resulting recovery that is allowed by the Commission among GSEC's rate classes.

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#### IV. COMMISSION ANALYSIS

[1] The issue before us is whether to approve the proposed Settlement Agreement pertaining to GSEC's petition to add a new provision to its General Service Time-of-Use Rate G-1 which would grant to customers a 5% discount on base rates in exchange for their agreement not to cogenerate or buy power from another supplier without five years prior notice. Based on our review of the record in this proceeding, we will conditionally approve the Settlement Agreement as submitted. We believe the SED will allow GSEC some greater ability to plan its power supply needs and the program, as clarified below, will result in rates that are just and reasonable.

Having reviewed the responses to our February 6, 1995 requests, we are satisfied that the SED Program which GSEC seeks to introduce is similar to the programs which have been adopted in Massachusetts and Rhode Island. Customers who decide to enter into this particular discount, however, must fully understand the ramifications of signing the agreement; we are not certain the proposed SED agreement makes these terms clear enough. We will, therefore, require that GSEC clarify the proposed SED Agreement to make clear to customers that, in the event that they elect to participate in the discount and subsequently decide to withdraw from the program, they are subject to the non-discounted tariffed rate for a five year period after they so elect, unless they choose to utilize a three year buy-down provision. Further, any notice provided to customers with regard to this program must be clear as to the consequences to the customer who signs the agreement.

At the hearing we indicated that we would decide whether we wanted a report summarizing participation in the 5% SED discount within the G-1 rate class. For now, we believe a quarterly report which summarizes participation for the total rate class is sufficient and do not see a need for customer specific information. After some experience with the program, however, we may seek further information.

Based upon the foregoing, it is hereby

**ORDERED**, that the proposed Settlement Agreement on the 5% SED program is hereby approved, conditional on GSEC clarifying the SED Agreement regarding the consequences when customers elect to participate in the program and subsequently decide to withdraw; and it is

FURTHER ORDERED, that GSEC provide a quarterly report summarizing the participation in the SED program which summarizes participation for the total rate class; and it is

FURTHER ORDERED, that GSEC file a revised SED Agreement and the revised tariff 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 sixth day of March, 1995.

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NH.PUC\*03/06/95\*[80856]\*80 NH PUC 116\*Concord Steam Corporation

[Go to End of 80856]

80 NH PUC 116

## Re Concord Steam Corporation

DR 94-298

Order No. 21,557

New Hampshire Public Utilities Commission

March 6, 1995

ORDER approving a steam service utility's 10-year special contract with the Concord School District, under which the school district rather than the utility will pay up front for a service line extension, with the extension treated as a contribution in aid of construction and with the school district being reimbursed via credits against tariffed service rates over the first five years of the contract. Because the contract's termination provisions are reasonably flexible, the commission finds the 10-year term unusual but not anticompetitive.

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### 1. SERVICE, § 188

[N.H.] Extensions — Burden of cost — Special long-term contract arrangements — Upfront payments by customer — Reimbursements via credits against tariffed service rates

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— Steam heating service line for school district — Contribution in aid of construction — No issues of anticompetitive practice. p. 117.

### 2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade versus competitive practices — Long-term special contract arrangements — For providing steam heating service to school district — No finding of anticompetitive behavior — Factors — Flexible early termination provisions. p. 117.

### 3. VALUATION, § 250

[N.H.] Property included or excluded — Property not financed by utility — Contributions in aid of construction — Steam heating service line for school district — Special long-term contract arrangements — Special accounting treatment. p. 117.

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BY THE COMMISSION:

#### ORDER

On December 8, 1994, a contract (Contract) between the Concord Steam Corporation (Concord Steam) and the Concord School District (School District) was filed with this Commission. It has an effective date of July 1, 1995. Because the Contract departs from Concord Steam's tariff in several instances, specifically in that it contains (i) a ten year term requirement and (ii) a certain reimbursement provision for a service line installation, Puc rule 1601.01 (d) requires that it be treated as a special contract.

On January 27, 1995, attorneys on behalf of EnergyNorth Natural Gas, Inc. (ENGI or EnergyNorth) filed a Motion to Intervene (Motion) and requested a hearing date to address the specific concerns stated in the Motion, the principal issue being that the Contract's ten year term provision is anti-competitive.

On February 2, 1995, the Commission Staff (Staff) from the Finance and Economics Departments filed separate memoranda with the Commission. The Finance memorandum focused on the special accounting implications of the Contract while the memorandum from Economics provided a general analysis of the Contract and presented Staff's unified recommendation that the Commission approve the Contract. At the Commission meeting on February 6, 1995, we granted ENGI's Motion to Intervene but denied its request that a hearing on the merits be scheduled. Rather, we requested that ENGI submit written comments regarding Staff's recommendations by the close of business on February 16, 1995.

EnergyNorth made such a filing on February 15, 1995 in a letter addressed to Chairman Patch by Robert R. Giordano, President and CEO of ENGI. In his letter, Mr. Giordano reiterated that ENGI was not opposed to Concord Steam servicing the School District; EnergyNorth objected to those provisions in the Contract which could be used to limit the School District's ability to switch back to natural gas during the next ten years.

[1-3] Staff addressed ENGI's anti-competitive concerns in its February 2nd memorandum. Staff asserted that the conditions for termination of the Contract, as given in Article 3, are sufficiently broad so as to ensure that the School District is not unduly tied to Concord Steam for its energy needs<sup>1(13)</sup>. Given the flexibility of the termination conditions, Staff argued that the ten year term provision of the Contract is not anti-competitive and that Staff had no objections to its inclusion.

With respect to the second departure issue noted above, namely a certain reimbursement provision for a service line connection, it is important to realize that Concord Steam's current tariff requires it to provide steam heat service to the School District at its tariffed rates and to pay for the service line installation. Because of the School District's apparent desire to shift operating costs to its capital budget, the School District asked Concord Steam to allow it to pay for the

service line connection in the first instance and then receive a credit against the tariffed service rates during the first five years of the Contract. As noted in Staff's

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memorandum, this reimbursement provision essentially gives Concord Steam a zero interest loan on the installation costs of the service lines, estimated to be on the order of \$60,000 to \$80,000.

As noted further by Staff, structuring the payment and repayment of the service line installation costs in the above specified manner transfers all of the potential risks away from Concord Steam and its remaining firm ratepayers and onto the School District. This is because the School District has agreed to absorb the remaining balance of the installation costs, should the Contract be terminated by either party before the full reimbursement is completed.

This entire transaction of first paying for and then being reimbursed for the installation of the service lines raises some special accounting issues, as outlined in Staff's memorandum. Specifically, from Staff's perspective, the payment to Concord Steam by the School District should be considered as a Contribution in Aid of Construction (Account 265) since the School District is providing for the service line installation costs that are generally provided by Concord Steam. Staff further recommends that Concord Steam should be required to keep detailed accounting of the specific contribution and should debit the credits to the School District's bills to Account 265 until the entire amount has been repaid or otherwise cancelled.

After reviewing the record, notably the Contract, Staff's memoranda, and EnergyNorth's reply, we find that the provisions of the Contract are not unreasonable and therefore we approve the Contract. In particular, we find that the Contract's termination conditions are sufficiently broad to lessen any concern that the ten year term provision is overly restrictive. Consequently, we reject EnergyNorth's contention that this provision is anti-competitive.

With respect to the special accounting issues raised by Staff, we direct Concord Steam to adopt Staff's recommendation of the accounting treatment for the reimbursement transaction.

Based on the foregoing; it is hereby

ORDERED, that the Contract is approved; and it is

FURTHER ORDERED, that Concord Steam shall account for the reimbursement transaction as previously described above; and it is

FURTHER ORDERED, that Concord Steam shall provide an annual report to the Commission which details the reimbursement transaction and updates the status of the reimbursement account.

By order of the Public Utilities Commission of New Hampshire this sixth day of March, 1995.

FOOTNOTES

<sup>1</sup>Specifically, provision A. 1. allows the School District to cancel (for whatever reason) the Contract on an annual basis, while provision A. 2. allows for immediate termination of the

Contract should conditions change significantly in the heating supply industry. An example of such an adverse change is the material increase in the cost of steam heat versus other forms of heat delivery (see Article 3: A. 2. a. of the Contract).

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NH.PUC\*03/07/95\*[80857]\*80 NH PUC 118\*One Call Communications, Inc., dba OPTICOM

[Go to End of 80857]

80 NH PUC 118

**Re One Call Communications, Inc., dba OPTICOM**

DR 95-027

Order No. 21,558

New Hampshire Public Utilities Commission

March 7, 1995

ORDER authorizing an interexchange telephone carrier to introduce two new services for hospitality customers (such as hotels and condominium groups), with the first providing special rates for those hospitality customers generating usage of over \$6500 per month, and with the second providing for inbound 800 service.

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1. RATES, § 585

**Page 118**

[N.H.] Telephone rate design — Toll service — Hospitality customers — Hotels and motels — Special rates — With minimum monthly usage commitment of \$6500 — New inbound 800 service — Interexchange telephone carrier. p. 119.

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BY THE COMMISSION:

ORDER

[1] On February 3, 1995, One Call Communications, Inc. d/b/a OPTICOM, (Opticom) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authorization to introduce Hospitality D and Hospitality 800 Service for effect March 6, 1995.

Hospitality D Service is a basic toll service with rates that apply to hospitality customers (e.g. hotels, motels, condominiums) whose average monthly long distance usage exceeds \$6500. Hospitality 800 Service is an inbound 800 service for hospitality customers.

Opticom's filing included the second revision of its tariff's page 60 which assumed that the property surcharge proposed in DR 95-015 would be approved. The proposed first revised page

60 was denied by Order No. 21,544 (February 22, 1995). Opticom will be required to delete paragraph .06 *Property Surcharge* on page 60, with its compliance filing.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Hospitality D and Hospitality 800 Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's Tariff are approved for effect as filed:

3rd Revised Page 2  
2nd Revised Page 2.1  
2nd Revised Page 2.2  
1st Revised Page 49  
2nd Revised Page 50  
1st Revised Page 55  
1st Revised Page 56  
1st Revised Page 57  
1st Revised Page 58  
1st Revised Page 59  
1st Revised Page 61;

and it is

FURTHER ORDERED, that page 60 be revised to delete paragraph .06 *Property Surcharge* and submitted as the third revision in lieu of the first revision; and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than two weeks from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re One Call Communications, Inc., DR 95-015, Order No. 21,544, 80 NH PUC 86, Feb. 22, 1995.

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NH.PUC\*03/07/95\*[80858]\*80 NH PUC 119\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80858]

80 NH PUC 119

### Re AT&T Communications of New Hampshire, Inc.

DR 95-030  
Order No. 21,559

New Hampshire Public Utilities Commission

March 7, 1995

ORDER authorizing an interexchange telephone carrier to offer "500 personal number" service, a custom network service that allows a

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subscriber, among other things, to choose whether a call placed to that number would be charged to the subscriber or the caller.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Custom network service — "500 personal number" service — Subscriber options — Billings to subscriber or caller — Interexchange telephone carrier. p. 120.

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BY THE COMMISSION:

ORDER

[1] On February 7, 1995, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting authority to introduce AT&T 500 Personal Number Service for effect March 10, 1995.

AT&T 500 Personal Number Service is a Custom Network Service which permits long distance calling to the subscriber's AT&T Personal 500 NXX-XXXX telephone number. The service offers various options which include, for example, the ability to allow the subscriber to designate whether the subscriber or caller pays for the calls and the ability to forward the call to three alternate telephone numbers in sequence.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T 500 Personal Number Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, PUC No. 1-Custom Network Services are approved for effect as filed:

*Table of Contents*

*Original Page 24*

*Section 22*

Original Pages 1-12;  
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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

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NH.PUC\*03/07/95\*[80859]\*80 NH PUC 120\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80859]

80 NH PUC 120

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-032

Order No. 21,560

New Hampshire Public Utilities Commission

March 7, 1995

ORDER authorizing an interexchange telephone carrier to offer "WORLDWORX 800" service, a custom network service that allows a subscriber to add, on a call-by-call basis, digital capability and/or voice capability to one 800 number.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Custom network service — "WORLDWORX 800" service — Subscriber options — Addition of digital or voice capability to an 800 number — Call-by-call basis — Interexchange telephone carrier. p. 121.

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BY THE COMMISSION:

**Page 120**

**ORDER**

[1] On February 9, 1995, AT&T Communications of New Hampshire, Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting authority to introduce AT&T WORLDWORX 800 for effect March 13, 1995.

AT&T WORLDWORX 800 Service is a Custom Network Service which permits



MEGACOM customers to add, on a call-by-call basis, digital capability (at speeds of 56 or 64 kbps) as well as voice capability on one 800 number. The proposed tariff revision is an add-on to AT&T's interstate WORLDWORX offering. The terms and conditions of the interstate tariff apply, except for intrastate usage charges which are specified in the intrastate tariff as filed in the petition.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T WORLDWORX 800 Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, PUC No. 1- Custom Network Services are approved for effect as filed:

*Table of Contents*  
5th Revised Page 6

*Section 4*  
Original Page 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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

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NH.PUC\*03/07/95\*[80860]\*80 NH PUC 121\*Ropewalk Services Company

[Go to End of 80860]

80 NH PUC 121

### **Re Ropewalk Services Company**

Additional parties: Cold Spring Properties, Inc.; Ropewalk West Townhouse Association

DE 90-113  
Order No. 21,561

New Hampshire Public Utilities Commission

March 7, 1995

ORDER relieving Ropewalk West Townhouse Association of its receivership duties as to the Cold Spring water system, and authorizing a related new entity, Ropewalk Services Company, to assume ownership and control of the water system.

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## 1. PUBLIC UTILITIES, § 37

[N.H.] Factors affecting regulatory status — Restricted use — Number of customers — Exemption from regulation for fewer than 10 customers — Water systems — Residential associations treated as single consumer. p. 122.

## 2. RECEIVERS, § 1

[N.H.] Relief from receivership duties — Factors — Transfer to new owner — Water system. p. 122.

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BY THE COMMISSION:

## ORDER

On July 6, 1990, the New Hampshire Public Utilities Commission (Commission) received a petition from Cold Spring Resort/White Mountain Country Club (Cold Spring) seeking, pursuant to RSA 362:4, exemption from the provisions of RSA Title XXXIV for service provided to the five customers of the Cold

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Spring water system in the Town of Ashland. Two of the system's customers, Ropewalk West Townhouse Association (RWTA) and Cold Spring Properties Townhouse Association (CSPTA), subsequently objected to the proposed exemption. Proceedings in the docket included a number of hearings which culminated in placement of the water system in the receivership of RWTA by Order No. 20,331 dated December 11, 1991. An emergency rate increase was granted by Order No. 20,471 on April 29, 1992. For a full procedural history, please consult earlier orders in this docket.

On September 12, 1994 the Commission received the following petitions:

1) a petition by Ropewalk Services Company, a new non-profit corporation created by RWTA and CSPTA to own and operate the water system, for exemption from the provisions of RSA Title XXXIV; and

2) a petition by RWTA to be discharged from its receivership responsibilities.

The petitions are the result of the parties in the docket having come to terms over the outstanding issues in the case. Ropewalk Services Company recently acquired all of the right, title and interest of Cold Spring Properties, Inc. in and to the water system. Ropewalk Services Company's By-Laws require that RWTA and CSPTA each appoint two of the four directors of Ropewalk Services Company.

Besides serving RWTA (36 units) and CSPTA (75 units), the water system currently serves two "outside" customers who have no representation in Ropewalk Services Company. They are Green Meadow Golf, Inc. and a single family homeowner. Both will be billed on the same basis as RWTA and CSPTA, except that Green Meadow Golf, Inc. will be charged on the basis of 14

billing units to reflect that it is a commercial use, which is consistent with its billing treatment for the past fifteen years. Any tariff conditions such as shutoff would apply equally to outsiders as well as the two associations. No further development to be served by the water company is anticipated.

Commission Staff investigated the financial, managerial and technical capability of Ropewalk Services Company, its billing practices and the stipulations of its current By-Laws through written data requests. Based on the Company's responses, the last of which was received February 28, 1995, Staff is satisfied that Ropewalk Services Company can adequately maintain and operate the water system and recommends that the exemption from the provision of RSA Title XXXIV be granted.

[1] RSA 362:4 I allows exemption if "the whole of such water ... system shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, ... whenever the commission may find such exemption consistent with the public good." Treatment of the townhouse associations as a single consumer in this case is reasonable because they are in essence providing service to themselves through the non-profit corporation. *Re Cathedral Ledge Water System*, 72 NH PUC 208 (1987). See also Order No. 21,513 in *Re Belleau Lake Corporation/Beverly Hills Water Association, Inc.* (January 31, 1995). The remaining customers consist of a single family residence and buildings served by Green Meadow Golf, *i.e.*, a clubhouse/restaurant and a separate building containing four residential units. The circumstances surrounding service to these consumers appear to this Commission to meet the public good standard of the statute in that there appears no compelling benefit in requiring service to them to be regulated.

[2] The second petition, to relieve RWTA of its receivership responsibilities, includes a request that the surplus of funds accrued during receivership be transferred to Ropewalk Services Company. The surplus consisted of \$7,149.39 in cash and receivables as of December 31, 1994 and represents a reserve for replacement of water system assets and extraordinary repairs. The transfer will cause the funds to continue to serve the purpose for which they were collected, *i.e.*, operation and maintenance of the water system, and will similarly satisfy the public good.

Based upon the foregoing, it is hereby

ORDERED, that Ropewalk Services Company is exempted from the requirements of RSA Title XXXIV; and it is

Page 122

FURTHER ORDERED, that RWTA is relieved of its receivership responsibilities regarding the Cold Spring water system; and it is

FURTHER ORDERED, that the funds held by Ropewalk West Townhouse Association as receiver be paid to Ropewalk Services Company to be applied to the water system; and it is

FURTHER ORDERED, that Ropewalk Services Company notify this Commission if new customers are added or circumstances otherwise change.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Cold Spring Resort/White Mountain Country Club, DE 90-113, Order No. 20,331, 76 NH PUC 773, Dec. 11, 1991. [N.H.] Re Cold Springs Properties, Inc./Ropewalk West Townhouse Asso., DE 90-113, Order No. 20,471, 77 NH PUC 224, Apr. 29, 1992. [N.H.] Re Belleau Lake Corp., DC 92-231, Order No. 21,513, 80 NH PUC 49, Jan 31, 1995.

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NH.PUC\*03/07/95\*[80861]\*80 NH PUC 123\*Public Service Company of New Hampshire

[Go to End of 80861]

80 NH PUC 123

**Re Public Service Company of New Hampshire**

DR 95-044  
Order No. 21,562

New Hampshire Public Utilities Commission

March 7, 1995

ORDER approving an electric utility's special contract with Pike Industries, providing for reduced extension charges associated with construction of an upgraded, three-phase overhead distribution line.

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1. SERVICE, § 188

[N.H.] Extensions — Burden of cost — Special contract arrangements — Waiver of monthly surcharges — But minimum annual purchase commitment — Contribution to cost — Upgraded electric distribution lines for service to industrial customer. p. 123.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Public Service Company of New Hampshire (PSNH), on February 23, 1995, filed Special Contract NHPUC-106 (Special Contract) between PSNH and Pike Industries (Pike). The subject of the Special Contract is construction of 3,300 feet of aerial plant, adding two phases to existing single-phase facilities, to serve Pike's existing premises in Columbia, New Hampshire.

The Special Contract is necessary because the PSNH standard line extension policy is applicable only to customers taking service under the residential service rates or General Service

Rate G. Pike will be taking service under Primary General Service Rate GV.

The Special Contract requires no monthly surcharge toward the cost of the line extension. The income that PSNH has estimated that it will receive from energy sales to Pike under the Company's applicable Rate GV is sufficient to warrant the expenditure necessary to supply electric energy to Pike's premises.

The Special Contract does require that Pike guarantee an annual purchase commitment of \$10,687 for a 5-year period. In the event Pike terminates electric service from PSNH prior to the end of the 5-year period, Pike is obligated to pay \$547 per month for the remaining months in the 5-year period. Any amounts over \$10,687 paid during a given year are to be applied to the forthcoming yearly minimum purchase commitment.

In the event another PSNH customer takes 3-phase service from the distribution line

**Page 123**

constructed to provide 3-phase service to Pike during the 5-year period, PSNH will accordingly reduce the annual guarantee as well as the monthly early termination charge of \$547.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract NHPUC-106 is approved as filed.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

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NH.PUC\*03/07/95\*[80862]\*80 NH PUC 124\*Pennichuck Water Works, Inc.

[Go to End of 80862]

80 NH PUC 124

**Re Pennichuck Water Works, Inc.**

DR 95-046

Order No. 21,564

New Hampshire Public Utilities Commission

March 7, 1995

ORDER granting a three-month extension of the term of a special rate contract executed by a water utility and an industrial customer, Anheuser-Busch, Inc.

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1. RATES, § 612

[N.H.] Water rate design — Large consumers — Industrial customer — Special long-term

rate contract — Three-month extension of contract term. p. 124.

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BY THE COMMISSION:

ORDER

[1] On February 27, 1995, Pennichuck Water Works, Inc. (Pennichuck) filed a petition with the New Hampshire Public Utilities Commission (Commission), requesting a 90 day extension to its special contract with Anheuser-Busch, Incorporated (Anheuser-Busch). The existing contract, a 25 year agreement dated March 3, 1969 and approved by the Commission on April 25, 1969 by Order No. 9685, is due to expire on March 15, 1995. Pennichuck represents that the parties are currently negotiating with respect to revised financial terms and expect to complete negotiations and file the revised contract for Commission approval no later than June 15, 1995.

Pennichuck is unclear in its petition whether it expects to file a revised contract no later than June 15, 1995 or whether it is requesting that the Commission act on its revised contract no later than June 15, 1995. Absent an extension of the special contract, Pennichuck would be authorized to provide water service to Anheuser-Busch only under the rates set forth in its approved tariff. We therefore presume that Pennichuck is prepared to file its revised contract well in advance of its proposed termination of the existing special contract on June 15, 1995, in order to allow the Commission sufficient time to review its filing.

Based upon the foregoing, it is hereby

ORDERED, that the special contract between Pennichuck and Anheuser-Busch is extended 92 days from March 15, 1995 to June 15, 1995, unless the Commission in a subsequent order further extends the contract upon finding additional time is required to review the revised contract; and it is

FURTHER ORDERED, that Pennichuck file its revised special contract no later than April 14, 1995 with supporting testimony explaining, pursuant to RSA 378:18, the special circumstances that render departure from the general schedules just and consistent with the public interest, and why a special contract is more appropriate than designing tariffed rates applicable to all industrial customers in the Pennichuck franchise area; and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on April 27, 1995 at 10:00 a.m. at which each party will provide a preliminary summary of its position with regard to the revised special contract. Absent objection, the Prehearing Conference will be recorded on tape

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rather than by a stenographer; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, Pennichuck, the Staff of the Commission and the Intervenor hold a First Technical Session to review the special contract and supporting testimony; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Pennichuck notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order in a statewide newspaper of general circulation no later than March 17, 1995, publication to be documented by affidavit filed with the Commission on or before April 27, 1995; 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 Pennichuck and the Office of the Consumer Advocate on or before April 17, 1995, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 (a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before April 24, 1995.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 1995.

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NH.PUC\*03/07/95\*[80863]\*80 NH PUC 125\*Affinity Corporation dba Affinity Fund

[Go to End of 80863]

80 NH PUC 125

**Re Affinity Corporation dba Affinity Fund**

DE 94-243

Order No. 21,565

New Hampshire Public Utilities Commission

March 7, 1995

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

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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 services. p. 125.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 125.

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BY THE COMMISSION:

ORDER

[1, 2] On October 12, 1994, Affinity Corporation, formerly Affinity Fund, Inc., a Wisconsin corporation d/b/a Affinity Fund (AF), 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.

AF 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.

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Based upon the foregoing, it is hereby

ORDERED *Nisi*, that AF 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. AF 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, AF shall notify the Commission of the change.
5. AF 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. AF shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. AF 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. AF 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. AF 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. AF shall compensate the appropriate Local Exchange Company for all originating and terminating access used by AF 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 AF 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

**Page 126**

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 AF to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that AF shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than March 21, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 3, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. AF 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 AF shall file a compliance tariff with the Commission on or before March 21, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 6, 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 seventh day of March, 1995.

Notice of Conditional Approval of  
AFFINITY CORPORATION d/b/a AFFINITY FUND

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On October 12, 1994, Affinity Corporation, formerly Affinity Fund, Inc., a Wisconsin corporation, d/b/a Affinity Fund (AF), 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. 21,565, issued in Docket No. DE 94-243, the Commission granted AF conditional approval to operate as of April 6, 1995, subject to the right of the public and interested parties to comment on AF 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 AF's petition to do business in the State should submit written comments no later than April 3, 1995, 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. 21,916, 78 NH PUC 365, Aug. 2, 1993.

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NH.PUC\*03/13/95\*[80864]\*80 NH PUC 128\*New Hampshire Electric Cooperative, Inc.

[Go to End of 80864]

80 NH PUC 128

**Re New Hampshire Electric Cooperative, Inc.**

DR 92-244  
Order No. 21,566

New Hampshire Public Utilities Commission

March 13, 1995

APPLICATION by electric cooperative for authority to implement new rates for standby and supplemental services provided to customers that otherwise generate their own power; rejected, and such service ordered charged at the PG rate instead. Commission finds that the cooperative's plan to develop standby service rates on a delivery point basis could be discriminatory and also violative of traditional rate-making policy that rates be premised on systemwide costs rather than location-specific ones.

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1. RATES, § 342

[N.H.] Electric rate design — Standby and supplemental services — For customers with self-generation capabilities — Proposal for delivery point-based rates — Rejection — Factors — Potential for discrimination — Noncompliance with rate-making guidelines — Necessity of systemwide rather than location-specific costs of service. p. 132.

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APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative; Murtha, Cullina, Richter, and Pinney by Paul R. McCary, Esq. on behalf of Plymouth Cogeneration Limited Partnership; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. on behalf of Plymouth State College; Office of Consumer Advocate by Kenneth R. Traum on behalf of Residential Ratepayers; and Eugene F. Sullivan III, Esq. on behalf of the

New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On December 30, 1992, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a petition and supporting testimony with this Commission to implement standby and supplemental service rates for customers meeting their normal power needs through on-site generation. On January 26, 1993, the Commission issued an Order of Notice scheduling a prehearing conference for February 11, 1993 to establish a procedural schedule to govern its investigation into the proposed rates and to address motions to intervene.

On March 1, 1993, the Commission issued Report and Order No. 20,772 adopting a procedural schedule and granting full intervenor status to Plymouth Cogeneration Limited Partnership (PCLP), the developer of a cogeneration project designed to meet a portion of the electricity needs and all the steam requirements of Plymouth State College, a current Rate PG customer of NHEC, and the Office of Consumer Advocate (OCA). The Commission granted limited intervenor status to Plymouth State College (College). Subsequently, the College requested and was granted full intervenor status, and Public Service Company of New Hampshire (PSNH) was made a necessary party. PCLP submitted direct testimony on May 7, 1993, while NHEC filed rebuttal testimony on July 6, 1993, and Staff submitted direct testimony on July 15, 1993.

On August 25 and 26, 1993, the Commission held duly scheduled hearings on the merits of NHEC's proposed rates. Briefs and Reply Briefs were filed by the parties on October 15 and 29, 1993, respectively. On November 29, 1993, the Commission issued an oral decision rejecting the standby rate as proposed by NHEC and requiring NHEC to serve the affected customers under the PG Rate.

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### II. BACKGROUND

NHEC's intention in filing its *Petition to Implement Standby and Supplemental Service Rates* is summarized by its witness, Dennis R. Eicher. Mr Eicher states:

My testimony concerns the Cooperative's proposal to implement two new Standby and Supplemental Services rates (Primary and Secondary Service) for members who have on-site generating unit(s) which are normally used to supply all or a portion of the member's power and energy requirements. While the option always exists for the member to terminate membership with the Cooperative, isolate from the Cooperative's distribution system and supply its total energy requirements using on-site generating unit(s), many members with on-site generation are likely to find it necessary and/or desirable to purchase supplemental power and/or energy and backup from the Cooperative. The proposed Standby Service rates are designed to address this need by providing a framework under which the Cooperative may provide this service at just and reasonable rates. Ex. 1, p.7.

NHEC bases its proposal on the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Energy Regulatory Commission (FERC) regulations that implement PURPA, specifically 18 CFR §292.305(b) and (c), which require electric utilities upon request of a Qualifying Facility (QF), to offer standby and supplementary power. As set forth in the testimony of Staff witness Thomas Frantz, the term "standby electric service" generally refers to four types of service: 1) supplementary power, the level of energy service regularly supplied to a standby customer over and above the energy being provided by its own generation, 2) backup power, the amount of energy required by the standby customer when its own generating facilities experience an unscheduled outage, 3) maintenance power, the energy supplied to a standby customer during a scheduled outage, and 4) interruptible power, a type of service which is interruptible to the standby customer if the utility finds itself short of capacity or approaching "peak demand". Exhibit 21, pp. 3-4. The services and rates at issue in this proceeding are supplementary power, backup power and maintenance power. Interruptible service is not at issue and NHEC has a filed tariff for this service.

NHEC is a duly franchised electric utility in the State of New Hampshire subject to this Commission's jurisdiction. Prior to the submission of its proposed standby and supplemental service rates, NHEC was contacted by the College and informed that the College intended to install on-site a cogeneration facility to supply it with steam for heating purposes and to meet some portion of its electric needs. In response, NHEC filed this petition.<sup>1(14)</sup>

NHEC purchases approximately 90% of its power from PSNH. NHEC is a full requirements customer of PSNH at 27 of its 35 power delivery points. Pursuant to the Partial Requirements Resale Service Agreement (Resale Agreement) between NHEC and PSNH for the purchase and sale of this power, the determination of billing demand for NHEC is on the basis of the current monthly billing demand in kilovolt-ampere (kVA) plus the current month's ratcheted demand increment for each PSNH delivery point. Essentially, the demand component of the power delivered to each distinct delivery point is on a non-coincident peak basis. Thus, the power costs for the same load may vary significantly depending on the nature of the customer base and usage patterns at any delivery point. The energy component of the Partial Requirements Agreement is charged to each delivery point differentiated by an on-peak and off-peak rate.

### III. POSITIONS OF THE PARTIES AND STAFF

#### A. *New Hampshire Electric Cooperative.*

NHEC takes the position that its standby service rates are required for any member that has on-site generation who requests standby and/or supplemental service. Standby service is required if all four of the following conditions are met:

#### Page 129

1. NHEC will be called upon to supply the member's load that is normally supplied by the member's own generating unit(s) when it is out of service; and
2. The member's unit(s) is used for other than emergency and/or test purposes; and
3. The total generating capability of the member exceeds 100 kW; and

4. The member's total generating capability exceeds 20% of the member's peak demand. Ex. 2 at 9.

NHEC asserts members meeting the above conditions constitute a new customer class, based on the load characteristics of standby customers, for ratemaking purposes. If the rate were optional, NHEC believes members with significant load being met by on-site generation could pose large increases in power costs for NHEC when their generating unit(s) were down and the members relied on NHEC to supply the replacement power at standard tariff rates. NHEC has proposed the standby tariff in order to ensure that power costs driven by standby customer outages would not be recovered by other members.

NHEC's proposed Standby Service Charge includes a Facilities Charge, Fixed Charge, Standby Capacity Charge for Distribution and Power Supply, and an Energy Charge for service provided at Secondary and Primary voltage. Ex. 1, p. 17. Each member's Facilities Charge is unique and specified in the Member Service Agreement that NHEC requires members to sign before receiving Standby service.

The Fixed Charge is intended to recover customer related costs and includes the customer costs for the Rate PG or Rate G class plus any additional costs associated with the metering of standby service. The Standby Capacity Charge includes two cost components: one is intended to recover the distribution system capacity costs and is based on the higher of 1) the mutually agreed upon level of Standby Capacity, 2) the maximum 30 minute non-coincident peak demand of the member's Standby Capacity Requirement established during the current billing month, or 3) the maximum 30 minute Standby Capacity Requirement established during any of the eleven preceding months. The other component of the Standby Capacity Charge is designed to recover purchased power capacity costs based on the coincidental peak demand of the customer with the delivery point peak.

NHEC bases the power supply capacity costs and the energy component of the Standby Service rates on the rates contained in PSNH's Resale Agreement adjusted for losses and a pro rata share of NHEC's costs for Administration and General, Other Taxes, Miscellaneous Expenses and Margin Requirements. NHEC's proposed rates for Primary and Secondary Service are outlined below:

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

<i>Cost Component</i>	<i>Primary Service</i>	<i>Secondary Service</i>
Facilities	Member Specific	Member Specific
Fixed Charge	\$66.00/month	\$72.00/month
Standby Capacity		
- Distribution (NCP)	\$ 1.72/kVA	\$ 2.07/kVA
- Power Supply (CP)	\$15.73/kVA	\$18.18/kVA
Energy	6.19¢/kWh	6.43¢/kWh

Customers receiving standby service would also be responsible for any changes in rates as part of NHEC's normal Power Cost Adjustment mechanism.

A customer can receive supplemental service as well as standby service. NHEC believes some customers will desire to purchase additional power above their on-site generating

capabilities. NHEC has chosen to define supplemental power and energy as the total power supplied by NHEC minus the standby service requirements. Standby service requirements

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equal the standby customers specified standby capacity minus its net generation. Supplemental service is provided under either the Primary General (PG) or General Service (G) tariff rate.

NHEC asserts that the proposed standby rates are necessary to prevent subsidization of the standby class by other existing customer classes. NHEC argues that the proposed rates are non-discriminatory, and that the rate design differences are justified by the different characteristics of the standby class. Finally, NHEC maintains that the proposed rates are just and reasonable, as the proposed rates are based upon approved cost-of-service analysis and provide for the recovery of the actual cost imposed upon NHEC.

*B. Plymouth Cogeneration Limited Partnership.*

PCLP takes the position that NHEC's proposed standby rates over-recover costs, penalize cogenerators, and discriminate against standby customers. PCLP further argued that NHEC ignored the historical cost-of-service of an existing standby service customer in developing a rate that is not consistent with traditional rate design and cost-of-service principles.

PCLP contends that NHEC's proposed rates do not reflect the cost of providing backup service, and as a result would allow NHEC to over-recover its cost of providing backup service. PCLP points out that the Balsams have been receiving standby service from NHEC for several years under the PG Rate, but that NHEC did not utilize its experience with the Balsams in developing its standby rates.

PCLP asserts that NHEC's proposed rates are the product of inconsistent costing principles in that they are based upon the coincident peak demand of the customer and location specific costs. NHEC's general service and primary general service rates are based upon the customers noncoincident peak demand and system-wide costs. PCLP states that standby customers would see different bills for the identical service depending on their location on the NHEC system because the proposed rates are delivery point specific. No other customer on NHEC's system is charged rates that are location specific. This leads PCLP to conclude that NHEC's proposed rates are discriminatory, and result in higher demand charges than for other large customers.

PCLP argues that standby service rates should be uniform across a utility's system because the utility's cost of serving a specific customer location is beyond the customer's control. Uniform rates, PCLP maintains, is a matter of fundamental fairness. PCLP's witness, Mr. Dahlen, stated that the proposed rate "is location specific and that is something that has basically been rejected in electric utility ratemaking for a long time." (Tr. at 49-50) PCLP asserts that no regulatory commission appears to have approved a standby rate based upon coincidental delivery point demands.

PCLP concludes that the Commission should decline to approve NHEC's proposed standby rates, and that NHEC should continue to render standby service under rate PG.

### *C. Plymouth State College*

The College takes the position that the proposed standby rate is not needed, is not cost based, and is unstable, poorly designed and discriminatory. The College argues that NHEC has been providing standby service to the Balsams at the PG Rate, without problem. Furthermore, the College asserts that there is no basis for treating the College differently from the Balsams. Therefore, the College concludes that NHEC should be able to provide standby service to it at the PG Rate.

The College avers that the result of the NHEC proposal will be to charge more than incremental cost for power supply in most instances, with the exception of random cases when the College takes service at the delivery point peak. The College contends that the proposed rate is unstable because the charge will vary dramatically depending on the time of the month in which service is taken. The College asserts that the proposed rate is poorly designed in that it may discourage cogeneration or force cogenerators to disconnect from the NHEC system completely. Finally, the College argues that delivery point billing produces different prices in different localities, resulting in discrimination

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based on locality.

### *D. Office of Consumer Advocate*

The OCA takes the position that a separate rate class is necessary to provide standby service, and supports NHEC's proposed rates, at least until some history and usage patterns are available. The OCA contends that the NHEC proposal better assigns costs incurred to the cost causer over the long run than any other proposal. Finally, the OCA asserts that the proposed rates do not overcharge standby customers, but rather protect core customers from subsidizing standby services.

### *E. Staff*

Staff generally supports NHEC's proposed standby rates, and agrees with the costing methodology used to design the proposed rates. Staff asserts that cost causation should be reflected in rates along with due consideration of other ratemaking principles. Staff states that the proposed rates will reflect the actual costs of being coincident with a delivery point peak, which is important because a single standby customer may have a significant effect on the delivery point peak.

Staff disagrees with PCLP's contention that the standby rates are discriminatory despite differing from the rate design for other classes. Staff argues that NHEC's rate design for the other classes should also be based upon the coincident demand of the class by delivery point in order to provide customers with the appropriate price signals.

## IV. COMMISSION ANALYSIS

[1] We have considered the evidence introduced at the hearings and the briefs filed by the parties. After thorough review, we reject the standby rate as proposed by NHEC, and require NHEC to provide service to standby customers under the PG Rate. Our reasons are as follow.



We are persuaded by PCLP that the standby rate proposed by NHEC may be discriminatory, and we are not convinced that NHEC's proposal is just and reasonable. The establishment of rates on a delivery point basis, as NHEC has proposed, could result in different charges to similar customers. This results because the assessment depends heavily upon which delivery point the customer is served by, the size of the delivery point, and the size of the customer's load. In addition, no other NHEC customer is currently billed on a delivery point basis, and the Commission is not aware of any instance when it has authorized rates to be set on a delivery point basis.

While we affirm the principle that rates should reflect costs, we are convinced that sound ratemaking dictates that rates be based upon system-wide rather than location-specific costs. We are not persuaded by NHEC that similarly situated customers that impose different costs upon NHEC, due to the happenstance of their location, should be treated differently. We agree with PCLP that uniform rates are a matter of fundamental fairness, as the customer has no say as to where a utility sites its facilities. As the College pointed out, differences in costs due to the delivery point should be no different than the treatment of variations in the costs of transmission and distribution at different locations. (Brief of the College, at 23)

We share NHEC's concern that, under the current PSNH wholesale rate, NHEC could conceivably face higher demand charges should a standby customer take service at the delivery point peak. However, NHEC does not bill any other customer based upon its contribution to the coincident peak. It is not clear that a standby customer taking delivery at the coincident peak is driving the peak any more than any other customer. Given the random nature of unplanned outages, and the ability to schedule planned maintenance at off-peak periods, we are not convinced that this will be a frequent problem.

We do not agree with NHEC's assertion that the unique provisions of the PSNH wholesale rate require different treatment of standby customers vis-a-vis any other customer. Any customer could cause a higher demand charge as a result of a high coincident peak. NHEC has not proposed rates for other classes based upon the customers coincident peak demand. NHEC has not explained why costs arising due to the PSNH wholesale rate's demand charge are an

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appropriate basis for rates in the instant case, but not for the rates charged to other customer classes.

We agree with the Staff's testimony and OCA's brief that NHEC should work with its standby customers to schedule maintenance (planned outages) in off-peak periods, and encourage NHEC to do so. This will minimize the demand charge and resulting ratchet effect. However, we do not agree that NHEC's proposal should be implemented as an interim step "until some history and usage patterns can be developed." (Brief of the OCA, at 7) Rates should be developed based upon the characteristics of a class of customers, not upon the experience of a specific customer at a certain location.

Thus, we agree in principle with NHEC in its reply brief that a utility should not design "a rate which will be applicable to an entire class of existing and future customers around the specific load and operational data from one particular customer." (Reply Brief of NHEC, at 2)

Nevertheless, it seems to us that this is exactly what NHEC has done in designing a proposed rate for PCLP that differs from what it has historically charged another standby customer, namely the Balsams. We are persuaded by the College that the proposed Plymouth facility is similar to the Balsams, which has been provided standby service at the PG rate, apparently without detrimental consequences.

Based upon the foregoing, it is hereby

ORDERED, that the standby rates as proposed by NHEC are hereby rejected; and it is

FURTHER ORDERED, that NHEC provide service to standby customers under the PG Rate.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1995.

#### FOOTNOTES

<sup>1</sup>As part of its petition in DR 92-009, NHEC had included a Standby tariff proposal that was later withdrawn from the filing. The record in this docket also indicates that some backup or standby service has been provided to a customer of NHEC, the Balsams, a resort hotel with an affiliated manufacturing business, Tillotson Rubber Company, located in Dixville Notch, under tariff rates for a number of years.

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NH.PUC\*03/13/95\*[80865]\*80 NH PUC 133\*Public Service Company of New Hampshire

[Go to End of 80865]

80 NH PUC 133

### Re Public Service Company of New Hampshire

DR 94-256

Order No. 21,567

New Hampshire Public Utilities Commission

March 13, 1995

ORDER establishing a procedural schedule for conferences and hearings relative to an electric utility's filing of its 1995 conservation and load management plan.

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#### 1. RATES, § 649

[N.H.] Procedure — Hearings and conferences — Establishment of schedule — Electric utility — Annual conservation and load management plan. p. 133.

#### 2. CONSERVATION, § 1

[N.H.] Electric utility — Conservation and load management plans — Annual filings —

Procedural schedule. p. 133.

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BY THE COMMISSION:

ORDER

[1, 2] On October 31, 1994 Public Service Company of New Hampshire (PSNH) filed its 1995 Conservation and Load Management (C&LM) Pre-Approval Filings. An Order of Notice issued on January 20, 1995 required requests for intervention to be filed by February 6, 1995 and also scheduled a prehearing

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conference for February 9, 1995.

Maurice R. Lamy (Lamy) filed a request for intervention on February 1, 1995. George E. Sansoucy (Sansoucy) filed a Petition to Intervene on February 6, 1995. The Commission's Executive Director and Secretary, Dr. Sarah P. Voll, responded to Sansoucy's Petition by letter dated February 7, 1995, and advised that NH Admin. Rule Puc 203.02(a)(2) requires potential intervenors to demonstrate the "rights, duties, privileges, immunities or other substantial interests" which may be affected in the proceeding. A similar letter was forwarded to Lamy on February 8, 1995.

A duly noticed prehearing conference was held on February 9, 1995 at which the following procedural schedule was agreed to by the Staff and parties who were present:

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

2/15/95 Data Requests by Staff, OCA  
and Intervenors  
2/24/95 Company Data Responses  
3/1/95 Technical Session  
3/9/95 Testimony by Staff, OCA and  
Intervenors  
3/16/95 Data Requests by Company  
3/23/95 Data Responses by Staff, OCA and  
Intervenors  
3/24/95 Rebuttal Testimony  
3/27/95 Settlement Conference 10:30 a.m.  
4/6/95 Final Hearing

On February 10, 1995 Sansoucy responded to the aforementioned letter from Dr. Sarah P. Voll and provided additional information. Likewise, on February 13, 1995 Lamy responded to Dr. Voll's earlier letter with regard to intervention. PSNH filed an Objection to Sansoucy's Petition to Intervene on February 16, 1995.

At our public meeting on February 21, 1995 we deliberated the intervention requests of Sansoucy and Lamy. At that meeting we decided to grant Lamy full intervention status and we denied Sansoucy's request for full intervention status. A Secretarial Letter was issued on that date which details our decision with regard to these requests for intervention.

By letter dated March 13, 1995 Staff Attorney, Robert J. Frank, advised the Commission that

the Staff and parties had agreed to move the Settlement Conference from March 27, 1995 to March 24, 1995.

We find that the proposed procedural schedule, as modified by Mr. Frank's letter, is reasonable and therefore we approve the same.

Based on the foregoing; it is hereby

ORDERED, that the proposed procedural schedule as set forth above is approved, with the exception of the settlement conference which will now be held on March 24, 1995 at 10:00 a.m.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1995.

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NH.PUC\*03/13/95\*[80866]\*80 NH PUC 134\*MCI Telecommunications Corporation of New Hampshire

[Go to End of 80866]

80 NH PUC 134

**Re MCI Telecommunications Corporation of New Hampshire**

DR 95-036

Order No. 21,568

New Hampshire Public Utilities Commission

March 13, 1995

ORDER authorizing an interexchange telephone carrier to introduce new "Private 800" and "Personal 800" services and also a new schedule of discounts for "Friends and Family" calling based on total monthly usage.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special calling plans — New discounts for "Friends and Family" calling — "Private 800" service — "Personal 800" service — Interexchange telephone carrier. p. 135.

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BY THE COMMISSION:

Page 134

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ORDER

[1] On February 13, 1995, MCI Telecommunications Corporation of New Hampshire (MCI) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting

authority to introduce Friends & Family Option B, MCI Private 800, MCI Personal 800 Plan R and increase the MCI Personal 800 rate, for effect March 17, 1995.

MCI Friends & Family Option B is a discounted toll option applied to total monthly usage. The discount is greater on calls from an MCI customer to Calling Circle Members who are presubscribed to MCI.

MCI Private 800 and MCI Personal 800 Plan R are introduced in the intrastate tariff. However, the terms and conditions are not outlined in the intrastate tariff. Rather, the intrastate tariff references the interstate tariff by stating that the services are available pursuant to the terms and conditions as outlined in MCI's Tariff FCC No. 1.

The rate per minute for Personal 800 service is being increased from 25 to 28 cents.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above. However, MCI will be required to include the terms and conditions of MCI Private 800 and MCI Personal 800 Plan R (from its MCI Tariff FCC No. 1) in its compliance filing in this docket.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's New Hampshire Intrastate Telecommunications Services Tariff - PUC No. 1 are approved for effect as filed:

35th Revised Page 1  
18th Revised Page 2  
17th Revised Page 3  
3rd Revised Page 25.2  
2nd Revised Page 25.3  
Original Page 25.4  
3rd Revised Page 37;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of March, 1995.

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NH.PUC\*03/13/95\*[80867]\*80 NH PUC 135\*U.S. Digital Network Limited Partnership

[Go to End of 80867]

80 NH PUC 135

## Re U.S. Digital Network Limited Partnership

DE 94-291  
Order No. 21,569

New Hampshire Public Utilities Commission

March 13, 1995

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

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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 services. p. 136.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 136.

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BY THE COMMISSION:

ORDER

Page 135

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[1, 2] On December 5, 1994, U.S. Digital Network Limited Partnership (USDN), a Virginia 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.

USDN 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 USDN 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. USDN 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, USDN shall notify the Commission of the change.
5. USDN 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. USDN shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. USDN 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. USDN 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. USDN 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. USDN shall compensate the appropriate Local Exchange Company for all originating and terminating access used by USDN 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 USDN 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 USDN to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that USDN shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than March 20, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 3, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. USDN 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 USDN shall file a compliance tariff with the Commission on or before March 20, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 5, 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 thirteenth day of March,



1995.

Notice of Conditional Approval of  
U.S. DIGITAL NETWORK LIMITED  
PARTNERSHIP

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On December 5, 1994, U.S. Digital Network Limited Partnership (USDN), a Virginia 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. 21,569, issued in Docket No. DE 94-291, the Commission granted USDN conditional approval to operate as of April 5, 1995, subject to the right of the public and interested parties to comment on USDN 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 USDN's petition to do business in the State should submit written comments no later than April 3, 1995, to:

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Dr. Sarah P. Voll  
Executive Director and Secretary  
Public Utilities Commission  
8 Old Suncook Road  
Concord, New Hampshire 03301-7319

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\*03/13/95\*[80868]\*80 NH PUC 138\*New Hampshire Electric Cooperative, Inc.

[Go to End of 80868]

80 NH PUC 138

**Re New Hampshire Electric Cooperative, Inc.**

DR 95-031  
Order No. 21,570

## New Hampshire Public Utilities Commission

March 13, 1995

APPLICATION by electric cooperative for authority to implement discounted rates for certain sawmill customers with self-generation capabilities; granted for a one-year period. The discount would provide for demand charges to be reduced by \$3.50 per kilowatt and for energy charges to be reduced by 1.4 cents per kilowatt-hour.

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## 1. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Targeting of sawmill facilities — Self-generation capabilities as a factor — Antibypass proposals — Discount rates for qualifying minimum loads — Reductions in demand and energy charges — One-year trial basis. p. 138.

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BY THE COMMISSION:

## ORDER

[1] The Petitioner, New Hampshire Electric Cooperative, Inc. (NHEC) filed testimony and exhibits on February 8, 1995, supporting a Sawmill Generation Deferral (SGDS) Rate. NHEC believes that, given their load characteristics and ability to accept a loss of electrical service, sawmills and closely related industries are particularly vulnerable to diesel self-generation and, absent a special rate, would likely generate their own power. NHEC has lost two sawmills from its system in recent years. A modelling of ten NHEC accounts found that all had an economic option to install self-generation with a simple payback at currently forecasted rates ranging from 2.1 to 3.6 years.

The sawmills make a significant contribution to NHEC's revenues. A review of nine vulnerable accounts indicates that they purchase approximately 4.9 million kilowatt-hours (kWhs) per year with resulting revenues of \$567,000.

In order to retain the sawmill load on the NHEC, and ultimately on the Public Service Company of New Hampshire (PSNH) systems, NHEC and PSNH amended PSNH's wholesale Amended Partial Requirement Agreement (APRA), filed with the Federal Energy Regulatory Commission on August 1, 1994 and approved October 18, 1994. Under the APRA, PSNH will provide a credit to NHEC of \$6.50 on wholesale power purchases for every kW or kVA of demand billed at retail by NHEC to qualifying sawmills on Rate SGDS. In order to qualify for the sawmill credit, NHEC's sawmills must satisfy the same qualifications and complete the same forms as sawmills receiving service under PSNH's retail Rate SGD, approved by this Commission on August 25, 1993 by Order No. 20,945.

Based on the discount in the wholesale tariff, Rate SGDS provides a \$3.50 per kW (or kVA) reduction to the demand charge of the otherwise applicable standard rate and a 1.4¢ per kWh reduction to the energy charge to qualifying sawmills and related industries who agree to

participate for a period of five years.

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NHEC's discounts do not exactly mirror the wholesale discount because it believes that it is important to retain a demand charge of at least one dollar per kWh to encourage the sawmills to improve their load factor. Therefore, it applies \$3.50 of the wholesale discount to the demand charge and the remainder to the energy charge. NHEC expects that Rate SGDS, on average, will reduce the average price per kWh to the sawmills by approximately 26% from NHEC's standard tariffed rates.

NHEC requests that the Commission give the rate its prompt attention, given the vulnerability of this industry to self-generation and the competitive disadvantage of the sawmills in the NHEC service territory compared to those in PSNH's service territory.

The Commission recognizes that this filing has benefits to NHEC and its members, the sawmill industry and PSNH. While we recognize the importance of acting promptly to prevent further loss of load from this industry, that urgency should not preclude the Commission from undertaking a thorough analysis of the issues. We are prepared, based on our review and Staff's recommendation, to approve Rate SGDS for a period of one-year effective April 13, 1995 pending further Commission review.

Based upon the foregoing, it is hereby

ORDERED *NSI*, that NHEC's Rate SGDS is approved for a period of one year pending Commission review; and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on April 12, 1995 at 10 a.m., at which each party will provide a preliminary summary of its position with regard to the Petition. Absent objection, the Prehearing Conference will be recorded on tape rather than by a stenographer; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, NHEC, the Staff of the Commission and the Intervenors hold a First Technical Session to review the Petition and allow NHEC to provide any updates or amendments to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, NHEC notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order of Notice no later than March 20, 1995, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before April 12, 1995; and it is

FURTHER ORDERED, that NHEC 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 potentially affected customers by first class U.S. Mail, postmarked no later than March 20, 1995; 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 NHEC and the Office of the Consumer Advocate on or

before April 3, 1995, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 (a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before April 10, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 13, 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 thirteenth day of March, 1995.

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NH.PUC\*03/13/95\*[80869]\*80 NH PUC 140\*One to One Communications, Inc.

[Go to End of 80869]

80 NH PUC 140

**Re One to One Communications, Inc.**

DE 94-296

Order No. 21,571

New Hampshire Public Utilities Commission

March 13, 1995

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

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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 services. p. 140.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 140.

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BY THE COMMISSION:

ORDER

[1, 2] On December 8, 1994, One to One Communications, Inc. (OTOC), a Utah 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.

OTOC 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 OTOC 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. OTOC 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, OTOC shall notify the Commission of the change.
5. OTOC 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. OTOC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. OTOC 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. OTOC 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. OTOC 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. OTOC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by OTOC 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 OTOC 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 OTOC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that OTOC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than March 20, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 3, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. OTOC 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 OTOC shall

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file a compliance tariff with the Commission on or before March 20, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 5, 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 thirteenth day of March, 1995.

Notice of Conditional Approval of  
ONE TO ONE COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On December 8, 1994, One to One Communications, Inc. (OTOC), a Utah 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. 21,571, issued in Docket No. DE 94-296, the Commission granted OTOC conditional approval to operate as of April 5, 1995, subject to the right of the public and interested parties to comment on OTOC 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 OTOC's petition to do business in the State should submit written comments no later than April 3, 1995, 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\*03/16/95\*[80870]\*80 NH PUC 142\*NYNEX

[Go to End of 80870]

80 NH PUC 142

**Re NYNEX**

DE 95-063

Order No. 21,573

New Hampshire Public Utilities Commission

March 16, 1995

PETITION by local exchange telephone carrier for authority to reactivate the "411" dialing code for purposes of disseminating directory information; granted on an interim basis, where such directory information is deemed an adjunct to basic service envisioned by the Federal Communications Commission as appropriate for use of limited "N11" numbers.

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1. SERVICE, § 455

[N.H.] Telephone — Numbers — Assignment of "N11" numbers — Reactivation of "411" code — For accessing directory information — Appropriate adjunct to basic service — Interim basis — Customer notice. p. 143.

2. SERVICE, § 449

[N.H.] Telephone — Information service — Access to directory listings — Reactivation of "411" dialing code — Interim basis. p. 143.

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BY THE COMMISSION:

ORDER

**Page 142**

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The New Hampshire Public Utilities Commission (Commission) Staff was notified informally on March 1, 1995, that NYNEX had plans to make Directory Assistance (DA) service



accessible by dialing 411 as well as by dialing 555-1212. At the same time, the Commission Staff was informed that the 411 DA service and an advertising campaign would commence on March 13, 1995. The Commission, based upon Staff's recommendation, requested NYNEX to submit detailed information by March 8, 1995, on its planned use of 411 and what exactly will occur on March 13, 1995. The Commission therefore opens this docket to consider the ramifications of the use of 411 to access directory assistance.

In response to the Commission's request NYNEX stated that it plans to furnish DA service in conjunction with its provision of basic exchange service, using an "appropriate telephone number" as permitted in its tariff, NHPUC-No. 75. The appropriate telephone number NYNEX plans to use is 411, the number NYNEX's predecessor had used until 1977 when it was compelled for technological reasons to use a 1-plus seven digit number to reach DA. NYNEX also informed the Commission that NYNEX does not seek exclusive use of 411. Other providers of basic service, when they appear in NYNEX's territory, will be able to access DA by 411. NYNEX also pointed out that PBX users can route 411 DA traffic to whatever provider they desire. Thus, NYNEX stated, competition would not be affected.

By its response on March 8, 1995, NYNEX indicated it would postpone the date for commencing its advertising campaign and for reactivating 411 in New Hampshire. NYNEX will proceed with those steps in other NYNEX states.

411 is an N11 telephone number, similar to 911. N11 telephone numbers are a limited resource which the FCC recognized as being in the nature of a national resource. *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Service*, 2 FCC 2910, 2919 (1987). Likewise, the Commission has held that these numbers should be reserved for significant national use (*Re Williams Communication, Inc.*, Order No. 21,356 dated September 19, 1994) and has denied petitions for use of N11 numbers in New Hampshire pending the outcome of the FCC Docket No. CC 92-105, which specifically addresses allocation of N11 numbers. In the Notice of Proposed Rulemaking for that docket, the FCC advised that it would not disturb the use of 411 for DA service classified as basic or adjunct to basic. The FCC limited its inquiry to whether the 411 code should be restricted to the provision of DA service that is classified as basic or adjunct to basic.

[1, 2] We find that the ability to dial DA service by a three-digit telephone number serves the public interest. We agree that use of 411 to access DA service classified as basic or adjunct to basic services is a use permitted by the FCC and thus may be permitted to NYNEX as a basic service provider. It is also important that any of the other basic exchange providers now authorized in the state (i.e., the 12 independents) have the opportunity to use 411 for DA if they so choose.

Notwithstanding the above conclusions, the telecommunications industry has experienced dramatic changes over the eighteen years since 411 was last used in New Hampshire. NYNEX's position, and that of the Commission has been affected. We would expect NYNEX to recognize that its reactivation of 411, after these eighteen years which have seen the Bell divestiture as well as an explosion of technological innovation, will have an impact on the industry which the Commission must examine. The Commission must analyze the impact on independent exchange carriers, toll competitors, all customers, and on private users of sophisticated equipment.

An example of the impact is the effect on a large user of a PBX who currently programs equipment so as to preclude employee use of NYNEX's DA service, instead routing DA inquiries to an in-house database. Such a user may incur a large DA bill if the switch to 411 occurs without sufficient notice enabling reprogramming of the PBX. Another effect resulting from lack of notice is the Commission's inability to consider broader implications and applications of the 411 DA access. For example, the Commission could consider the implementation

Page 143

of 411 as access to a "gateway" DA which would direct a customer's call to any of several DA providers. Analysis and preparation for this impact cannot be accomplished within a thirteen day period; nor should such analysis and preparation occur after the fact.

We have a statutory duty to keep informed of and to supervise NYNEX and all public utilities. We believe NYNEX should have formally notified us of its plans in a timely fashion, provided us with an analysis of the change, and sought our input and approval.

Based upon our review of the March 8 response by NYNEX and on the Staff's recommendation, we will approve on an interim basis NYNEX's use of 411 for DA service. We will order Staff to investigate and analyze the implications of such usage and report its conclusions by a date certain. We will issue a final order subsequent to that investigation and to the completion of the FCC docket.

Based on the foregoing, it is hereby

ORDERED, that NYNEX's proposal to make DA service accessible by dialing 411 as well as by dialing 555-1212 is approved on an interim basis effective immediately; and it is

FURTHER ORDERED, that Staff shall conduct an investigation to analyze the impact of such usage on telecommunications in New Hampshire and report its conclusions and recommendations on or before June 13, 1995; and it is

FURTHER ORDERED, that the Commission shall reconsider this interim order subsequent to our receipt of the Staff report and subsequent to the FCC order in its Docket No. CC 92-105.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of March, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Williams Communications Inc., DE 94-184, Order No. 21,356, 79 NH PUC 500, Sept. 19, 1994.

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NH.PUC\*03/20/95\*[80871]\*80 NH PUC 144\*WilTel Inc.

[Go to End of 80871]

80 NH PUC 144

**Re WilTel Inc.**

DR 95-037

Order No. 21,578

New Hampshire Public Utilities Commission

March 20, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which, among other things, increase the per-minute rate for conference calling and introduce a directory assistance option for enhanced travel card services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — Change in conference call rates — Enhanced travel calling card services — Directory assistance options — Interexchange carrier. p. 144.

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BY THE COMMISSION:

ORDER

[1] On February 15, 1995, WilTel Inc. (WilTel) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authority to introduce Directory Assistance for Enhanced Travel Card Service, increase the per minute rates for conference calling, decrease the per conferenced party rate and make minor text changes, for effect March 20, 1995.

When using WilMAX Enhanced Travel Card service, the proposed Directory Assistance (DA) surcharge is 40 cents per request. The customer may choose optional call completion by the DA operator for an additional 40 cent surcharge.

The proposed revisions include changing charges for conference calling. The per minute

**Page 144**

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charge for conference calling during prime hours is being increased from 25 cents to 45.2 cents. The per minute charge for conference calling during non-prime hours is being increased from 14 cents to 37.2 cents. The rate per conferenced party is being reduced by one cent.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize WilTel to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages WilTel's NHPUC Tariff No. 2 are approved for effect as filed:

- 11 Revised Page 1
- 4th Revised Page 52
- 1st Revised Page 63.5.1
- 1st Revised Page 63.5.2
- Original Page 63.5.3;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1995.

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NH.PUC\*03/20/95\*[80872]\*80 NH PUC 145\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80872]

80 NH PUC 145

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-038

Order No. 21,579

New Hampshire Public Utilities Commission

March 20, 1995

ORDER authorizing an interexchange telephone carrier to provide an add-on service for those virtual telecommunications network service (VTNS) customers that already subscribe to the carrier's interstate services, such that they now also can obtain intrastate VTNS through the carrier for custom-designed voice communication service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Subscribers of interstate virtual telecommunications network service (VTNS) — New add-on service — Intrastate custom-designed VTNS — Interexchange telephone carrier. p. 145.

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BY THE COMMISSION:

ORDER

[1] On February 17, 1995, AT&T Communications of New Hampshire, Inc. (AT&T) filed a petition with the New Hampshire Public Utilities Commission (Commission) for authority to introduce AT&T Virtual Telecommunications Network Service (VTNS) for effect March 20, 1995.

VTNS is a custom-designed voice telecommunications service which meets specific customer requirements. VTNS is an add-on to AT&T's interstate VTNS and is available only to customers who subscribe to the interstate service.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T Virtual Telecommunications Network Service.

Based upon the foregoing, it is hereby  
ORDERED, that the following pages of

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AT&T's Tariff PUC No. 1 - Custom Network Services are approved for effect as filed:

*Table of Contents*

Original Page 25

*Section 1*

6th Revised Page 23

Original Page 23.1

4th Revised Page 25

2nd Revised Page 26

Original Page 26.1

2nd Revised Page 27

1st Revised Page 28

*Section 23*

Original Pages 1-10;

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 as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1995.

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NH.PUC\*03/20/95\*[80873]\*80 NH PUC 146\*NYNEX

[Go to End of 80873]

80 NH PUC 146

**Re NYNEX**

DR 95-040  
Order No. 21,580

New Hampshire Public Utilities Commission

March 20, 1995

ORDER authorizing a local exchange telephone carrier to complete its plan of converting business customers from message unit rates to measured service rates.

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1. RATES, § 539

[N.H.] Telephone rate design — Business service customers — Conversion process — From message unit rates to measured service rates. p. 146.

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BY THE COMMISSION:

ORDER

[1] On February 17, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from NYNEX for authority to revise its tariff PUC No. 75 for effect March 19, 1995.

The revisions include the introduction of two new services: Business and Residence Measured Service-4E in the areas of Harrisville and Westmoreland where Measured Service-4E was not available. This filing completes the conversion of measured business exchange service from a message unit to a Measured Service-4E basis (initiated with docket DE 83-186). Availability of this service will ensure that all line options are available to current 4-Party customers whose service is being eliminated (docket DR 94-305). As a result, references to business measured (message unit) service are removed or replaced as Measured Service-4E for the following associated services:

- Local Exchange
- Remote Line
- NOVA Centrex
- Centrex
- Public Access Line
- Flexpath Digital PBX
- Analog to Digital Conversion PBX
- Intellipath Digital Centrex
- ISDN Primary

This filing also converts Originating-only Service Lines from a message unit to a Measured Service-4E basis. In addition, this filing incorporates and cancels Supplements 21, 22 and 31.

Staff reviewed this filing and discussed its concerns with the Company. Since unlimited business service is available in all New

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Hampshire locations served by NYNEX, Staff questioned the rationale of paragraph 5.1.2.A.1. which allowed a customer with Centrex service involving unlimited business service at a principal premises to have Measured Service-4E at an ancillary location if unlimited business service was not available as a service offering. NYNEX agreed that paragraph 5.1.2.A.1. should be removed and the phrase ", or from exchanges each in the local service area of the other," from paragraph 5.1.2.A be deleted. Remaining paragraphs in that section should be renumbered with the submission of the compliance tariff.

We have reviewed Staff's recommendation and find that the proposed filing when modified as discussed above is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX's Tariff PUC No. 75 are approved for effect as filed:

*Supplement No. 46*

Title Page

Original Pages 1 and 2

*Part A - Section 5*

Seventh Revision of Page 10.1

Third Revision of Page 18

*Section 6*

Eighth Revision of Page 5

*Section 7*

Eighth Revision of Page 21

Fourteenth Revision of Page 29

Second Revision of Page 29.7

Tenth Revision of Page 77

Fourteenth Revision of Page 82

Fourth Revision of Page 84

*Section 8*

Fifth Revision of Page 7

*Part C - Section 5*

Sixth Revision of Page 2

Fourth Revision of Page 6

*Section 6*

Third Revision of Page 4

Eighth Revision of Page 11  
Second Revision of Page 11.7

*Section 10*  
Second Revision of Page 18

and it is

FURTHER ORDERED, that NYNEX revise the following pages to reflect the modifications discussed above:

*Part A - Section 5*  
Fifth Revision of Page 1  
Third Revision of Page 2

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 NYNEX file a compliance tariff with the Commission on or before April 3, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1995.

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NH.PUC\*03/20/95\*[80874]\*80 NH PUC 147\*Cable and Wireless, Inc. New Hampshire

[Go to End of 80874]

80 NH PUC 147

**Re Cable and Wireless, Inc. New Hampshire**

Additional applicant: Cable and Wireless, Inc.

DE 95-042  
Order No. 21,581

New Hampshire Public Utilities Commission

March 20, 1995

ORDER authorizing Cable and Wireless, Inc. New Hampshire to transfer its operating authorities to its parent company, Cable and Wireless, Inc.

**Page 147**

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1. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Factors affecting approval — Intercorporate transfers — Transfer of operating



authority to parent company — Sharing of technical and managerial staff — Compliance with domestic incorporation requirements — Telecommunications carrier. p. 148.

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BY THE COMMISSION:

#### ORDER

[1] The Petitioner, Cable & Wireless, Inc. New Hampshire (CWNH) and, Cable & Wireless, Inc. (CWI) collectively filed with the New Hampshire Public Utilities Commission (Commission) on February 22, 1995, a petition (Petition) "... to transfer the Certificate of Authority to Operate as a Telecommunications Utility held by CWNH to CWI." The Petitioner further sought approval prior to March 31, 1995, because of related tax filing efficiencies.

Cable & Wireless Communications, Inc. (CWCI), which changed its name to Cable & Wireless, Inc. on September 3, 1993, originally filed for authority in Docket DE 91-092 on July 1, 1991. By Order No. 20,372 (January 20, 1992), the Commission granted authority to CWCI, a District of Columbia corporation, subject to CWCI's incorporation in the State of New Hampshire pursuant to the domestic incorporation requirements of RSA 374:22 in effect at that time, which have since been amended. CWCI subsequently received its articles of incorporation and became domestically incorporated as Cable & Wireless, Inc. New Hampshire on February 2, 1992.

CWI has filed its Amended Certificate of Authority issued by the New Hampshire Secretary of State. CWI further certifies that it will comply with all rules and regulations established by the Commission. CWI is in compliance with the reporting requirements established in its [CWNH's] authorizing order.

CWNH is a wholly-owned subsidiary of CWI. CWNH and CWI utilize the same technical and managerial staff. Both corporations use the network currently employed by CWNH to provide New Hampshire intrastate services. CWI avers that its financial condition has not materially changed since the Commission's finding of financial competence in Order No. 20,372 (January 20, 1992). After assignment, CWI plans to dissolve CWNH.

CWI will provide the same rates and services as those now being provided by CWNH. CWI's proposed tariff is identical to the current tariff of CWNH, with the exception of the name of the carrier, the designation of all pages as "original," and the issue and effective dates.

The Petitioner seeks the waivers customarily granted to resellers, specifically waivers from NH Admin. Rules, Puc 406.03 Accounting Records; 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies. CWI maintains its books in accordance with Generally Accepted Accounting Principles (GAAP).

CWNH evidenced its technical, managerial, and financial competence in the record of DE 91-092. After the transfer of control, CWI expects that its competitive capabilities will be enhanced by reducing various legal, accounting and regulatory expenses.

We find the petition to be in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to transfer control of Cable & Wireless, Inc. New Hampshire to Cable & Wireless, Inc. is granted; and it is

FURTHER ORDERED, CWI 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; and it is

FURTHER ORDERED, CWI shall maintain its books and records in accordance with Generally Accepted Accounting Principles; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before April 3, 1995, in accordance

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with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Cable & Wireless Communications, Inc., DE 91-092, Order No. 20,372, 77 NH PUC 37, Jan. 20, 1992.

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NH.PUC\*03/20/95\*[80875]\*80 NH PUC 149\*Ashland Electric Department

[Go to End of 80875]

80 NH PUC 149

### **Re Ashland Electric Department**

Additional party: New Hampshire Electric Cooperative

DR 94-005

Order No. 21,582

New Hampshire Public Utilities Commission

March 20, 1995

ORDER denying rehearing of Order No. 21,473 (79 NH PUC 706), which had directed a municipal electric utility to obtain commission authorization prior to extending service to an area located within corporate limits but already served by an electric cooperative. Commission finds that no new issues were raised which merited reconsideration.

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## 1. PROCEDURE, § 33

[N.H.] Rehearing or reconsideration — Grounds for granting — Raising of new, unaddressed issues — Citing of errors of fact or law. p. 150.

## 2. MUNICIPAL PLANTS, § 9

[N.H.] Commission jurisdiction — Limited authority — Extensions within corporate limits — Pre-existing facilities of regulated utility as a factor. p. 150.

## 3. SERVICE, § 79

[N.H.] Commission jurisdiction — Limits — Municipal utility services — Extensions within corporate limits — Pre-existing facilities of regulated utility as a factor. p. 150.

## 4. FRANCHISES, § 34

[N.H.] Validity and propriety — Provisions as to exclusivity — Impact of municipal extensions within corporate limits — But in area already served by franchised utility — Continuing controversy. p. 151.

## 5. SERVICE, § 178

[N.H.] Extensions — Factors affecting duty or right to extend — Pre-existing franchise — Unregulated municipal versus regulated utility services — Impact of exclusivity provisions — Continuing controversy. p. 151.

## 6. SERVICE, § 115

[N.H.] Municipal jurisdiction — As to extensions — Within corporate limits — But in area already served by franchised utility — Necessity of securing vote at town meeting. p. 151.

## 7. MUNICIPAL PLANTS, § 9

[N.H.] Commission jurisdiction — As to municipal extensions within corporate limits — Lack of authority — Franchised utility notwithstanding — No exclusivity under franchise — Dissenting opinion. p. 152.

## 8. SERVICE, § 115

[N.H.] Municipal jurisdiction — As to extensions — Within corporate limits — Franchised utility notwithstanding — No exclusivity under franchise — Dissenting opinion. p. 152.

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BY THE COMMISSION:

ORDER

On December 21, 1994 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,473 which found that the Town of Ashland Electric Department (Ashland) must submit to the Commission its plans for construction of electric facilities within the Town of Ashland parallel to the facilities owned and operated by New Hampshire Electric Cooperative,

Inc. (NHEC) already serving certain residents of the Town of Ashland. Commissioner Ellsworth did not join the majority in that decision.

Ashland, on January 10, 1995, timely filed a Motion for Rehearing (Motion) pursuant to RSA 541:3 and N.H. Admin. Rules, Puc 203.04(c). NHEC, with consent of Ashland and the Commission Staff (Staff) and Commission approval, filed on January 18, 1995 a late objection to Ashland's Motion. Staff did not file a response.

Ashland argues that Order No. 21,473 is in error and is unlawful and unreasonable in that 1) the Commission exceeded its limited statutory authority over municipal utilities; 2) the Commission misread RSA 38:1 and 3; 3) the Commission erred in citing Rural Electrification Administration (REA) preemption cases; 4) the Commission improperly asserted that because Ashland once sought purchase of NHEC's property pursuant to RSA 38:6 it was required to continue to operate under the provisions of RSA 38:10; 5) the Commission improperly relied on RSA 364; 6) the Commission's statement that it would not render a declaratory ruling on exclusivity of franchises was erroneous because in stating that it would consider the interest of the municipal utility's expansion under a public good analysis, it was in fact determining that NHEC's franchise was non-exclusive; and 7) the Commission erred in requiring Ashland to submit its proposal to extend its plant to town meeting vote.

NHEC objects to the Motion for Rehearing, arguing that the essence of the Motion is to argue once again for Ashland's position and if not successful, preserve Ashland's rights on appeal, without raising new information or analyses not contained in prior filings or argument.

[1] We have considered the Motion for Rehearing and Objection thereto and do not find a basis for rehearing or reconsideration of Order No. 21,473. We announced at the Commission's public meeting on January 23, 1995 our decision not to grant Ashland's motion. This order memorializes that announcement and to the extent necessary to avoid misunderstanding of our order, clarifies certain issues raised by Ashland. We will follow the order of issues raised by Ashland in its Motion.

1) *"The Commission exceeded its limited statutory authority over municipal utilities."*

[2, 3] We disagree with Ashland regarding the scope of our authority. We recognize that our role over municipal utilities is a limited one, which we noted in Order No. 21,473, at p. 7. For the reasons stated in our order, however, we do not consider our role so limited as Ashland would describe. Ashland has raised no new argument regarding its interpretation of the pertinent statutory provisions.

2) *"The Commission misread RSA 38:1 and 3."*

Again, we interpret RSA Chapter 38 differently than does Ashland. There is nothing raised in the motion that is different from the presentation of the issues in Ashland's memorandum of law or oral argument that would cause us to reconsider this issue.

3) *"The Commission erred in citing REA preemption cases."*

We agree with Ashland that REA preemption cases are not directly on point and in fact stated that in our Order. As we noted, "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." Order No. 21,473 at p. 14.

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4) *"The Commission improperly asserted that because Ashland once sought purchase of NHEC's property pursuant to RSA 38:6 it was required to continue to operate under the provisions of RSA 38:10."*

We do not agree with Ashland that it is free to begin the process of working through Chapter 38, then abandon it and go forward with acquisition independent of the statute. This has been fully briefed and argued; Ashland disagrees with our interpretation but does not present a basis for rehearing of the issue.

5) *"The Commission improperly relied on RSA 364."*

As we stated in our order, "In addition, another statute should be mentioned, though it does not resolve the threshold question." Order No. 21,473 at p. 12. We referenced RSA 364 as a basis to place in context the Commission's authority regarding expansion of a municipal utility that affected a public utility. We did not rely on RSA 364 to interpret RSA 38; rather we noted the provisions of RSA 364 to better present the totality of the Commission's authority in these cases. RSA 364 is not critical to our interpretation of RSA 38, but we continue to believe it is informative.

6) *"The Commission's statement that it would not render a declaratory ruling on exclusivity of franchises was erroneous because in stating that it would consider the interest of the municipal utility's expansion under a public good analysis, it was in fact determining that NHEC's franchise was non-exclusive."*

**[4, 5]** While we stated that we would not address the issue of franchise exclusivity in Order No. 21,473, we are persuaded that to a degree, Ashland is correct in stating that we have by our analysis indicated a conclusion that NHEC's franchise is not necessarily exclusive as it relates to a municipal utility. We will not grant rehearing on that matter but will clarify our position. Whether to allow Ashland to build parallel lines within NHEC's franchise territory (within the Town of Ashland) would be evaluated as part of our public good analysis in an RSA 38:16 proceeding.

We do not believe the legislature could have envisioned public utility franchise exclusivity as an absolute bar to a municipal utility when enacting RSA 38:10. If the public utility's franchise were absolute, there would be no purpose in the RSA 38:10 proceeding. This does not mean, however, that we consider public utility franchises necessarily or automatically to be open to competition from a municipal utility.

This decision in no way resolves the questions under consideration in the petition of *Freedom Electric Company*, DR 94-163 which, among other issues, raises exclusivity between two or more public utilities. Exclusivity has been the subject of much debate in the legislature, filings before the Commission in *Freedom*, presentations at our Roundtable on Competition in the Electric Industry and countless discussions in the electric industry press. No doubt it will continue to be a major issue addressed throughout the country and there are likely to be further orders issued by this Commission on franchise exclusivity in general. We caution readers,

therefore, to refrain from finding a broader ruling in this order than in fact has been made.

7) *"The Commission erred in requiring Ashland to submit its proposal to extend its plant to town meeting vote."*

[6] We continue to believe that Ashland must proceed under RSA 38. This too has been fully briefed and argued, and we recognize that Ashland disagrees with our interpretation. There is nothing presented in its motion to compel rehearing of the matter.

We conclude, therefore, that Ashland has raised no new issues that cause us to reconsider. *In re Appeal of Working on Waste*, 133 N.H. 312 (1990).

Based upon the foregoing, it is hereby

ORDERED, the Motion for Rehearing of Order No. 21,473 filed by Ashland Electric Department is DENIED; and it is

FURTHER ORDERED, that Order No. 21,473 is clarified as stated herein.

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By order of the Public Utilities Commission of New Hampshire this twentieth day of March, 1995.

#### DISSENTING OPINION

[7, 8] I concur with the arguments advanced by Ashland Electric Department and would grant the Motion for Rehearing of Order No. 21,473.

In my dissent I found, on the issue of franchise exclusivity, that NHEC's franchise is not exclusive as it relates to the provision of service in the territory of a municipal utility. A municipal utility cannot be limited in its expansion within its municipal bounds. I apply no public good standard, as would the majority, but rather acknowledge that Ashland is not constrained by statute or regulations from expanding within its bounds, even if such expansion is at the expense of a franchised public utility.

Bruce B. Ellsworth  
Commissioner

March 20, 1995

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Ashland Electric Dept., DE 94-005, Order No. 21,473, 79 NH PUC 706, 159 PUR4th 152, Dec. 21, 1994.

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NH.PUC\*03/20/95\*[80876]\*80 NH PUC 152\*The Keystone Corporation

[Go to End of 80876]

80 NH PUC 152

**Re The Keystone Corporation**

DE 94-203

Order No. 21,583

New Hampshire Public Utilities Commission

March 20, 1995

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

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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 services. p. 152.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 152.

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BY THE COMMISSION:

ORDER

[1, 2] On August 25, 1994, The Keystone Corporation (formerly Keystone Long Distance, Inc.), a Virginia corporation, d/b/a Keystone Long Distance Group (Keystone), 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.

Keystone 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 Keystone is granted interim authority to offer as a telecommunications public utility intraLATA toll service,

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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. Keystone 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, Keystone shall notify the Commission of the change.
5. Keystone 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. Keystone shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Keystone 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. Keystone 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. Keystone 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. Keystone shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Keystone 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 Keystone 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

**Page 153**

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 Keystone to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Keystone shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than April 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 17, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Keystone 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 Keystone shall file a compliance tariff with the Commission on

or before April 3, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 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 March, 1995.

Notice of Conditional Approval of  
THE KEYSTONE CORPORATION  
d/b/a Keystone Long Distance Group

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 25, 1994, The Keystone Corporation (formerly Keystone Long Distance, Inc.), a Virginia corporation, d/b/a Keystone Long Distance Group (Keystone Corp), 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. 21,583, issued in Docket No. DE 94-203, the Commission granted Keystone conditional approval to operate as of April 19, 1995, subject to the right of the public and interested parties to comment on Keystone 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 Keystone's petition to do business in the State should submit written comments no later than April 17, 1995, 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\*03/21/95\*[80877]\*80 NH PUC 155\*Public Service Company of New Hampshire

[Go to End of 80877]

80 NH PUC 155

### Re Public Service Company of New Hampshire

DR 94-293  
Order No. 21,584

New Hampshire Public Utilities Commission

March 21, 1995

MOTION by electric utility for approval of a special rate contract with an industrial customer, Polyvac, Inc.; granted, with the commission citing to the associated economic development initiatives and ratepayer benefits emanating therefrom.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Special rate contract — Purposes — Load retention — Promotion of economic development programs — Contribution to cost as a factor affecting approval. p. 155.

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BY THE COMMISSION:

ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on December 6, 1994 a request for approval of a special contract, Special Contract No. NHPUC-101 (NHPUC-101), between PSNH and Polyvac, Inc. (Polyvac), a manufacturer of surgical containers, for its facility located in Manchester, New Hampshire. NHPUC-101 will be in effect for a period of ten years, effective the first day of the month following approval.

PSNH's filing included testimony and exhibits supporting a discounted rate for Polyvac in both redacted and unredacted form. PSNH requested protective treatment for certain information considered confidential in the Special Contract and the supporting materials. The Commission approved in part PSNH's Motion for Protective Order (Order 21,454 on December 12, 1994). PSNH filed a Motion for Rehearing of Order No. 21,454 on December 22, 1994, which was denied by the Commission (Order No. 21,491 on January 9, 1995). PSNH filed unredacted prices pursuant to the Commission's Order No. 21,454 on January 20, 1995.

[1] NHPUC-101 provides for rates of electric service lower than those otherwise available under applicable tariffed rates in the form of discounted energy and demand charges. By retaining service to Polyvac, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers. NHPUC-101 also provides for an additional discount for demand and energy above a base level to provide an economic incentive for production expansion.

PSNH and Polyvac are working together to determine appropriate energy conservation opportunities at Polyvac. In addition, Polyvac has been in direct contact with DRED, and has received a grant from the New Hampshire Industrial Research Center, and DRED, to assist in the development of new polymer products for the medical industry. If successful, such development will increase production and employment in New Hampshire. PSNH states that Polyvac does not

directly compete with any New Hampshire company.

Upon review of the filing, the Commission finds that Special Contract No. NHPUC-101 substantially meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633), as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-101 between PSNH and Polyvac, Inc. is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-101,

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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 Polyvac by our approval today of this special contract; 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 April 4, 1995 and to be documented by affidavit filed with this office on or before April 17, 1995; 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 17, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 20, 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 twenty-first day of March, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [N.H.] Re Generic Discounted Rate Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,454, 79 NH PUC 675, Dec. 12, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,491, 80 NH PUC 16, Jan. 9, 1995.

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NH.PUC\*03/27/95\*[80878]\*80 NH PUC 156\*Public Service Company of New Hampshire

[Go to End of 80878]

80 NH PUC 156

## Re Public Service Company of New Hampshire

Additional applicant: Northeast Utilities Service Company

DF 95-072

Order No. 21,585

New Hampshire Public Utilities Commission

March 27, 1995

ORDER authorizing an electric utility to substitute new letters of credit for existing ones with different banks, relative to certain pollution control revenue bonds. However, the utility is denied authority to modify such letters of credit in the future without first obtaining commission approval.

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### 1. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Letters of credit — Substitution — Factors — Expiration of existing letters of credit — Reasonableness of terms — Electric utility. p. 156.

### 2. SECURITY ISSUES, § 38

[N.H.] Necessity of commission authorization — Modification of letters of credit — Relative to pollution control revenue bonds — Electric utility. p. 156.

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BY THE COMMISSION:

### ORDER

[1, 2] On March 15, 1995, Public Service Company Of New Hampshire (PSNH) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking approval to substitute two new letters of credit

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and reimbursement agreements with Barclays Bank PLC, New York Branch (Barclays) and Swiss Bank Corporation, New York Branch (Swiss Bank) in place of the existing relationships with Barclays and Citibank, N.A. (Citibank) with respect to PSNH's outstanding Series D (Series D PCRBs) and Series E (Series E PCRBs) Taxable and Tax-exempt pollution control revenue bonds.

The existing letters of credit are due to expire this year and the proposed substitutions will reduce PSNH's fees associated with the letters of credit.

The proposed substitution of Barclays and Swiss Bank as the letter of credit banks will occur

pursuant to the terms of the financing agreements already approved and determined by the Commission to be consistent with the public good by the Commission in Order No. 19,889 in Docket No. 89-244 (July 20, 1990) and Order No. 20,587 in Docket No. 92-160 (September 1, 1992).

The proposed substitution will be accomplished without requiring PSNH to make any substantially new or more restrictive business covenants than those under existing agreements which have been previously reviewed and approved by the Commission in DF 89-244 and DF 92-160.

The proposed substitution will not require the issuance of any new securities or the incurrence of any additional indebtedness by PSNH.

PSNH seeks authority to obtain from time to time during the term of the Series D PCRBs and Series E PCRBs, without seeking further approval from the Commission, extensions, modifications, substitutions, and replacements of and for the letters of credit supporting the Series D PCRBs and Series E PCRBs and the related reimbursements agreements pursuant to the terms herein.

The Commission finds that the proposed substitutions are consistent with the public good. We do not find granting PSNH authority to modify the letters of credit without Commission oversight to be in the public good.

Based upon the foregoing, it is hereby

ORDERED, *nisi* that the Commission hereby approves and authorizes, pursuant to RSA 369:1 and 369:14, the execution and delivery by PSNH of new reimbursement agreements with Barclays with respect to the Series D PCRBs and Swiss Bank with respect to the Series E PCRBs, substantially in the form submitted to the Commission in the PSNH petition; and it is

FURTHER ORDERED, that the Commission denies PSNH authority to obtain from time to time during the term of the Series D PCRBs and Series E PCRBs, without seeking further approval from the Commission, extensions, modifications, substitutions, and replacements of and for the letters of credit supporting the Series D PCRBs and Series E PCRBs and the related reimbursement agreements from the same or different banks in accordance with the provisions of the Loan Agreements. The Commission will require PSNH to file for approval on any extensions, modifications, substitutions, and replacements of or for the said PCRBs. Any changes will be filed on a timely basis and the Commission will expect PSNH to take advantage of any opportunity to convert taxable PCRBs to tax exempt PCRBs; and it is

FURTHER ORDERED, that pursuant to N.H. Administrative Rule PUC 203.01, the companies shall cause an attested copy of the Order *nisi* to be published once in a newspaper having general circulation in that portion of the State in which operations are proposed to be conducted, such publication to be no later than March 30, 1995, and to be documented by affidavit filed with this office on or before April 5, 1995; 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, 1995; and it is

FURTHER ORDERED, that this Order, *nisi* will be effective on April 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 twenty-seventh day of March, 1995.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire/Northeast Utilities Service Co., DF 92-160, Order No. 20,587, 77 NH PUC 454, Sept. 1, 1992.

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NH.PUC\*03/27/95\*[80879]\*80 NH PUC 158\*Public Service Company of New Hampshire

[Go to End of 80879]

80 NH PUC 158

**Re Public Service Company of New Hampshire**

DR 95-012

Order No. 21,586

New Hampshire Public Utilities Commission

March 27, 1995

ORDER determining that an inquiry should be launched into the impact on an electric utility's rates of the proliferation of the use of special rate contracts for service to industrial customers.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customers — Special rate contracts — Propriety of — Factors — Load retention — Business and economic development. p. 159.

2. RATES, § 49

[N.H.] Commission jurisdiction — As to special contracts — Approval on case-by-case basis — No need for special, separate review process. p. 159.

3. RATES, § 339

[N.H.] Electric rate design — Industrial customers — Special rate contracts — Proliferation of — Load retention versus economic development goals — Impact on other ratepayers of aggregate effects of so many contracts — Initiation of inquiry. p. 160.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY AND  
POSITIONS OF THE PARTIES

On January 25, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a copy of Special Contract No. NHPUC-105 with Summit Packaging Systems, Inc. (Summit Contract) pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. PSNH represents that, absent the contract, Summit will continue phasing out its manufacturing in New Hampshire and will locate new machinery at its facility in Wisconsin.

On February 8, 1995, the Office of the Consumer Advocate (OCA) requested that the Commission schedule a procedural hearing on the Summit Contract. The OCA stated that it was concerned with the continuing number of special contracts filed by PSNH and the potential ramifications the discounts may have on the Residential class at the end of the fixed rate period.

On February 21, 1995, the Staff of the Commission filed an Objection to the OCA's request. While Staff agreed with the OCA's concern that the existence of numerous special contracts may affect the pool of ratepayers subject to tariffed rates, it argued that the issue of proliferating special contracts is broader than the specific contract contemplated in the instant docket. Staff recommended that the concern raised by the OCA be addressed in the context of a rulemaking rather than delaying the progress of this docket.

On March 2, 1995, the OCA filed a

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Response to Staff's Objection requesting a procedural hearing for the purpose of determining what issues are appropriate for this docket and what issues are appropriate for a generic docket regarding special contracts. Citing RSA 378:7, RSA 541-A:31 I, and the New Hampshire Constitution, the OCA argued that the Commission has authority to issue an order dealing with rates only after a full hearing. The OCA argued that *nisi* orders are therefore insufficient process for the determination of special contracts.

The OCA's Response also stated that the OCA wants to test whether this particular special contract meets the criteria set forth in the Commission's order in *Generic Discounted Rates Docket*, 77 NHPUC 650 (1992) (hereafter DR 91-172). The OCA argued that New Hampshire RSA 378:7 requires a hearing in this case.

On March 3, Cabletron Systems, Inc. (Cabletron) filed its notice of intent to intervene in this docket or any generic docket opened to explore the issues raised by the OCA. Cabletron's stated interest is the risk to captive industrial customers which it perceives as similar to the risk perceived by the OCA, that is, exposure of customers to reallocation of the costs of special contracts.

On March 13, 1995, PSNH filed its Statement in Opposition to the OCA's Response. Arguing



that no generic docket on special contracts is necessary, PSNH cited the Commission's order in DR 91-172 as dispositive with regard to the issues of revenue loss and ratepayers' risks. PSNH argued that this particular special contract is one crafted for business retention and economic development, and thus comes within the defined guidelines produced in DR 91-172 and the Checklist process established by the Commission. PSNH pointed out that the OCA did not claim that the proposed special contract breaches any of those Checklist items.

## II. COMMISSION ANALYSIS

We agree with Staff that the instant docket is not the forum in which to address the generic concerns raised by the OCA and, therefore, there is no need for a procedural hearing. This docket will consider a specific economic development and business retention special contract under RSA 378:18.

[1, 2] In DR 91-172, while we chose not to establish generic discounted rates, we identified the standards by which we would consider requests for economic development and business retention special contracts and we directed Staff to prepare a checklist of items by which to analyze such requests. We approved that checklist, after reviewing comments and suggestions provided by all parties to DR 91-172, thereby putting all interested parties on notice as to what factors we would use when considering a request for an economic development and business retention special contract. (Supplemental Order Approving Final Checklist for Economic Development and Business Retention Special Contracts, Order No. 20,882, June 23, 1993.)

Our orders on special contracts have been issued *nisi* since that time, with interested parties having a specified period during which to object to our approval or denial. We rely on RSA 378:18, in which the Legislature treated special contracts differently than other cases, for authority to approve or deny special contract requests by order. Unlike the cases contemplated by RSA 378:7, for which the Legislature required a hearing, the Legislature directed that special contracts may be acted upon by Commission order alone. The OCA claims that *nisi* orders are an insufficient process, and insofar as this claim may be interpreted as a request to create a different mechanism for considering special contracts, we reiterate our statement made in DR 91-172 at page 654: we do not find it necessary or appropriate at this time to create a mechanism outside the authority granted us in RSA 378:18 for review of special contracts.

The OCA states it wishes to test whether the Summit Contract meets certain criteria set forth in DR 91-172. The OCA relies upon an aggregate of many, unidentified, contracts to assert that risk exists warranting more formal investigation of this particular special contract than has been accorded prior special contracts. The OCA also asserts that this contract might be an example of predatory pricing or unfair competition and that it is important to test each

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case to prevent free riders. We raised these concerns in DR 91-172 and ordered preparation of the Checklist to guard against them. The OCA makes no statement as to how this particular contract fails to achieve any of the ten items on our published Checklist. Accordingly, we find the OCA's claims unsupported with regard to the Summit Contract and we will go forward, using the process we have in place. We will consider the Summit Contract in light of DR 91-172 and the Checklist for Economic Development and Business Retention Special Contracts and, should

we decide to approve it, do so by issuing an order *nisi*.

[3] The OCA raises an appropriate issue for the Commission's consideration when it questions the aggregate impact of numerous special contracts. As we indicated in DR 91-172, we believe that the element of risk of revenue loss is critical. We declined to establish a risk sharing formula but suggested we might consider developing such a formula in the future. We also indicated our readiness to undertake an investigation, if we become aware of an abuse of our special contract process amounting to unfair competition or creation of an untariffed class of customer. (77 NHPUC at 654 and 655.) The OCA has presented a possibility of such abuse, but provides no support therefor. Nonetheless, we recognize that numerous special contracts (hereinafter referred to as load retention special contracts) have been approved since DR 91-172 which are unrelated to economic development and business retention in New Hampshire. We therefore find it appropriate to open a docket of independent inquiry, pursuant to RSA 365:5, to which Cabletron will be given intervenor status.

Our inquiry will consider, at a minimum, whether a load retention special contracts checklist should be established to identify the standards and considerations the Commission will use in its analysis. Our Order of Notice opening the inquiry will define the scope of our inquiry more particularly.

Based upon the foregoing, it is hereby

ORDERED, that the OCA's request for a procedural hearing is denied; and it is

FURTHER ORDERED, that the Commission Staff shall commence an inquiry pursuant to the foregoing discussion and our further direction as to the scope of the inquiry.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of March, 1995.

#### 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\*03/27/95\*[80880]\*80 NH PUC 160\*Public Service Company of New Hampshire

[Go to End of 80880]

80 NH PUC 160

### Re Public Service Company of New Hampshire

DE 94-080

Order No. 21,589

New Hampshire Public Utilities Commission

March 27, 1995

ORDER approving a partial settlement offered with respect to an electric utility's 1994 integrated least-cost resource plan filing. Commission deems adequate the utility's planning process vis-a-vis Clean Air Act Amendment requirements. It also finds that, given forecasts that capacity additions will not be needed for some time, it is reasonable for the utility to focus on management of existing resources without the need to immediately address additional renewables, although a greater commitment to renewables is warranted for the future. Commission acknowledges that it might become necessary at some point to open an inquiry into competitive bidding procedures for new supply resources. Despite its merger with Northeast Utilities, the utility is directed to continue its long-term resource planning on an intrastate, company-specific basis rather than on a combined system basis.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Purchased power — Proposals for competitive bidding — Initiation of inquiry — Solicitation of comments. p. 168.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Settlement agreement — Additional analyses of short- versus long-term environmental risks — Deferral of light loading issues — Deferral of competitive bidding proposals for demand-side management projects. p. 168.

3. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Distant need for capacity additions as a factor — Greatest focus on management of existing resources — But need for increased emphasis on renewables — Greater emphasis on deploying distributed utility resources. p. 168.

4. CONSERVATION, § 1

[N.H.] Electric utility — Integrated least-cost resource planning — Necessity of greater commitment to renewables — But no immediate minimal requirement. p. 168.

5. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Clean Air Act Amendment (CAAA) requirements — Reasonableness and adequacy of CAAA-specific planning — Use of selective catalytic reduction technology — Merrimack station. p. 169.

6. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Effect of merger

and multistate operations — Long-term planning on company-specific rather than combined systemwide basis — Goal of minimization of cost for jurisdictional ratepayers. p. 169.

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APPEARANCES: Robert P. Knickerbocker, Jr., Esq. of Day, Berry & Howard and Catherine E. Shively, Esq., on behalf of Public Service Company of New Hampshire; Ann Brewster Weeks, Esq. on behalf of the Conservation Law Foundation; Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton on behalf of EnerDev, Inc.; Carolyn Mercer-McFadden on behalf of the Sierra Club, New Hampshire Chapter; Michael W. Holmes, Esq. on behalf 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:

## ORDER

### I. PROCEDURAL HISTORY

The subject of this proceeding is the 1994 least cost integrated resource plan (LCIP) filed by Public Service Company of New Hampshire (PSNH) on April 29, 1994. By Report & Order No. 21,251 (June 7, 1994), we established a procedural schedule and granted a timely request for intervention filed by the Sierra Club of New Hampshire. Though granted full intervention, the Sierra Club of New Hampshire did not actively participate in the case. The Conservation Law Foundation (CLF) filed a late motion to intervene which we granted at our August 8, 1994 Commission meeting.

On August 25, 1994, PSNH filed a motion seeking protective treatment of its Merrimack Unit 2 Continued Operation (CUO) Study. Staff partially objected to the relief sought in PSNH's motion because it requested relief beyond the normal Commission procedures to protect confidential materials. By Order No. 21,353 (September 19, 1994) we granted PSNH's request for confidential treatment but denied its request for special protective measures.

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A late request for intervention was filed by EnerDev, Inc. (EnerDev) on November 3, 1994. PSNH filed a timely objection to EnerDev's late filing. By Order No. 21,432 (November 18, 1994) we granted EnerDev intervention subject to certain terms and conditions which limited the scope of its involvement in the remainder of the proceeding. Specifically, we denied EnerDev the right to conduct discovery and to submit testimony but allowed it to participate in the final hearing through the cross-examination of witnesses.

Before the final hearing CLF filed the testimony of Alan J. Noguee, OCA filed the testimony of Kenneth E. Traum, and Staff filed the combined testimony of George R. McCluskey, John C. Cutting and Scott W. Harrold. PSNH thereafter filed rebuttal testimony of Frank B. Sabatino, William L. Stillinger, Michael W. Townsley, and the combined testimony of Joseph J. Staszowski, Terry C. Ranger and Dennis R. Brown.

An Offer of Partial Settlement was filed on December 16, 1994. The Settlement was entered into by PSNH, OCA (the Signatory Parties) and Staff, which resolved all but three outstanding

issues relative to PSNH's 1994 LCIP.

The final hearing was held on December 19-20 and 29 relative to the Partial Settlement and disputed issues. We heard testimony from witnesses for PSNH, CLF, OCA and Staff. At the close of the hearing we agreed to entertain briefs relative to the disputed issues. Staff and all parties who participated in the final hearing filed post-hearing briefs on January 31, 1995.

We deliberated this matter at our Commission meeting on February 13, 1995. On March 1, 1995, PSNH filed a "Motion for Special Post-Deliberation Consideration". CLF filed an objection to PSNH's Motion on March 6, 1995 and Staff filed a response to the same on March 9, 1995.

## II. SETTLEMENT AGREEMENT

The Offer of Partial Settlement resolved nine issues that had been the subject of data requests and the Technical Sessions and Settlement Conferences throughout the proceeding.

### A. Purchase of Small Power Producer/Cogenerator Power During Light Loading Periods

Staff and the Signatory Parties agreed that the issue of Light Loading should be addressed in a separate proceeding and that the results of that proceeding be incorporated in future PSNH LCIP filings.

### B. Electrical Energy Demand Forecast, 1994-2008

Staff and the Signatory Parties agreed that PSNH's forecasting process complies with the Commission's requirements and orders, and that the Energy Demand in the LCIP and discussed in NU's 1994 Economic and Load forecast for 1994-2003 is reasonable.

### C. Environmental Uncertainties and Risks

Staff and the Signatory Parties agreed that the 1996 LCIP will include consideration of existing and possible new or stricter environmental regulations, their impacts on resources and PSNH's strategies for dealing with such changes.

### D. Competitive Bidding for Utility Supply and Demand Resources

Staff and the Signatory Parties agreed that competitive bidding is appropriate when there is a demonstrable need for new supply resources and recommend that the Commission open a rulemaking to determine appropriate procedures for supply-side bidding. They agreed that consideration of competitive bidding for utility demand-side be deferred pending greater experience with both utility-sponsored DSM programs and competitive bidding for supply-side resources.

### E. Avoided Cost Calculations

Staff and the Signatory Parties agreed that PSNH's avoided energy costs will be calculated according to the Commission's decision in this docket on the appropriateness of Combined

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System or PSNH System planning. For purposes of the Settlement, they agreed on a stream of capacity costs filed as Attachment 1 to the Settlement.

#### F. Supply-side Resources

The Signatory Parties agreed that the 1996 LCIP will describe and support PSNH's supply procurement strategy, including its position on the balance between short and long term resources and the details of the costs of new supply-side resources.

#### G. Demand-side Management

The Staff and Signatory Parties agreed that PSNH will fund DSM at a level of approximately \$3.057 million in 1995 and \$3.897 million in 1996, including direct expenditures and lost fixed cost revenues. In addition to funds from existing sources, PSNH will continue to utilize 80% of the proceeds from the sale of SO<sub>2</sub> allowances and 25% of the net savings that result from re-financing through the Business Finance Authority. They also agreed that the 1996 LCIP will be based on a thorough evaluation of DSM potential in PSNH's service territory, will discuss options to access that potential and will include information on the cost of those resource options.

#### H. Integration of Supply-side and Demand-side Resources

The 1996 LCIP Integration report will describe the recommended resource plan, summarize the analysis that led to its selection and detail key performance results. Detailed cost and savings data will be included in a technical appendix which shall be provided confidential treatment as the Commission deems appropriate. Staff and the Signatory Parties agreed that the recommended resource plan is not a commitment but rather a best estimate of future resources to meet projected demands. At a minimum, the plan will include the type, size and timing of uncommitted additions and detail any retirements of existing resources.

#### I. Uncertainty and Risk

Staff and the Signatory Parties agreed that the 1996 LCIP will include the results of the analysis detailing key performance results of the following scenarios: 1. low and high load growth; 2. loss of a significant resource; 3. new and/or stricter environmental regulations; and 4. loss of a large block of load.

### III. CONTESTED ISSUES AND POSITIONS

The record in this matter includes extensive pre-filed testimony, exhibits, legal briefs and the transcript of three hearing days. Due to the number and complexity of the issues in this proceeding, we will only highlight the contested issues and positions of Staff and the parties.

Issue 1: Whether Or Not PSNH Should Be Required To Acquire Utility Distributed Resources And Additional Renewable Resources

#### A. CLF

CLF contends that despite facing substantial financial risks related to future environmental regulation and fossil fuel price fluctuations, PSNH's 1994 LCIP filing contains little or no contingency planning to meet future uncertainty. Pointing to New Hampshire least cost planning statutes, RSA 378:37-39, CLF contends that the filing is deficient in at least three ways: (a) insufficient consideration and priority was given to the role renewable resources play in addressing future environmental uncertainty; (b) no value was placed on hands-on experience that accompanies small but meaningful investment in renewable resources; and (c) the filing

omits any mention of the economic benefits that could accrue from a strategy which integrates distributed utility resources<sup>1(15)</sup> into the PSNH distribution and transmission network. In order to remedy these perceived shortcomings, CLF requests that the Commission direct PSNH to: (a) submit a comprehensive assessment of the long-term value of renewable resources in

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diversifying supply and mitigating financial risks; (b) commit to a research and development plan for the orderly development of advanced renewable and distributed utility technologies; and (c) conduct a limited solicitation for competitive renewable resources.

*B. PSNH*

PSNH disputes the contention that it has failed to adequately consider the role of renewable resources in its LCIP. It points out that in 1993 renewables comprised approximately 12% of its capacity requirements and 15% of its energy requirements, figures which compare favorably with industry standards. PSNH's current activities include its participation in development projects involving wind, solar photovoltaic, landfill methane recovery, and fuel cells. In addition, PSNH participates in several Electric Power Research Institute renewable programs, and it is involved in a wind energy project that is designed to evaluate the wind potential in New Hampshire.

PSNH opposes CLF's recommendation to issue a "green RFP" because new capacity is not needed until 2007, and any purchases made prior to that time would increase cost pressures and harm New Hampshire's economy. For the same reasons, PSNH opposes the acquisition of distributed utility resources.

*C. OCA*

Given the generally high cost of existing renewable resources, the OCA recommends a cautious approach to the acquisition of new renewable and distributed utility resources.

*D. Staff*

Staff's pre-filed testimony did not address renewable resources but during the hearing Staff offered the testimony of George McCluskey relative to CLF's recommendations. Mr. McCluskey is the Commission's Manager of Energy Planning.

Staff opposes CLF's recommendation to issue a green RFP in light of PSNH's excess capacity, but Staff agrees that the 1994 LCIP failed to analyze options to avoid transmission and distribution reinforcement and replacement costs through investments in distributed utility resources. Staff recommends that PSNH be directed to evaluate this option in its 1996 LCIP filing.

Issue 2: Whether or Not PSNH's Adoption of Selective Catalytic Reduction Technology Constitutes the Least Cost Alternative to Meet State and Federal Clean Air Act Requirements

*A. PSNH*

Title I of the Clean Air Act Amendments of 1990 (CAAA) requires all regions which are not in compliance with National Ambient Air Quality Standards for priority pollutants to attain such compliance within specified time periods. Pursuant to CAAA, New Hampshire must implement



plans to reduce nitrogen oxide (NO<sub>x</sub>) emissions in order to address ozone non-attainment.

In 1994, the New Hampshire Air Resources Division (NHARD) adopted final regulations which established specific NO<sub>x</sub> emissions limits for PSNH's Merrimack 2 in 1995 (the so-called Phase I standard) and a range of acceptable emissions for 1999 (Phase II standard). That Phase II range extends from .4 to .1 lbs of NO<sub>x</sub> per MMBTU of heat input, with final determination of the Phase II limit yet to be made by the NHARD director.

According to PSNH, NHARD's decision will be significantly influenced by the work of the Ozone Transport Commission. Current indications by that organization suggest that Phase I reductions will be insufficient to bring the Northeast region into ozone attainment. PSNH states that because the New Hampshire Phase I reductions are more extensive than those in other Northeastern states, additional major reductions beyond Phase I will not be called for at Merrimack 2. For this reason, PSNH believes it is unlikely that the NHARD director will adopt a 1999 emissions standard more stringent than the .4 lbs NO<sub>x</sub> per MMBTU limit.

According to PSNH, because of the unique operating characteristics of the Merrimack 2

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boilers, post-combustion control strategies for Phase I compliance are limited to either Selective Catalytic Reduction (SCR) or Selective Non-Catalytic Reduction (SNCR) technologies. Based on a review of SCR systems in operation in Germany, PSNH contends that SCR is the only technology which has the capability for Phase II compliance.

Given this technological limitation, PSNH analyzed the economics of six options in its Merrimack 2 Continued Unit Operation (CUO) Study: (i) SCR in 1995; (ii) SNCR in 1995 with SCR in 1999; (iii) SNCR in 1995 with natural gas reburn in 1999; (iv) SNCR in 1995, then retirement in 1999 and replacement with supply options as needed; (v) SNCR in 1995 then retirement in 1999 and replacement with supply and demand-side options; (vi) SNCR in 1995 then repower in 1999. In response to data requests, PSNH also considered SNCR in 1995 then retire in 1999 and replace with a gas-fired combined cycle unit. The results of PSNH's analyses indicates that, on either a Combined or PSNH System basis, the installation of SCR in 1995 is the least cost means of complying with CAAA.

PSNH rejects criticisms by EnerDev that its CUO Study does not reflect the real capital and operating costs of a full-scale SCR system. PSNH points out that the catalyst manufacturer has provided a performance guaranty which obligates the manufacturer to install replacement catalyst and supply additional ammonia, at no additional cost to PSNH, whenever the performance of the SCR system deteriorates below acceptable levels.

PSNH also rejects EnerDev's claim that the gas price assumption used in the combined cycle unit option is excessively high and unfairly biased against that option. While agreeing that its gas price forecast is on the high end of forecasts, PSNH argues that the difference between its forecast and EnerDev's is not significant enough to affect the final result. According to PSNH, in order for a combined cycle unit to cost the same as installing SCR, the heat rate of the combined cycle unit would have to be reduced 43%. If the heat rate remained the same, the gas price forecast would have to be reduced by 81%.



In summary, PSNH argues that: (a) SCR is a proven technology capable of meeting reasonably anticipated emission limitations for 1999; (b) the performance guaranty protects PSNH in the event that the technology fails to perform as expected; and (c) SCR is the least cost option for compliance with the CAAA.

#### B. *EnerDev*

As previously noted, EnerDev's limited intervenor status precluded it from presenting testimony or other evidence; however, during the final hearing, we permitted it to conduct extensive cross-examination of PSNH's witnesses. EnerDev also presented its position relative to this issue in its post-hearing brief.

EnerDev contends that the Commission should reject the conclusion that SCR technology is the least cost means to comply with state mandated NO<sub>x</sub> emissions limits because the CUO Study submitted by PSNH is incomplete and based on erroneous cost assumptions.

In support of its position, EnerDev argues that PSNH only began studying the SCR option in April 1994 and it did not visit Germany (the country with most experience with SCR retrofitted coal plants) until August 1994, the same month the CUO Study was completed. In addition, PSNH failed to investigate the experiences of two coal-fired plants in the United States using SCR technology and omitted from its analysis the financial risks associated with a more stringent emissions requirement and the associated risk that the SCR technology will fail to achieve the projected emissions standards. EnerDev expressed concern about the ability of SCR technology to cost-effectively achieve large reduction's in NO<sub>x</sub> emissions<sup>2(16)</sup>.

Another line of cross-examination involved the potential for "ammonia slip". EnerDev pointed out that the German plants burned pulverized coal versus the crushed coal at Merrimack, suggesting that different types of coal could affect SCR performance.

EnerDev also questioned the value of the performance guaranty provided to PSNH by its contractor. The guaranty does not protect against the risk of plant closure resulting from the failure of the SCR technology to meet the

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NO<sub>x</sub> emissions requirements.

In addition to raising concerns about the functioning of the SCR process and its ability to meet the required emissions limits, EnerDev claims that the COU Study contains erroneous assumptions which seriously skew the results. One of the most critical of those errors was the projected cost of natural gas to fire the combined cycle turbine that PSNH modeled as a potential replacement for Merrimack 2. Using alternative long-term gas price forecasts and different inflation assumptions, EnerDev contends that the lifetime cost of the combined cycle gas turbine could be significantly lower than the figure calculated by PSNH.

Following the hearing, EnerDev requested that the Commission order an independent study to determine whether the capital and operating cost assumptions used in the CUO Study provide a reasonable basis to select SCR technology for Merrimack 2.

### C. Staff

Mr. McCluskey testified that SCR cost estimates prepared by PSNH indicate a capital investment of about \$20 million in 1995 to cover the cost of the initial catalyst and ancillary equipment at Merrimack 2, followed by additional investments in replacement catalyst every 2 years, plus annual ammonia expenses ranging from \$0.5 million in 1995 to \$3.8 million in 2013. Taken together, those costs could increase PSNH's annual revenue requirement by between \$2 million and \$4 million during the fixed rate period.

Mr. McCluskey further testified that based upon the data furnished to Staff, PSNH's selection of SCR technology for Merrimack 2 is the least cost means of complying with the CAAA. Despite this conclusion, Staff expressed a concern that the SCR technology may prove incapable of achieving the emissions levels projected for 1999, which in turn could result in additional costs to either repower Merrimack 2 or to retire and replace it with long-term purchased power. Staff also pointed out that PSNH's analysis was based on an assumption that the Phase II emissions standard will be set at or close to the maximum allowable under New Hampshire law. According to Staff, these assumptions have implications with regard to the prudence of PSNH's compliance strategy.

### D. OCA

The OCA expressed concern that SCR technology is unproven for a facility with Merrimack 2's characteristics and that the contractor guaranty does not cover replacement power costs in the event the facility fails to comply with the final Phase II requirements. In light of these concerns, the OCA recommends that the Commission allow PSNH to proceed at its own risk with the installation of SCR equipment but that cost recovery issues be addressed in a separate proceeding.

Issue 3: Whether PSNH Should Be Permitted To Conduct Its Long-Term Least Cost Planning On A Combined System Basis

#### A. PSNH

PSNH contends that the entire Sharing Agreement is premised on Combined System planning. Although the language of Section 4 of the Agreement appears to limit Combined System planning to the acquisition of new resources, PSNH argues that by implication such an approach applies to all planning activities. According to Mr. Sabatino, it "was accepted that Combined System planning was what was contemplated by the agreement and by the negotiators". Transcript, Day II at 16. PSNH also asserts that the approvals of the NU/PSNH merger by Connecticut, Massachusetts and the Federal Energy Regulatory Commission were all premised on the concept of Combined System planning.

PSNH further contends that the Commission specifically approved Combined System planning when it approved the Sharing Agreement (and related merger agreements) in DR 89-244. Mr. Sabatino pointed to page 170 of that decision and testified that the Commission "approved without qualification" both the Sharing Agreement and the Capacity Transfer Agreements. *Id.* at 18. Because there was no such qualification, PSNH argues that the

Commission approved Combined System planning.

On the other hand, Mr. Sabatino testified that the issue of Combined System planning was never raised as an issue in DR 89-244 because "it was accepted that Combined System planning was what was contemplated by the agreement and by the negotiators". *Id.* at 16.

In response to Staff's argument regarding the Commission's order in DR 89-244 relative to PSNH's future least cost planning requirements, PSNH counters that that aspect of the Commission's order relates only to demand-side measures (DSM) and state-mandated independent power producer (IPP) purchases. *Id.* at 17-10.

PSNH further argues that Staff's recommendation is not in PSNH's long-term best interests and that Combined System planning has been accepted in FPPAC proceedings in relation to capacity transactions. Exhibit 13, Rebuttal Testimony of Frank B. Sabatino, p. 4, 23-24.

#### B. Staff

Staff contends that PSNH should be required to conduct its long-term least cost resource planning from the perspective of the PSNH System rather than from that of the Combined System. Staff bases its recommendation on three principal grounds. First, the plain language of the Sharing Agreement requires Combined System planning only in the event that the Combined System needs long-term capacity. Second, the Commission's order in DR 89-244 expressly requires PSNH to conform to New Hampshire's least cost planning requirements. Third, due to the nature of the affiliate relationship between PSNH and NU, Combined System planning is incompatible with the needs of PSNH.

Staff disagrees with PSNH's proposed interpretation of the Sharing Agreement. Staff maintains that the plain language of the Sharing Agreement requires Combined System planning only in the event that the System requires additional generating capacity. According to PSNH's filing, there will be no such capacity need until after the Sharing Agreement terminates<sup>3(17)</sup>. Accordingly, Staff maintains that the Sharing Agreement provides no support for PSNH's position.

Staff also disagrees with PSNH's interpretation of the Commission's order in DR 89-244. Staff maintains that the Commission expressly rejected any notion that PSNH was relieved of its least cost planning obligations. Although the Commission approved the Sharing Agreement, Staff contends that when it did so it also indicated that PSNH would be required to conform to New Hampshire's least cost planning requirements.

According to Staff, the nature of the affiliate relationship established by the Sharing Agreement lends further support for Staff's position. The Combined System is not a completely integrated generation and transmission system like the Initial NU System. The participants in the Initial NU System pool their generation and transmission resources in order to minimize both the short and long-term costs of meeting total system demand. Unlike the Combined System, the participants in the Initial NU System incur costs based on their use of the system and therefore share equitably in its benefits. The Combined System works differently. While the Initial System shares costs among its participants, PSNH is required to bear the total costs of its generation and transmission resources<sup>4(18)</sup>. According to Staff, the difference is significant from a planning standpoint. When a fully integrated system makes resource decisions for the benefit of the

system, the participants of the system share equitably in the costs and benefits of that decision. In the case of PSNH, it bears the total cost for its resources, irrespective of decisions made for the benefit of the Combined System.

### C. OCA

OCA argues that PSNH's least cost filings should contain information on the financial implications of different courses of action, including PSNH System planning, Combined System planning and membership in the Northeast Utilities Generation and Transmission Agreement (G&T Agreement). OCA points out that once the Sharing Agreement terminates, all

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options which are available to PSNH should be evaluated. OCA agrees with Staff that one of the objectives of PSNH's planning should be to reduce the risk associated with unplanned outages at Seabrook. In order to achieve that objective, OCA suggests selling or swapping portions of PSNH's ownership in Seabrook.

## IV. COMMISSION ANALYSIS

### A. *The Settlement Agreement*

[1, 2] Staff, the OCA and PSNH submitted an Offer of Partial Settlement which covers nine separate and diverse issues. In particular, Staff and the signatories recommend that we open an investigation into competitive bidding for new supply resources to determine appropriate rules and procedures for utility competitive bidding programs. We interpret this recommendation to be a request to initiate a rulemaking for competitive bidding processes.

As discussed in Order No. 21,545, DE 94-081, we intend to seek comments from electric utilities and other interested parties on a range of issues relating to competitive bidding. When those comments have been reviewed and digested, we will be better prepared to respond to the rulemaking request. We, therefore, reserve the right to determine whether to address the competitive bidding issues through rulemaking or in some other manner.

We approve all other components to the Settlement as being appropriate resolutions of these issues. Several components of the Settlement require PSNH to address specific planning issues raised in the required reports in the 1994 LCIP filing. Staff has requested, and PSNH has agreed to provide in future LCIP filings, additional information and analysis of environmental and other uncertainty and risk, of the integration of supply and demand side resources and of PSNH's supply procurement strategy. Staff and the Signatory Parties have agreed to defer the issue of light loading to a separate docket and to defer issues of competitive bidding for supply and demand resources until there is a need for new supply resources, and then more experience with supply side bidding and with utility DSM programs before addressing bidding for DSM. We agree that more information on risk and on PSNH's planning processes is a useful addition to future filings and that we do not need to address the light loading and competitive bidding issues in this proceeding. We also find that the stipulated level of funding for the 1995 and 1996 DSM programs is appropriate and that an evaluation of DSM potential in PSNH's service territory will provide helpful guidance on future levels of DSM budgets. We accept the stipulated steam of avoided capacity values and will expect PSNH, as agreed, to file avoided energy costs consistent

with our findings below.

#### *B. Renewable Resource Strategy*

[3, 4] We agree with CLF's assertion that PSNH's filing inadequately addresses the role of renewable resources in its least cost planning, but for the reasons set forth below, we decline to order PSNH to acquire additional low cost renewable supplies.

As previously noted, PSNH's projected need for capacity is sufficiently distant that we believe its planning activities should focus on the management of existing resources instead of new acquisitions. Although the reduction of harmful emissions was a factor in our decision to approve Granite State Electric's "Green RFP" purchases, PSNH's resource mix already includes an adequate amount of renewable resources. This fact, along with the remedial work ongoing at Schiller and the two Merrimack units, the recent Newington gas conversion, and the high percentage of nuclear capacity, leaves PSNH reasonably well positioned to withstand most uncertainties associated with future environmental regulations. In light of PSNH's relatively high rates, we believe the public interest would be better served at this time by actions designed to reduce rather than increase unit costs.

Although we decline to adopt CLF's recommendation, we will require PSNH to include in its next LCIP a description of its renewable resource R&D activities, along with information on the scale of those activities and an explanation of the strategic importance of that work.

One area where additional investments

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might lead to cost reductions in the near term is transmission and distribution (T&D). There appears to be no indication in this particular least cost plan that PSNH has evaluated the distributed utility generation as thoroughly as it ought to in order to be certain that the company and the ratepayers are being served appropriately. Therefore, we direct PSNH to evaluate in its next LCIP the costs and benefits of deploying distributed utility resources as an alternative to costly additions or modifications to the existing T&D networks.

#### *C. Merrimack 2 Strategy*

[5] We accept the opinions of Staff and PSNH relative to the options considered by PSNH in its Merrimack 2 CUO Study. The record adequately supports a finding that PSNH reasonably considered the available alternatives to meet CAAA requirements. The CUO Study indicates that the installation of SCR technology in 1995 is the most economic means of complying with New Hampshire's 1995 and anticipated 1999 NO<sub>x</sub> emissions limits. An important assumption, however, which Staff pointed out during the hearing, is the capability of SCR technology to achieve the projected emission standard.

EnerDev has failed to establish that the CUO Study was premised on unrealistic assumptions and incorrect data. PSNH's analysis adequately supports its conclusion that with lower long-term gas prices and more efficient combined cycle units, the SCR option is still the most economic alternative.

Our decision in this case should not be interpreted as pre-approval of the SCR project which

results in automatic cost recovery. We agree with the OCA that the scope of this proceeding is limited to PSNH's planning processes and procedures, an area that does not extend to cost recovery issues. In addition, we note for the record that PSNH's decision rests on certain critical technical and regulatory assumptions regarding the performance of SCR technology and the Phase II emissions standards. We also note that PSNH's review and selection of the SCR technology was completed in a somewhat abbreviated time frame for a project of this magnitude. In approving this aspect of PSNH's least cost filing we conclude only that PSNH employed a reasonable planning methodology to reach its conclusion. Cost recovery issues will be addressed in a separate proceeding.

#### *D. Combined System vs. PSNH Planning*

[6] Under New Hampshire law and the long-standing policy of this Commission, electric utilities of this state have an obligation to conduct long-term resource planning in order to meet the energy needs of its customers at the lowest reasonable cost. RSA 378:37. As will be discussed in more detail below, we believe that when the Commission approved the NU/PSNH merger and the associated affiliate agreements, it did not relieve PSNH of its least cost planning obligations under New Hampshire law. The issue before us is whether PSNH may adequately satisfy these obligations by utilizing a planning methodology which evaluates PSNH's needs based on the economics of the Combined System as opposed to the economics of the PSNH System. For the reasons set forth below, we conclude that it cannot, and we order PSNH to conduct future least cost planning by evaluating resource options available to PSNH based on the economics of the PSNH System. We do not believe it would be in the current interests of New Hampshire ratepayers for PSNH to plan the development of its system based on the needs and economics of the Combined System.

We begin our analysis with the plain language of the Sharing Agreement and an explanation of the Commission's order which approved that Agreement as part of the PSNH/NU merger. We then turn our attention to the arguments for and against Combined System planning.

##### *1. Sharing Agreement*

We do not accept PSNH's argument that a Combined System planning approach is reasonably implied from Section 4 of the Sharing Agreement. Section 4 of the Sharing Agreement, entitled "Resource Planning", expressly states that Combined System planning would be

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utilized in the event that the Combined System requires additional capacity. Except for this specified circumstance, we believe that nothing in the Sharing Agreement requires PSNH to conduct Combined System least cost planning. According to undisputed current projections, the Combined System will not need capacity until 2007, five years after the Sharing Agreement terminates.

In light of the plain language of Section 4, we accord less weight to the contrary testimony of PSNH relative to the general intent of the negotiators who participated in the reorganization and merger. Whatever may have been intended by certain negotiators during the merger and reorganization, the plain language of Section 4 unambiguously limits Combined System

planning to those decisions which relate to the acquisition of new capacity for the purpose of meeting a Combined System need.

We also believe that the Sharing Agreement recognizes our regulatory authority over planning decisions relative to the acquisition of demand-side resources and purchases from IPPs. The second sentence of Section 4 is an expression of the parties' intent to use Combined System economics when evaluating these resources "... to the extent appropriate or practicable in light of State and Federal regulation." New Hampshire law requires that resource decisions be made to minimize costs to New Hampshire ratepayers; accordingly, decisions based on the needs of the Combined System could produce results which are inconsistent with RSA 378:37.

Because the Sharing Agreement does not call for PSNH to conduct Combined System planning unless there is a capacity need, Staff's recommended planning approach would not in our opinion "impair or change" the Rate Agreement or Sharing Agreement. *See*, RSA 378:42. We believe that Staff's recommendation would simply require PSNH to comply with New Hampshire's least cost planning requirements in a manner which is consistent with PSNH's obligations under the Sharing Agreement. In the unlikely event that the Combined System requires additional capacity during the term of the Sharing Agreement, we recognize PSNH's contractual obligation to engage in a combined planning approach.

### 2. *The Commission's Order in DR 89-244*

Our decision in this proceeding is also justified by the directive of our order in DR 89-244. In that order the Commission directed PSNH/NU to "comply with *all existing and any future least cost integrated planning ... requirements of the commission*". 75 NH PUC 396,481 (Order No. 19,889 July 20, 1990)(emphasis added). Clearly, this was an unambiguous reservation of authority over PSNH's future least cost planning procedures.

Moreover, before the Commission issued its order in DR 89-244, a joint recommendation stated that PSNH/NU were committed "to implement least cost planning as specified by the Commission ..." PSNH cannot now argue that we are constrained in our authority over its least cost planning procedures.

### 3. *Methodological Differences*

We turn our analysis to the disagreement over which planning methodology is in the long-term best interests of PSNH and its customers. PSNH argues that Staff's recommendation will cause long-run disadvantages to PSNH and its customers. Staff counters that because the Combined System is not a "fully integrated system"<sup>5(19)</sup>, PSNH should plan according to customary least cost principles, *i.e.*, in a manner which meets the needs of PSNH's customers at minimum cost. According to Staff, each power system has a unique mix of generation and transmission resources that will minimize its power costs. The resource selections that each system must make in order to arrive at its optimal mix will therefore differ depending on the unique existing circumstances of each system and the rate and nature of future load growth. Accordingly, Staff believes it is unlikely, although not impossible, that Combined System planning will result in a least cost mix of resources for PSNH ratepayers.

We believe that a planning approach based on the needs and economics of the PSNH System is the more effective methodology of producing a least cost resource mix. Because



PSNH is responsible for all of its generation and transmission costs, its planning should be focused on reducing those costs.

Our decision relative to this issue does not mean that we believe PSNH was disadvantaged by its exclusion from the NUG&T. On the contrary, if Mr. Sabatino's testimony is correct about the acquisition premium remaining with PSNH, this simply increases the probability that PSNH will benefit by remaining outside of the G&T. This supports our decision to require PSNH to plan on a PSNH System basis.

We reject the claim that PSNH's rates would increase under PSNH System planning. PSNH System planning seeks to identify from available resources those that are least cost for PSNH and its ratepayers. By increasing the number and diversity of resource options, PSNH will be better able to minimize its costs and rates.

PSNH argues that planning for a larger power system such as the Combined System increases rather than decreases the options available to meet future demands. This argument fails to take into account the fact that under the Sharing Agreement PSNH does not enjoy the benefit of selecting from that wider array of resources. On the contrary, according to PSNH its capacity needs during the term of Sharing Agreement must be met by the Initial System at a cost which is already defined under the Sharing Agreement.

We therefore find no basis for PSNH's claim that prices will be lower under the Combined System planning approach. Finally, we must address the implication in PSNH's testimony that resource options which are now available to the Combined System would be denied to PSNH under PSNH System planning. We emphasize that our decision today does not preclude PSNH from participating in generation projects with affiliate operating companies, or with any other project developer, provided such participation is least cost for New Hampshire.

In conclusion, we direct PSNH to plan the long-term development of its system in a manner which minimizes costs to New Hampshire electric ratepayers. Consistent with this decision, future LCIP filings will be prepared based on the PSNH System planning methodology. The basic economic criterion for such planning is minimization of PSNH's present value revenue requirements. This order is not intended to affect energy or pass-through transactions which are short-term in nature and thus more closely related to operations than long-term planning.

PSNH and Staff agree that PSNH is unlikely to require additional supply resources during the term of the Sharing Agreement. We therefore direct PSNH to focus its planning efforts on the efficient management of existing resources. In particular, we will require PSNH's 1996 LCIP to address, and where appropriate, develop plans to minimize the cost of utilizing existing resources.

We will not address the issues raised in PSNH's Motion for Special Post-Deliberation Consideration or in the responses filed thereto. Nothing in the rules or statutes that govern our procedures authorize such filings or compel us to address them. However, this Order in itself has clarified our previous deliberations, and to the extent that PSNH believes this Order has not adequately addressed its concerns, it may pursue the appropriate post-Order remedies.



Based on the foregoing; it is hereby

ORDERED, that the Offer of Partial Settlement submitted by PSNH, Staff and OCA is hereby APPROVED; and it is

FURTHER ORDERED, that PSNH in its next LCIP filing evaluate the costs and benefits of installing distributed utility resources within its transmission and distribution system; and it is

FURTHER ORDERED, that PSNH's planning with regard to its CAAA compliance is adequate; and it is

FURTHER ORDERED, that PSNH shall conduct its least cost integrated resource planning based on the economics and needs of the PSNH System in accordance with this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of March, 1995.

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#### FOOTNOTES

<sup>1</sup>Distributed utility resources include small generation technologies, energy storage systems and DSM measures which are located close to customer loads.

<sup>2</sup>In particular, EnerDev cites the potential problems associated with the conversion of SO<sub>2</sub> to SO<sub>3</sub> which could cause air heaters to plug, leading to plant outages and higher power costs.

<sup>3</sup>According to PSNH's projections, the Combined System will not need additional capacity until 2007. Exh. 1, p.2. The Sharing Agreement terminates in 2002.

<sup>4</sup>PSNH's costs are reduced by its share of joint dispatch and capability responsibility savings which result from the single entity status of the Combined System within NEPOOL.

<sup>5</sup>According to Staff a fully integrated system is one where the participants pool resources and equitably share in the costs and benefits. The affiliates of the NU Initial System are structured this way as members of the NUG&T. PSNH and the Initial System pool resources, resulting in operational savings, but PSNH is responsible for all of its "own load" costs.

#### 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, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,353, 79 NH PUC 496, Sept. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,432, 79 NH PUC 644, Nov. 18, 1994. [N.H.] Re Concord Electric Co., DR 94-081, Order No. 21,545, 80 NH PUC 87, Feb. 22, 1995.

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NH.PUC\*03/28/95\*[80881]\*80 NH PUC 172\*Tilton-Northfield Aqueduct Company, Inc.

[Go to End of 80881]

80 NH PUC 172

**Re Tilton-Northfield Aqueduct Company, Inc.**

DF 94-264

Order No. 21,590

New Hampshire Public Utilities Commission

March 28, 1995

ORDER authorizing a water utility to use up to \$10,000 from a previous securities issue to purchase additional meters. The original issuance had been earmarked for the construction of water treatment facilities and/or new wells.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of notes — Purposes — Additions and betterments — Purchase of additional meters — Proceeds remaining from previous issuance — Water utility. p. 172.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Tilton-Northfield Aqueduct Company, Inc. is requesting authorization to use \$10,000.00 of the funds received from securities issued by authority of Order No. 21,441, in this docket, and Order No. 21,371 in Docket DF 94-218 to purchase additional meters. The Petitioner states that the amount of \$28,994.53 is the remaining balance from the combination of both loan funds. Securities, granted by the Bank of New Hampshire, were originally authorized for the Company to assess areas for water availability, drill test wells, for engineering and water testing.

The Petitioner avers that the final water quality testing has not been completed but that both quantity and quality appear to comply with DES requirements and engineering needs.

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The Petitioner avers that the Bank of New Hampshire agrees to the use of \$10,000 of the remaining funds for purchasing additional water meters.

We find that using \$10,000 of the remaining funds to purchase additional water meters is appropriate and consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Tilton-Northfield Aqueduct Company, Inc. is granted authorization to

purchase additional water meters using \$10,000 of remaining funds; 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 the financings, until there is a full accounting of the whole of said proceeds.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of March, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tilton Northfield Aqueduct Co., Inc., DF 94-218, Order No. 21,371, 79 NH PUC 547, Oct. 3, 1994. [N.H.] Re Tilton-Northfield Aqueduct Co., Inc., DF 94-264, Order No. 21,441, 79 NH PUC 653, Nov. 29, 1994.

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NH.PUC\*03/28/95\*[80882]\*80 NH PUC 173\*EnergyNorth Natural Gas, Inc.

[Go to End of 80882]

80 NH PUC 173

**Re EnergyNorth Natural Gas, Inc.**

DR 95-023

Order No. 21,592

New Hampshire Public Utilities Commission

March 28, 1995

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a credit of 9.03 cents per therm, attributable to the combined effects of renegotiated long-term supply contracts, lower prior-period uncollectibles, reductions in projected costs of gas, and execution of a management services contract.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — Per-therm credit mechanism — Renegotiation of long-term supply contracts — Lower prior-period uncollectibles — Forecasted reductions in costs of gas — Managerial efficiencies — Local distribution company. p. 174.

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APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on

behalf of EnergyNorth Natural Gas, Inc.; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On February 3, 1995, EnergyNorth Natural Gas, Inc. (ENGI) filed its Cost of Gas Adjustment (CGA) for the Summer 1995 period. Accompanying its CGA filing was a motion seeking protective treatment which was granted on February 17, 1995 in Order No. 21,540. A revised unredacted CGA was thereafter filed on March 16, 1995. A duly noticed final hearing was held on March 21, 1995 before Commission Hearing Officer, E. Barclay Jackson.

### II. POSITIONS OF ENGI AND STAFF

#### A. *ENGI*

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During the hearing ENGI presented the testimony of Carolyn Huber, ENGI's Manager of Regulatory Affairs, and Donald Carroll, who is ENGI's Vice President of Gas Supply. Ms. Huber explained that the CGA calculation for the 1995 Summer period results in a credit of \$0.0903 per therm. ENGI attributes the projected decrease in the cost of gas to three factors: (a) the current filing contains six months of demand charges as opposed to seven months in the 1994 filing; (b) a reduction in the projected index cost of gas; and (c) a prior period undercollection of \$871,637 as compared to this summer's \$160,530. At the hearing Ms. Huber testified that the CGA will reduce the monthly bill of ENGI's average residential customer in the amount of \$34.88, a 14.8% reduction.

Mr. Carroll elaborated upon several areas which impacted ENGI's fuel costs, including several long-term firm supply contracts which ENGI renegotiated, a Natural Gas Management Agency Agreement with Pendulum Gas Services (Pendulum), and changes in ENGI's transportation agreements with Tennessee Gas.

There was considerable testimony presented with regard to the Pendulum contract. Mr. Carroll explained that the contract was justified because it will enable ENGI to maximize its gas assets. Mr. Carroll further testified that he believed that ENGI and Staff had reached an agreement with regard to how the costs and revenues associated with that service contract would be handled in future CGA filings. After a brief recess, Staff and ENGI agreed that the Pendulum contract cost recovery issue had not yet been resolved. Staff and ENGI agreed to discuss the issue further and that if the issue could not be resolved it would be addressed separately from the remainder of the CGA filing. Staff and ENGI both agreed that for purposes of the instant CGA filing, this issue had no cost impact.

#### B. *Staff*

With the exception of the above-referenced potential disagreement over the cost recovery mechanism associated with the Pendulum contract, Staff indicated its support for ENGI's revised 1995 Summer CGA filing.

III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that ENGI's 1995 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept the filing as revised and modified during the hearing. ENGI's CGA for the 1995 Summer period shall be a credit of \$0.0903 per therm. We will address any disputed cost recovery issues with regard to the Pendulum contract when Staff or ENGI requests such a determination and an adequate record exists to make such a finding.

Based on the foregoing, it is hereby

ORDERED, that ENGI's Eighteenth Revised Page 1 superseding Seventeenth Revised Page 1, N.H.P.U.C. tariff of EnergyNorth Natural Gas, Inc. providing for a Summer 1995 Cost of Gas Adjustment credit of \$0.0903 per therm for the period April 1, 1995 through October 31, 1995 is hereby approved; and it is

FURTHER ORDERED, that consistent with previous Commission orders, should ENGI's monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, ENGI shall file a revised Cost of Gas Adjustment.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of March, 1995.

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NH.PUC\*03/28/95\*[80883]\*80 NH PUC 175\*Resale of Retail Toll Services Included in the Tariffs of Local Exchange Carriers

[Go to End of 80883]

80 NH PUC 175

**Re Resale of Retail Toll Services Included in the Tariffs of Local Exchange Carriers**

DE 95-054

Order No. 21,594

New Hampshire Public Utilities Commission

March 28, 1995

ORDER issuing a revised procedural schedule in a proceeding addressing the efficacy of, and parameters for, the resale of retail toll services.

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1. SERVICE, § 171

[N.H.] Resale services — Of retail toll services — Inquiry into efficacy of — Revised procedural schedule. p. 175.

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BY THE COMMISSION:

ORDER

[1] On March 6, 1995, the New Hampshire Public Utilities Commission issued an Order of Notice initiating a proceeding to consider whether resale of retail toll services should be permitted. At the Prehearing Conference held, as scheduled in the Order of Notice, on March 29, 1995, the Commission considered motions to intervene and revised a procedural schedule.

Parties requesting intervenor status included MCI, AT&T, New England Telephone and Telegraph Company (NYNEX), Granite State Telephone, Inc., Merrimack County Telephone, Hollis Telephone Company, Dixville Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Bretton Woods Telephone Company, Dunbarton Telephone Company, Frontier Communications of New England, Inc., and Union Telephone Company. There was no opposition to these requests for intervention. Capital Region Health Care Corporation (Mednet) requested status as a limited intervenor, which was not opposed. The Telephone Resellers Association submitted written comments and requested continuing information as to the progress and outcome of the proceeding. The Office of the Consumer Advocate (OCA) is a statutory party and participated in the Prehearing Conference.

The parties and Staff agreed to the following procedural schedule for the duration of this case:

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

Data Requests from the OCA	March 27, 1995
Data Responses to the OCA	April 10, 1995
Initial Testimony	May 1, 1995
Data Requests	May 15, 1995
Data Responses	May 30, 1995
Technical Session	June 5, 1995
Responsive Testimony from those who filed Initial Testimony	June 19, 1995
Settlement Conference	June 26, 1995
Data Requests if necessary	July 10, 1995
Data Responses if necessary	July 24, 1995
Filing of Settlement Agreement (if any)	August 4, 1995
Hearings	August 9, 10, 11

At the Prehearing Conference, questions were raised by several of the proposed intervenors as to the meaning and extent of the scope of this docket as described in the Order of Notice. After prolonged discussion during a Technical Session, a proposed limitation of scope was agreed upon and presented by the Parties and Staff. The parties and Staff proposed the scope of the proceeding be limited to the following two questions:

- a) Can switchless aggregations of customers (aggregators) purchase toll services for resale, whether or not they are public utilities?
- b) If such purchases for resale are permissible, what tariff is appropriate to govern them?

We have considered the arguments of the parties and Staff and will approve the agreed

upon scope of this proceeding. We also find the proposed procedural schedule to be reasonable. Based on the foregoing, it is hereby

ORDERED, that the issues addressed by this docket are limited to the following two questions:

a) Can switchless aggregations of customers (aggregators) purchase toll services for resale, whether or not they are public utilities?

b) If such purchases for resale are permissible, what tariff is appropriate to govern them?; and it is

FURTHER ORDERED, that MCI, AT&T, NYNEX, Granite State Telephone, Inc., Merrimack County Telephone Company, Hollis Telephone Company, Dixville Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Bretton Woods Telephone Company, Dunbarton Telephone Company, Frontier Communications of New England, Inc., and Union Telephone Company are granted full intervenor status; and it is

FURTHER ORDERED, that MedNet is granted limited intervenor status; and it is

FURTHER ORDERED, that the Telephone Resellers Association shall be placed on the service list; and it is

FURTHER ORDERED, that the procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of March, 1995.

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NH.PUC\*03/28/95\*[80884]\*80 NH PUC 176\*LDD, Inc., dba Long Distance Discount

[Go to End of 80884]

80 NH PUC 176

**Re LDD, Inc., dba Long Distance Discount**

DE 94-312

Order No. 21,596

New Hampshire Public Utilities Commission

March 28, 1995

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

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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 services. p. 176.

## 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 176.

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BY THE COMMISSION:

### ORDER

[1, 2] On December 27, 1994, LDD, Inc., a Missouri corporation, d/b/a Long Distance Discount (LDD), 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.

LDD 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

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ORDERED *Nisi*, that LDD 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. LDD 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, LDD shall notify the Commission of the change.
5. LDD 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. LDD shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. LDD 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. LDD 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. LDD 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. LDD shall compensate the appropriate Local Exchange Company for all originating and terminating access used by LDD 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 LDD 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

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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 LDD to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that LDD shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than April 11, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 24, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. LDD 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 LDD shall file a compliance tariff with the Commission on or before April 11, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 27, 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 twenty-eighth day of March, 1995.

Notice of Conditional Approval of  
LDD, INC. d/b/a Long Distance Discount

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On December 27, 1994, LDD, Inc., a Missouri corporation, d/b/a Long Distance Discount (LDD), 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. 21,596, issued in Docket No. DE 94-312, the Commission granted LDD conditional approval to operate as of April 27, 1995, subject to the right of the public and

interested parties to comment on LDD 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 LDD's petition to do business in the State should submit written comments no later than April 24, 1995, 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\*03/28/95\*[80885]\*80 NH PUC 179\*Rosebrook Water Company, Inc.

[Go to End of 80885]

80 NH PUC 179

### **Re Rosebrook Water Company, Inc.**

DR 94-155  
Order No. 21,597

New Hampshire Public Utilities Commission

March 28, 1995

ORDER approving a one-year special rate contract executed by a water utility and the owners of a large resort hotel, the Mount Washington Hotel, but requiring installation of a meter by which to gauge actual usage and costs of service for purposes of comparison in case of future special contract matters.

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#### 1. RATES, § 611

[N.H.] Water rate design — Service to hotel structures — Large resort hotel — Special one-year rate contract — Flat-fee, nontariffed basis — Terms and conditions — Best efforts of customer to conserve — Necessity of metering to establish benchmark cost of service — Bypass of water system absent rate break. p. 179.

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BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On July 25, 1994 Rosebrook Water Company, Inc. (Rosebrook) filed with the Public Utilities Commission (Commission) a special contract it entered into with MWH Preservation Limited Partnership, owners of the Mount Washington Hotel (Hotel), pursuant to RSA 378:18. The one year contract, executed on June 17, 1994 and effective for a one year period commencing on May 1, 1994, allows the Hotel an unlimited, unmetered quantity of water for \$25,000 with the provision that the Hotel will use its "*best efforts* to take all reasonable measures for the conservation of water, and/or any circumstances which would cause the waste of water ..." Contract at ¶4.

Rosebrook filed a one page "comparative budget analysis" in support of the contract purporting to establish incremental revenues of \$18,349 from the addition of the Hotel as a customer<sup>1(20)</sup>. The comparative budget analysis did not set forth the amount of usage by the Hotel and the incremental costs caused by that usage. The petition also did not state the "special circumstances" rendering a departure from the general rate schedules just and consistent with the public interest. RSA 378:18.

In light of these deficiencies in the petition, and Rosebrook's failure to prosecute the petition, the Commission has not acted upon the request.

On February 2, 1995 the Staff contacted Rosebrook and informed it that it must meter the Hotel's water usage pursuant to N.H. Admin. R., Puc 603.05(a) if it proposed to continue service to the Hotel beyond April 30, 1995.

In response to this letter, subsequent correspondence from the Executive Director and Secretary and requests by Rosebrook and the Hotel for Staff assistance in their attempts to negotiate a new contract for 1995, the Staff attempted to establish the cost of service to the Hotel. Staff examined Rosebrook's annual reports from 1988 through 1994 and through this admittedly unexact analysis, concluded that the cost of service to the Hotel is approximately \$10,000 a year.

Staff also concluded that at the current tariffed rates, the Hotel could construct its own water system within an economically viable payback period.

### II. COMMISSION ANALYSIS

The issue before us is whether there are special circumstances warranting a departure from the utility's general tariff.

[1] Based on the analysis of our Staff we find the Hotel could economically abandon the utility system if it were charged tariffed rates,

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thereby establishing special circumstances justifying a departure from the tariffed rates. Furthermore, again based on the analysis of our Staff, we can reasonably conclude that the Hotel

will provide net revenues to Rosebrook that exceed the cost to serve, thereby establishing the contract is just and consistent with the public interest. We will, therefore, approve the special contract.

We note, however, that our Staff's analysis was based on questionable data raising concerns about the actual cost of service to the Hotel. We are also concerned that the Hotel is not metered and may, therefore, unreasonably tax the capacity and performance of the supply and distribution systems. Thus, we will require the installation of a meter as a condition to the approval of any future special contracts so that an accurate analysis of the effect of the Hotel on the water system can be conducted.

Furthermore, it is the responsibility of Rosebrook and the Hotel to supply this Commission sufficient information justifying any future special contracts. We will expect supporting testimony for all future contracts from Rosebrook and the Hotel.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the special contract between Rosebrook Water Company, Inc. and MWH Preservation Limited Partnership commencing on May 1, 1994 and ending on April 30, 1995 is approved subject to the conditions set forth above; and it is

FURTHER ORDERED, that Rosebrook Water Company, Inc. shall publish an attested copy of this Order once in a newspaper of general circulation. Said publication shall occur no later than April 11, 1995, and an affidavit proving publication shall be filed with the Commission on or before April 24, 1995; 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 24, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective April 27, 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 twenty-eighth day of March, 1995.

#### FOOTNOTES

<sup>1</sup>We note that the pleadings reveal that Rosebrook had entered into special contracts in the two years preceding this contract with the Hotel without filing the subject contracts with the Commission. We can find no justification for this failure to comply with RSA chapter 378. We anticipate the water utility will not allow any further managerial lapses such as this in the future. *See*, RSA 365:41 and 42 (Supp. 1994).

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NH.PUC\*03/28/95\*[80886]\*80 NH PUC 180\*Paul E. Zimmerman

[Go to End of 80886]

80 NH PUC 180

**Re Paul E. Zimmerman**

DE 94-209

Order No. 21,598

New Hampshire Public Utilities Commission

March 28, 1995

ORDER finding that a realty firm manager had been operating as a public telecommunications utility by virtue of his provision of shared tenant service via a private branch exchange system. Commission thereby asserts limited jurisdiction over the individual.

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## 1. SERVICE, § 463

[N.H.] Telephone — Private branch exchange systems — Used in providing shared tenant services — Issues of commission jurisdiction. p. 184.

## 2. RATES, § 559

[N.H.] Telephone rate design — Joint use — Shared tenant services — Via private branch exchange system — Rolled in versus separately metered billing as a factor — Issues of commission jurisdiction. p. 184.

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## 3. PUBLIC UTILITIES, § 41

[N.H.] Regulatory status — Tests of public utility character — Restricted service — To tenants only — Inclusion of utility service in rent payments versus separate submetering and billing — Shared tenant telecommunications service. p. 184.

## 4. PUBLIC UTILITIES, § 39

[N.H.] Regulatory status — Tests of public utility character — Restricted service — To single customer or limited class — Mere numbers of customers not dispositive — Holding out to general public or portion of public — Presumption of commission regulation of all utility services — Waivers from regulation for very small utilities. p. 184.

## 5. PUBLIC UTILITIES, § 117

[N.H.] Declaration of public utility status — Telephone service — Shared tenant service — Provided by individual realty firm manager — Assertion of limited commission jurisdiction. p. 187.

## 6. FINES AND PENALTIES, § 8

[N.H.] Grounds for imposing — Unauthorized operation as public telecommunications utility — Provision of shared tenant services as part of business realty service — Mitigating circumstances — Degree of regulation of shared tenant services as case of first impression —

Declination to impose sanctions. p. 187.

## 7. CERTIFICATES, § 123

[N.H.] Telephone carrier — Provision of shared tenant services as part of business realty service — Factors affecting authorization — Tenant needs — Technical and financial expertise — Prior unauthorized operations notwithstanding. p. 187.

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APPEARANCES: Hall, Morse, Anderson, Miller & Spinella, P.C. by Frank P. Spinella, Jr., Esq. on behalf of Paul E. Zimmerman; Victor D. Del Vecchio, Esq. on behalf of NYNEX; Devine, Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. on behalf of Granite State Telephone, Inc.; McManimon and Scotland by Martin C. Rothfelder, Esq. on behalf of Union Telephone Company; and Amy L. Ignatius, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On September 12, 1994 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,349 based upon the information and belief of Commission Staff (Staff), that Paul E. Zimmerman was providing intrastate telecommunications services via a computerized switching device without the Commission's approval. *See*, RSA 362:2 (Supp. 1994); RSA 374:22 and 26. Order No. 21,349 required Mr. Zimmerman to appear before the Commission to show cause why he should not be subject to civil sanctions or criminal prosecution for operating a public telecommunications utility without Commission authorization. *See*, RSA 365:41 (Supp. 1994).

Order No. 21,349 also made New England Telephone and Telegraph Company, Inc., doing business as NYNEX (NYNEX), a mandatory party to this proceeding. On November 23, 1994, Union Telephone Company (Union) filed a motion to intervene which was subsequently granted. At the commencement of the December 2, 1994 hearing, Granite State Telephone Company (GST) orally moved to intervene, subject to certain limitations due to the lateness of its request. The Commission granted GST's request.

On December 2, and December 9, 1994 the Commission heard the testimony of three of Mr. Zimmerman's tenants or former tenants, Robert Hughes, Marshall Johnson and Dwight Devork, and the testimony of Kathryn Bailey of the Commission Staff, Paul Zimmerman, Lori

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Bowen, an employee of Mr. Zimmerman's, Mark Robinson, Mr. Zimmerman's accountant, and Peter Shepherd from NYNEX. The parties and Staff submitted post hearing briefs on January 13, 1995.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. *Paul E. Zimmerman*

Mr. Zimmerman contends that although he offers and provides telecommunications services to the tenants of his commercial buildings in Wolfeboro, those tenants do not constitute the "public" as set forth in RSA 362:2. Thus, he reaches the conclusion that he is not a public utility and is not subject to the jurisdiction of the Commission.

Mr. Zimmerman relies on the decisions of the New Hampshire Supreme Court in *Claremont Gas Light Company v. Monadnock Mills, Inc.*, 92 N.H. 468 (1943) and *Dover, Somersworth and Rochester Street Railway Company v. Wentworth & a.*, 84 N.H. 258 (1930) as well as certain opinions of the Attorney General interpreting these cases. In both decisions the Court found certain entities providing the types of services regulated by this Commission's predecessor did not meet the statutory definition of a utility because the services were not provided to the public.

Mr. Zimmerman also relies upon the 1990 decision of this Commission (which in turn was based on those earlier Court rulings) which found that a college providing telecommunications services to its students was not a public utility because its students did not constitute the statutory public. *See, Re Plymouth State College*, 75 NH PUC 65 (1990).

He further relies on *New Ipswich Electric Department v. Greenville Electric Co.*, 108 N.H. 338 (1967) in which the Court held that a landlord supplying electricity to a tenant was not a public utility.

Mr. Zimmerman also argued that regulation was unnecessary and inappropriate for shared tenant services.

#### B. NYNEX

NYNEX contends that Mr. Zimmerman is a public utility under the "totality of the circumstances".

NYNEX further contends that the *New Ipswich* case is distinguishable from this case because in *New Ipswich*, the landlord included the provision of electricity in the tenants' rent rather than submetering electricity and adding the cost to the tenants' rent.

It further contends that the controlling standard is whether the individual or entity is in the utility "business", which it defines as the pursuit of a profit for services rendered, regardless of whether a profit is realized.

Finally, NYNEX objects to Mr. Zimmerman's resale of basic exchange services, his use of unmeasured services and the inability of tenants to access NYNEX services creating an anti-competitive atmosphere.

#### C. Union

Union also asserts that Mr. Zimmerman is a public utility. Applying the doctrine of *in pari materia* to RSA 362:2 and RSA 362:4 (Supp. 1994), Union contends that the General Court has expressed its intent that the provision of utility services to less than ten customers falls under the Commission's jurisdiction. Mr. Zimmerman's operations, therefore, are under the jurisdiction of this Commission.

Union also raises the concern that Mr. Zimmerman is accessing tariffed services for resale without paying access fees in violation of this Commission's order in the "generic competition docket". *Re Generic Investigation Into IntraLata Toll Competition Access Rates*, Report and



Order No. 20,916 (August 2, 1993).

D. *GST*

GST also claims that Mr. Zimmerman is a utility subject to this Commission's jurisdiction. GST bases its position on its analysis of the same cases and opinions of the Attorney General cited by Mr. Zimmerman in support of its position.

GST goes on to distinguish the *Plymouth State* decision from the case at hand. GST argues that the College truly is a "private utility"

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...serving only students, faculty and administrators located in College facilities under the umbrella of control of the College, as distinguished from Mr. Zimmerman's public operations.

E. *Staff*

Staff contends that Mr. Zimmerman is a public utility because telephone service is not an incidental aspect of his tenants' operations but rather is critical to their business, as distinguished from *Plymouth State* where telephone service was ancillary to the primary operations of the students, that is education and housing.

Staff further relied on Mr. Zimmerman's failure to allow competitive telecommunications alternatives to his tenants, his failure to disclose his rates to tenants, his intent to make a profit through substantial markup on calls, and the non-portability of direct inward dial (DID) numbers as policy considerations supporting the imposition of Commission regulation.

In conclusion, Staff recommended the Commission find that Mr. Zimmerman is a public utility and that consumer protection disclosure provisions be imposed on his operations addressing tenants' rights to obtain service from NYNEX, accurate pricing information, the non-portability of DID numbers, the identification of Mr. Zimmerman's intrastate and interstate long distance carriers, the opportunity to question bills if necessary, and a tenant's right to cease taking telephone service from Mr. Zimmerman without breaking the lease.

### III. COMMISSION ANALYSIS

Although there is some dispute about representations which Mr. Zimmerman or his agent made to tenants concerning their use of Mr. Zimmerman's telephone system, the facts of the case, for the most part, are straight forward and undisputed. *See*, Transcript, December 2, 1994 at 122. Mr. Zimmerman is primarily engaged in the business of developing, managing, owning and leasing real estate. *See*, Transcript, December 2, 1994 at 150. He and his wife, Debbie Zimmerman, own and lease a number of retail and commercial properties located in close proximity to one another in the Town of Wolfeboro. Mr Zimmerman manages the business; the record indicates that Mrs. Zimmerman takes no active role in the business. *See*, Transcript, December 2, 1994 at 181-184.

There are approximately 56 commercial and retail tenants in four of the Zimmermans' commercial buildings clustered together on each side of the public way. *See*, Transcript, December 2, 1994 at 182-183. Mr. Zimmerman concedes that he is providing telecommunications services to at least 22 of these tenants, and offers the services to all of his

tenants, excluding those that are not compatible with his telecommunications equipment(21)

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<sup>1</sup> . See, Transcript, December 2, 1994 at 156-157.

Mr. Zimmerman provides telecommunications services via his digital Mitel SX200 switch, which is a model of private branch exchange (known as a switch or PBX). He aggregates his tenants' phone traffic through privately owned lines from the leased premises to his switch. The aggregated traffic is then routed to the public switched network owned and operated by NYNEX. Because all of the traffic is routed to NYNEX from the PBX, it is perceived by NYNEX's software as originating from one customer, thereby allowing Mr. Zimmerman to take advantage of NYNEX's discounted rates provided to high volume users. Mr. Zimmerman's telecommunications network also allows Mr. Zimmerman to resell basic exchange service.

Connection to the PBX allows the tenants to take advantage of a number of enhanced services provided by the switch, such as, voice mail, call accounting, bulletin boards, call rerouting and call conferencing. The telephone lines connecting his tenants to the switch also allow subscriber tenants to contact one another without accessing the public switched network. Mr. Zimmerman also leases customer premises equipment, such as telephones and facsimile machines to his tenants, as well as the right to use certain direct inward dial (DID) phone numbers which he has reserved with NYNEX.

In addition to the 22 tenants provided telecommunications services, Mr. Zimmerman leases "chairs" to "transient tenants" for a matter

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of hours. These transient tenants pay a fee for the use of such services as office space, conference rooms, photocopiers, a receptionist and telecommunications services. Mr. Zimmerman described the typical short term tenant as a businessman or professional vacationing in the area who needs to stay in contact with clients in a businesslike manner. See, Transcript, December 2, 1994 at 199-200; 223-225.

Mr. Zimmerman describes his telecommunications services as a loss- leader, that is, a service neither devised nor offered to make a profit on its own, but rather to attract clients to lease commercial space. Rental of office space is the actual source of profit. Thus, telecommunications services are a fundamental and integral component of his business designed to attract and retain tenants.

Mr. Zimmerman charges his tenants a mark-up of approximately 23% on NYNEX's undiscounted rates for intraLATA toll calls (Transcript December 2, 1994 at 138) and an average of 46% to in one case 128% over the discounted rates Mr. Zimmerman actually pays NYNEX for intraLATA toll calls. Transcript December 2, 1994 at 107 and 114; Exhibit 11. This is in addition to fixed line charges and equipment rental fees, the cost of which varies from tenant to tenant, which are included in the real estate lease.

[1-4] Mr. Zimmerman's operations are a form of shared tenant services or shared telecommunications services (STS) which have been recognized and regulated to varying degrees by some states. *See, In the Matter of International Business Machines Corporation*, Memorandum Opinion and Order, FCC 86-25, ENF 85-45 (January 27, 1986) (states are not federally preempted from regulating STS). Jurisdiction over STS is an issue of first impression in the State of New Hampshire.

Mr. Zimmerman does not contest that he owns, operates and manages plant and equipment for the conveyance of telephone messages. He does contend, however, that his tenants do not constitute the public as that term is used by the General Court in RSA 362:2 and therefore, he is not operating a public utility.

The question before us "is not a constitutional one nor one of public policy but rather one of statutory interpretation." *Allied New Hampshire Gas Co. v. Tri-State Gas Co.*, 107 N.H. 306, 307 (1966). The jurisdiction of this Commission, as established by the General Court, extends to:

every corporation, company, association, joint stock association, partnership and person ... owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages ... for the public ... .

RSA 362:2 (Supp. 1994)

The New Hampshire Supreme Court has addressed the meaning of the term "public" as used in RSA 362:2 on several occasions, and the Attorney General has issued opinions applying the analyses and holdings therein. The leading cases interpreting the term "public" in RSA 362:2 are *Claremont Gas Light Company v. Monadnock Mills, Inc.*, 92 N.H. 468 (1943) and *Dover, Somersworth and Rochester Street Railway Company v. Wentworth & a.*, 84 N.H. 258 (1930). As we noted in *Plymouth State*, however, these decisions are of questionable value to our analysis today, particularly in light of legislative revisions and additions to RSA chapter 362.

In regard to *Claremont* and *Dover*, we do not believe, as was set forth in the *Plymouth State* decision, the broad statements relative to our jurisdiction expressed therein remain viable statements of the law in this State. *Re Plymouth State College*, 75 NH PUC 65, at 67 (1990). In *Plymouth State*, the Commission noted that these decisions had never been directly overturned but that we would engage in an analysis of their continuing vitality when "presented with facts that frame a more appropriate presentation of the issue." *Id.* The facts of this case better frame the issue and, therefore, require such an analysis.

Both *Dover* and *Claremont* were decided over fifty years ago. Although age does not, in and of itself, diminish the reliability of the analyses of the Court, there have been significant changes in the analyses of economic regulation by courts and the subject legislation over the

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past fifty years. *See e.g., Nebbia v. New York*, 291 U.S. 502 (1934); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (Court defers to the rationale of the legislature involving economic regulation); and *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944) ("fair value" doctrine no longer a constitutional standard in utility rate setting).

Furthermore, as was noted in *Plymouth State*, the Court in *Allied New Hampshire Gas Co. v. Tri-State Gas Co.*, 107 N.H. 306, 308 (1966), considered a propane distributor supplying gas to four apartments from a 1000 gallon tank and chose not to apply the *Dover* and *Claremont* analyses. In *Allied*, each of the apartments was separately metered and individually billed by the propane distributor. In holding that the propane distributor was not subject to the Commission's jurisdiction, the Court disregarded *Dover* and *Claremont*. *Allied*, 107 N.H. at 308. The Court held that although this service fell within the literal words of RSA 362:2, it was outside the "purpose of the statute." *Id.*

This same analysis was repeated by the Court in 1982 in *Appeal of Omni Communications*, 122 N.H. 860 (1982), where the Court stated that the purpose of the Commission was to ensure "healthy competition in the trades and industries." *Appeal of Omni Communications*, 122 N.H. 860, 862 (1982) (citation omitted). The Court concluded that the Commission had no jurisdiction over radio paging because no need for regulation existed. *Id.*, at 864. *See also, Appeal of Atlantic Connections Ltd.*, 135 N.H. 510, 513-514 (1992) (applying similar analysis but reaching different conclusion).

Thus, our inquiry must focus on the legislative purpose or intent of RSA 362:2 as opposed to the number of individuals served. In determining the intent or purpose of the General Court in enacting RSA 362:2, we must be mindful that statutes *in pari materia* (that is, statutes of a like subject matter) are to be construed together. *National Grange Mutual Insurance Company v. Smith*, 133 N.H. 279, 281 (1990); *State Employees Association v. N.H. PELRB*, 118 N.H. 885, 890 (1978). RSA 362:2 (public utility defined), RSA 362:3-a (submetering of electric service in campgrounds authorized) and RSA 362:4 (regulation of water utilities) must be interpreted together, in order to avoid contradictory legislative mandates. It is a fundamental axiom of statutory construction that legislative enactments are to be read in a manner to avoid an absurd or illogical result. *State v. Kay*, 115 N.H. 696, 698 (1975).

RSA 362:2, defining a public utility, was first enacted in 1911. RSA 362:3-a was enacted by the General Court in 1987 in response to the Commission's decision in *Echo Valley Campground v. Public Service Company of New Hampshire*, 71 NH PUC 211 (1986). *Echo Valley* involved a four season campground offering electric service at 17 camp sites. Electric service was provided to the campground by the local electric utility which measured usage at a single metering point. The campground installed its own meters at the 17 sites and billed the occupant of each site its pro-rata share of the electric bill. *Echo Valley*, 71 NH PUC at 212.

The Commission held that the campground owners were engaged in the "sale of electricity ultimately sold to the public ..." (emphasis in original), *Echo Valley*, 71 NH PUC at 214 and, therefore, were operating a public utility subject to the jurisdiction of the Commission.<sup>2(22)</sup>

In the next legislative session the General Court enacted RSA 362:3-a, which reads as follows:

[t]he term sale shall not include electric submetering in campgrounds for the purpose of calculating reimbursable amounts among submeter users; provided, that reimbursable amounts shall be distributed pro-rata among submeter users and do not exceed the total amount charged by the utility to the campground master metered customer.

RSA 362:3-a (Supp. 1994). Thus, the General Court presumed that RSA 362:2 mandated the regulation of submetered electric service in campgrounds without regard to the number of sites served or rate charged, and by enacting RSA 362:3-a exempted from regulation the pro-rata distribution of electric service in this particular setting.

RSA 362:4,I enacted in its current form in

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1988, provides in pertinent part that:

If ... such water or sewage disposal system shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission *may exempt any such water or sewer company from any and all provisions of this title whenever the commission may find such exemption consistent with the public good.* (emphasis added).

RSA 362:4 (Supp. 1994).

Thus, the General Court presumed that RSA 362:2 requires the regulation of all water utilities, even those serving less than ten customers and by enacting RSA 362:4,I allowed the Commission to exempt from regulation those systems serving less than 10 customers. The Attorney General, in response to a question from this Commission in 1980, reached the same conclusion. The opinion analyzing RSA 362:2 and RSA 362:4 states that:

[t]he controlling factor is the provision of water to the public. If the entity actually provides water, or holds itself out as willing to provide water, to persons other than itself, than (sic) the entity is providing water to the public. Such an entity would be a public utility. *Thus, a corporation providing water to one or more residents of a subdivision ... would be a public utility.* (emphasis added)

Opinion of the Office of the Attorney General (January 31, 1980).

If the public/private utility characterization adopted by the Court early in this century and urged upon us by Mr. Zimmerman were a viable interpretation of the legislative mandate of RSA 362:2, then RSA 362:3-a and 362:4 would have been unnecessary. This is a conclusion we cannot support, as we will not assume the General Court adopts meaningless, illogical or absurd legislation. Thus, we must conclude that the holdings in *Dover* and *Claremont* are no longer viable statements of the law in this state. We conclude, therefore, that the type of shared tenant services offered by Mr. Zimmerman falls within the ambit of 362:2 and that Mr. Zimmerman is a public telecommunications utility subject to our jurisdiction.

We also do not find the Court's holding in *New Ipswich Electric Department v. Greenville Electric Co.*, 108 N.H. 338 (1967) to be pertinent, as the facts of *New Ipswich* are clearly distinguishable from Mr. Zimmerman's operations. In *New Ipswich* a landlord was obligated, pursuant to a lease, to "furnish electric power to its tenant without charge separate from the rental provided by the lease." *New Ipswich*, at 339. In contrast, Mr. Zimmerman does not include telecommunications services without charge separate from the rental. While he includes certain fixed charges for telecommunications services in the lease, Mr. Zimmerman effectively

sub-meters all of his tenants for their usage of these services on a per minute basis, recovering his expenses and adding a surcharge to the rates charged to him. Further, he stated that should a tenant choose not to use his telephone service, this would not be a breach of the lease and the rental payments would be adjusted accordingly. Transcript December 2, 1994 at 211. Thus, the analysis in *New Ipswich* provides no useful assistance to our analysis herein.

Consistent with *Allied*, 107 N.H. at 308, we must evaluate the purpose of RSA 362:2 and regulation of utilities, which is to ensure a fair opportunity for a utility to earn a return on its investment and protection of the interests of its customers or ratepayers. We believe Mr. Zimmerman's operations support the imposition of Commission regulation.

Although Mr. Zimmerman informed his prospective tenants that he offered the "best rates possible," he in fact charged his customers relatively high rates. The record further reveals that customers had not been informed that they would be billed for toll free (800) calls, though apparently once the matter was raised, he ceased charging for 800 calls. He also failed to inform customers that billing begins from the first ring to the called party, so that charges are incurred even if the call is never connected to the called party, contrary to standard utility billing that commences only when the call is answered. He also failed to inform customers that his billing is done on a per minute basis

**Page 186**

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rather than on a one second increment as NYNEX does, or on a 6 second increment as many of the interexchange carriers do. Under Mr. Zimmerman's billing, a 61 second call is billed as two minutes (or 120 seconds) of calling time, whereas NYNEX would bill only for 61 seconds. The facts are in dispute as to whether customers have been given the opportunity to choose alternative carriers. Mr. Zimmerman stated they were; some tenants testified there were never given a choice.

In addition, Mr. Zimmerman did not disclose to his customers that their numbers were not "portable." A block of DID numbers were assigned from NYNEX to Mr. Zimmerman's PBX, which he in turn assigned to individual customers. Businesses using Mr. Zimmerman's service found that their advertising, stationery, printed materials and customer recognition of the telephone number could not be transported to another location because Mr. Zimmerman would not release the DID number they had been assigned. Customer tenants testified that the loss of the DID number created a major business risk, effectively holding them captive to Mr. Zimmerman and his commercial establishments.

[5] We recognize the value of this type of STS service to the State's business community and do not want to discourage the benefits of competition in telecommunications options. Regulating STS services to the degree appropriate does not necessarily discourage competition; in fact, limited regulation can enhance the development of new alternatives, providing a basis for uniform service quality and reliability for customers. Working with a provider who does not disclose key terms could well discourage customers from seeking out competitive providers in the future. Thus, in implementing regulation of these services we seek to balance the interests of encouraging sound development of STS and other telecommunications services, while at the same time protecting the consumers of these services, to the extent appropriate and necessary.



*See, In the Matter of International Business Machines, supra.*

The General Court authorized the Commission to employ methods other than traditional rate of return regulation where appropriate, pursuant to RSA 374:3-a (Supp. 1994). Traditional cost of service or rate of return regulation does not appear to be appropriate under these circumstances. Rather, we believe regulation of STS should be on a more limited basis, similar to our treatment of intraLATA toll resellers. We will commence a proceeding, after proper notice, to determine the appropriate form and degree of regulation of STS services.

[6, 7] Because the Commission's jurisdiction over STS networks is an issue of first impression, we do not believe the imposition of civil or criminal sanctions is appropriate. Furthermore, based on the record in this proceeding we find Mr. Zimmerman has the financial, managerial and technical expertise to operate the STS telecommunications network he has constructed in Wolfeboro. We will, therefore, authorize him to conduct business as a public telecommunications utility in that area of Wolfeboro, New Hampshire described in this proceeding.

In response to the assertion by NYNEX that Mr. Zimmerman is inappropriately providing basic exchange services, we find its position ambiguous. In its brief, NYNEX alternatively states that such services may not be provided by resellers, but goes on to state that such services should only be provided via measured service. *See*, NYNEX Brief at p. 19. We expect this issue to be further developed and clarified by all participants in the STS docket to follow. We will withhold ruling on the types of service available to STS networks by local exchange carriers until a full examination of the issue in the STS docket.

In regard to customer reparations for "overcharges" by Mr. Zimmerman, the record in this proceeding is not sufficient to conclude that customers were overcharged. Having found that Mr. Zimmerman is a public utility, any customer may bring such allegations before this Commission pursuant to RSA 365:29, which authorizes the Commission to order reparations for a two year period for any rate or portion of rate that is illegal or unjustly discriminatory.

In the interim, we will require Mr. Zimmerman and NYNEX to provide for the portability of all DID numbers for Mr. Zimmerman's

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tenants thereby allowing existing and prospective tenants to move to an alternative location should they so desire; we will require all existing tenants be given the alternative of taking service from NYNEX, thereby providing access to competitive interstate and intrastate toll providers; and we will require Mr. Zimmerman to disclose to all existing and prospective tenants: 1) that they have the right to use NYNEX rather than Mr. Zimmerman's telecommunications network; 2) the average rate per minute he will charge the tenant; 3) the fact that billing commences upon the first ring and is not dependent upon actual connection with the called party; and 4) the fact that billing is done on a per minute basis, thus a 61 second call will be billed as a two minute call and 5) the fact that the telephone number assigned to a tenant is portable within the same exchange.

Based upon the foregoing, it is hereby

ORDERED, that the shared tenant services telecommunications network owned and operated by Paul E. Zimmerman in the Town of Wolfeboro, New Hampshire constitutes a public utility under RSA 362:2 (Supp. 1994) and is therefore subject to the jurisdiction of the New Hampshire Public Utilities Commission; and it is

FURTHER ORDERED, based on the record in this proceeding, that Paul E. Zimmerman has the requisite financial, managerial and technical expertise to operate a telecommunications network and he is therefore granted authority to operate the above referenced utility, the location of which is described in this proceeding provided that he complies with all of the terms and conditions of this order; and it is

FURTHER ORDERED, that the Executive Director and Secretary issue an order of notice commencing an investigation into the appropriate form of regulation of shared tenant services; and it is

FURTHER ORDERED, that during the pendency of the above referenced generic proceeding into shared tenant services, Paul E. Zimmerman comply with the following conditions in order to continue providing the subject services;

A. all prospective tenants be provided the following information:

1. The right to use NYNEX rather than Mr. Zimmerman's telecommunications network;
2. the average rate per minute he will charge the tenant;
3. billing commences upon the first ring and is not dependent upon actual connection with the called party;
4. billing is done on a per minute basis, thus a 61 second call will be billed as a two minute call; and
5. the telephone number assigned to a tenant is portable within the same exchange.

B. all current tenants taking telecommunications services from Mr. Zimmerman be provided with the same information set forth above; and it is

FURTHER ORDERED, that Paul E. Zimmerman file a tariff setting forth his rates and the terms and conditions of service pursuant to RSA 374:3-a within 30 days of the date of this order; and it is

FURTHER ORDERED, that Staff provide any requested assistance to Mr. Zimmerman in preparing the above referenced tariff; and it is

FURTHER ORDERED, that NYNEX and Mr. Zimmerman provide for the free portability of all direct inward dial numbers assigned to any current tenants and all future tenants taking direct inward dial service, so long as the tenant remains in the same exchange; and it is

FURTHER ORDERED, that any customers of Mr. Zimmerman who believe they should be reimbursed for inaccurate billing on intrastate toll service or otherwise compensated for Mr. Zimmerman's failure to disclose key terms should submit a specific request for compensation to the Commission or take other action as they deem appropriate.

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



March, 1995.

FOOTNOTES

<sup>1</sup>To date, only one tenant has been deemed incompatible with the telecommunications equipment.

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<sup>2</sup>The Commission also found that the failure to derive a profit from the sale of electricity was irrelevant to its analysis. *Echo Valley Campground v. Public Service Company of New Hampshire*, 71 NH PUC 211, 214 (1986)

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Zimmerman, DE 94-209, Order No. 21,439, 79 NH PUC 651, Nov. 29, 1994.  
[U.S.Sup.Ct.] Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 51 PUR(NS) 193, 88 L.Ed. 333, 64 S.Ct. 281 (1944).

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NH.PUC\*04/03/95\*[80887]\*80 NH PUC 189\*Corporate Telemanagement Group of New Hampshire, Inc.

[Go to End of 80887]

80 NH PUC 189

**Re Corporate Telemanagement Group of New Hampshire, Inc.**

DR 95-050  
Order No. 21,601

New Hampshire Public Utilities Commission

April 3, 1995

ORDER approving an interexchange telephone carrier's proposal for increasing certain calling cards rates, reducing monthly rates for 800 services, and introducing volume discount packages for combined usage of outbound toll and inbound 800 services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Increases in certain calling card rates — Reduction in certain 800 service monthly charges — Introduction of volume discount packages — For combined inward 800/outward toll usage — Interexchange carrier. p. 189.

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BY THE COMMISSION:

ORDER

[1] On March 3, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Corporate Telemanagement Group of New Hampshire, Inc. (CTG) requesting authority to introduce CTG Promise Package and increase various rates for effect April 1, 1995.

CTG Promise Package is a volume discount product that offers discounts on outbound toll and inbound 800 combined usage. Customers may choose discount options based on monthly dollar amounts or term commitments.

Rates are being increased by 4 percent for the Dial 1 Access, Direct Access, Travel Card, Telemanagement Gold Card, 800 Business Line, 800 T-1, 800 Travel-The Silver Card and 800 Check In products. In addition, the monthly rate per 800 number for 800 Business Line is being reduced from \$10 to \$3.50.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize CTG to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of CTG's NHPUC Tariff No. 1 are approved for effect April 3, 1995:

9th Revised Page 1  
 5th Revised Page 4  
 2nd Revised Page 35  
 4th Revised Page 36  
 3rd Revised Page 36.1  
 2nd Revised Page 37 in lieu of  
 1st Revision  
 1st Revised Page 39  
 Original Page 45;

and it is

FURTHER ORDERED, that CTG file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k);

**Page 189**

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and it is

FURTHER ORDERED, that CTG insure proposed tariff changes are received at the Commission no later than 30 days before the proposed effective date pursuant to N.H. Admin. Code Puc 1601.05 (a) (1).

By order of the Public Utilities Commission of New Hampshire this third day of April, 1995.

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NH.PUC\*04/03/95\*[80888]\*80 NH PUC 190\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80888]

80 NH PUC 190

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-053

Order No. 21,602

New Hampshire Public Utilities Commission

April 3, 1995

ORDER authorizing an interexchange telephone carrier to amend its tariffs to clarify when charges for busy line verification service apply.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Busy line verification — Special charges — Clarification of applicability — Interexchange telephone carrier. p. 190.

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BY THE COMMISSION:

ORDER

[1] On March 3, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to add language to the Busy Line Verification tariff which clarifies when the charge applies, for effect April 3, 1995.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NH PUC No. 4 are approved for effect as filed:

*Section 2*

3rd 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 30 days from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this third day of April, 1995.

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NH.PUC\*04/05/95\*[80889]\*80 NH PUC 190\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80889]

80 NH PUC 190

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-051

Order No. 21,603

New Hampshire Public Utilities Commission

April 5, 1995

ORDER authorizing an interexchange telephone carrier to amend its "CustomNet" service rates, to eliminate a discount for intra-CustomNet area code calling and to revise volume discounts to 10% starting at \$25 worth of calls and 15% at \$1,000 worth.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "CustomNet" service — Rate revisions

**Page 190**

— Elimination of CustomNet area code discount — Modification of discounts for volume calling — Interexchange telephone carrier. p. 191.

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BY THE COMMISSION:

ORDER

[1] On March 3, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to restructure and reprice its AT&T CustomNet service for effect April 5, 1995.

The revisions include elimination of the CustomNet Area Code (NPA) discount and a revision of the volume discount schedule to 10 percent at \$25, and 15 percent at \$1,000. In addition, the filing includes calls that originate over cellular access to CustomNet Service Type 1 locations for the application of rates, charges and regulations.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NH PUC No. 1 are approved for effect as filed:

*Table of Contents*  
3rd Revised Page 16

*Section 14*  
2nd Revised Page 2  
4th Revised Page 6  
5th 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 30 days from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 1995.

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NH.PUC\*04/05/95\*[80890]\*80 NH PUC 191\*Home Owners Long Distance, Inc.

[Go to End of 80890]

80 NH PUC 191

**Re Home Owners Long Distance, Inc.**

DR 95-060  
Order No. 21,604

New Hampshire Public Utilities Commission

April 5, 1995

ORDER approving an interexchange telephone carrier's proposal for revisions to its calling card offerings as well as its various 800 services for both business and residential customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card offerings — Introduction of prepaid debit cards — Business and residential subscribers — Interexchange carrier. p. 192.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" services — Usage- and time-of-day-based rates for business customers — No time-of-day-sensitive rates for residential customers — Special volume discount plans — Interexchange carrier. p. 192.

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BY THE COMMISSION:

ORDER

Page 191

On March 9, 1995, the New Hampshire Public Utilities Commission received a petition from Home Owners Long Distance Inc. (HOLD) for authority to introduce several new services, clarify time of day periods and holidays and make minor text changes.

[1, 2] The filing proposes to introduce VOX Gold Preferred Business Service, VOX Gold Calling Card Service, Prepaid Calling Card Service, Preferred Business 800 Service, Preferred 800 Gold Service and Residential 800 Service.

VOX Gold is an outbound service available to business customers. Rates are based on usage and time of day. Volume discounts apply with minimum monthly usage.

The VOX Gold Calling Card is a telephone calling card for business and residential customers. Prepaid Calling Card Service is HOLD's debit card offering.

Preferred Business 800 Service is an inbound calling service available to business customers. The rates are usage and time of day sensitive, billed in full minute increments and include volume discounts on minimum monthly usage. Preferred 800 Gold Service is an inbound calling service available to large volume business customers. Pricing is not time of day sensitive and is billed in six second increments with a thirty second minimum. Residential 800 Service is an inbound calling service for residential customers. Rates are not time of day sensitive, are billed in full minute increments and include a non-recurring fee and a recurring fee.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of the services outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of HOLD's NHPUC Tariff No. 1 are approved for effect April 8, 1995:

1st Revised Page 1  
 1st Revised Page 13  
 1st Revised Page 14  
 Original Page 14.1  
 1st Revised Page 15  
 2nd Revised Page 17 in lieu of  
 1st Revision

Original Page 18  
Original Page 19  
Original Page 20  
Original Page 21;

and it is

FURTHER ORDERED, that HOLD file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 1995.

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NH.PUC\*04/10/95\*[80891]\*80 NH PUC 192\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80891]

80 NH PUC 192

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-062

Order No. 21,605

New Hampshire Public Utilities Commission

April 10, 1995

ORDER authorizing an interexchange telephone carrier to reinstate a previously eliminated 20% discount for calls placed between two business customers when both subscribe to the carrier's "Sprint Clarity The Most for Business" service plan. The carrier also is allowed to cease offering Ultra WATS (wide area telephone service) and Dial 1 WATS Advantage services to new customers and to grandfather such options for existing customers. But introduction of a WATS transport resale service (Wholesale Communications Service) is permitted.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Wide area telephone service (WATS) — Elimination of special WATS plans — Grandfathering of existing subscribers — Introduction of new WATS transport resale plan — Interexchange carrier. p. 193.

2. RATES, § 582

[N.H.] Telephone rate design — Toll services — Business customers — "Sprint Clarity The Most for Business" service plan — Special rates for calls between two customers that both subscribe to plan — Reinstatement of previously eliminated discount — Flexibility to respond to

market forces as a factor — Interexchange carrier. p. 193.

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BY THE COMMISSION:

ORDER

On March 10, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) requesting authority to introduce Wholesale Communications Services, grandfather Dial 1 WATS Advantage and Ultra WATS to existing customers, and reinstate the Sprint Clarity The Most for Business Sprint to Sprint Discount for effect April 10, 1995.

[1] Wholesale Communications Services permits resellers to buy and resell Sprint's Ultra WATS Transport if the reseller agrees to the terms and conditions in the Wholesale Communications Services tariff.

The filing proposes to grandfather existing Ultra WATS and Dial 1 WATS Advantage customers. These services will no longer be offered to new subscribers.

[2] Finally, Sprint is proposing to reinstate its Sprint Clarity The Most for Business Sprint to Sprint discount. The discount is 20 percent off calls made to other Sprint residential and business customers. In its last filing at the Commission, Sprint petitioned to eliminate this discount but proposes to reinstate the discount for competitive reasons.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's NHPUC Tariff No. 4 are approved for effect as filed:

13th Revised Page 1  
 1st Revised Page 48  
 1st Revised Page 49  
 1st Revised Page 50  
 3rd Revised Page 63  
 1st Revised Page 74  
 1st Revised Page 76  
 Original Page 76-A  
 3rd Revised Page 94  
 3rd Revised Page 95;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).



By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1995.

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NH.PUC\*04/10/95\*[80892]\*80 NH PUC 194\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80892]

80 NH PUC 194

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-061

Order No. 21,607

New Hampshire Public Utilities Commission

April 10, 1995

ORDER authorizing an interexchange telephone carrier to restructure its rates for prepaid calling card service, to reduce the unit rate from 60 cents to 45 cents.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Prepaid calling cards — Reduction of unit rate — Interexchange telephone carrier. p. 194.

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BY THE COMMISSION:

**ORDER**

[1] On March 10, 1995, AT&T Communications of New Hampshire, Inc. (AT&T) filed a request to restructure and change the rate it charges for Prepaid Card Service. AT&T proposes to reduce the unit rate for Prepaid Card Service from \$.60 to \$.45 and to restructure the rate so that the unit rate applies regardless of the number of prepaid card units purchased.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that 1st Revised Page 23 of AT&T's tariff, P.U.C. No. 4, AT&T Long Distance Service, Section 2 - 10+288 Calling is approved; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1995.

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NH.PUC\*04/10/95\*[80893]\*80 NH PUC 194\*Phoenix Network, Inc.

[Go to End of 80893]

80 NH PUC 194

**Re Phoenix Network, Inc.**

DR 95-065

Order No. 21,608

New Hampshire Public Utilities Commission

April 10, 1995

ORDER authorizing an interexchange telephone carrier to amend its tariffs to reflect a new corporate address and new rates applicable to underlying carriers chosen by a customer.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Notice of new corporate address — New rates applicable to underlying carriers — Interexchange telephone carrier. p. 194.

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BY THE COMMISSION:

ORDER

[1] On March 10, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Phoenix Network, Inc. (Phoenix) requesting authority to make several revisions to its tariff.

The proposed revisions include changing

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Phoenix's address, introducing new rates applicable to the underlying carrier selected by Phoenix's customer, increases to some existing rates and decreases to other existing rates, and various administrative text changes.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Phoenix to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Phoenix's tariff NHPUC No. 1 are approved for effect as filed:

- 1st Revised Title Page
- 3rd Revised Page 1
- 2nd Page 3
- 3rd Revised Page 13
- 3rd Revised Page 14
- 1st Revised Page 15
- 3rd Revised Page 16
- 3rd Revised Page 17
- 3rd Revised Page 19
- 1st Revised Page 20;

and it is

FURTHER ORDERED, that Phoenix file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of April, 1995.

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NH.PUC\*04/11/95\*[80894]\*80 NH PUC 195\*Granite State Electric Company

[Go to End of 80894]

80 NH PUC 195

**Re Granite State Electric Company**

DR 94-063

Order No. 21,609

New Hampshire Public Utilities Commission

April 11, 1995

ORDER adopting settlement as to an electric utility's 1994 integrated least-cost resource planning procedures. The utility is commended for its commitment to incorporating demand-side management measures in its plans, and also for its use of innovative analytical methods in its forecasting processes, such as "option theory" and "high certainty" projections.

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1. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Consideration of parent company's resources — Incorporation of demand-side management resource blocks —

Development of "option theory" and "high certainty" forecasting methods — Assessment of supply- versus demand-side options — Compliance with Clean Air Act and Energy Policy Act requirements — Settlement. p. 198.

## 2. CONSERVATION, § 1

[N.H.] Electric utility — Integrated least-cost resource planning — Commitment to inclusion of demand-side management resource blocks. p. 198.

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APPEARANCES: Steven E. Thomas, Esq. for Granite State Electric Company; Ann Brewster Weeks, Esq. for Conservation Law Foundation; Kenneth E. Traum for the Office of Consumer Advocate; Amy L. Ignatius, Esq. for the Public Utilities Commission.

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BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

On June 1, 1994, Granite State Electric Company (Granite State) filed the 1994 Least Cost Integrated Resource Plan (LCIRP) for Granite State and the other affiliates of New England Electric System with the New Hampshire Public Utilities Commission (Commission). Granite State supplemented its filing on August 18, 1994 with a report on the July 21, 1994 Peak Demand.

The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor. The Commission granted the request of the Conservation Law Foundation, Inc. (CLF) for full intervention. *See* Report & Order No. 21,336 (August 31, 1994).

Staff submitted direct testimony, on November 30, 1994, of John C. Cutting, Scott W. Harrold and Chester A. Kokoszka. Granite State submitted Supplemental testimony on December 21, 1994.

In December, 1994 the Massachusetts Department of Public Utilities approved a settlement regarding the LCIRP as it relates to Massachusetts Electric Company, NEES' retail affiliate serving Massachusetts.

The Commission heard evidence in support of an Offer of Settlement (Settlement Agreement) entered into between the Parties and Commission Staff (Staff) on January 13, 1995.

#### II. POSITIONS OF PARTIES AND STAFF

##### A. *Granite State Electric Company*

NEES' LCIRP, based in large part on its NEESPLAN 4, addresses load forecast, resource inventory, resource need, planning methodology and implementation. New concepts not seen in prior Granite State LCIRPs include use of "Options Theory" and a "High Certainty" forecast.

Granite State forecasts its energy and peak demand, assuming a Granite State sales forecast of 1.7% growth from 1993 through 2008, compounded annually and an overall growth in

NEES's energy requirement and peak demand of 1.5% and 1.1% annually. These forecasts are based on an end-use approach in forecasting industrial class sales and are the result of surveys of commercial and industrial customers, developing specific information for each retail company.

The high certainty forecast recognizes five major market risks that could result in lower sales. Resources to meet the high certainty forecast will continue to be handled as in the past, while resources to meet demand above the high certainty level would be on a shorter term basis.

Granite State's DSM planning now includes study of net market potential for particular demand side management (DSM) blocks, which can be combined in different ways to provide a reliable resource. The LCIRP includes three DSM planning scenarios for each customer sector, representing minimum, present and maximum activity levels.

Planned supply side resources include repowering the Manchester Street station (resulting in a net increase of 313 MW of generation and a reduction in emissions) and power purchase options of approximately 200 MW from projects selected in the 1992 Contingent RFP, with flexibility to buy out the agreements if the power is not needed. NEES submitted to the Massachusetts, New Hampshire and Rhode Island Commissions revised contracts entered into as a result of the "Green RFP" which will provide an additional 36 MW of capacity. This Commission approved the revised contracts in Order No. 21,414 (November 3, 1994). NEES also plans for phased retirement of certain plants and has installed (or will install) emissions reduction systems to come into compliance with the Clean Air Act Amendments of 1990 (CAAA). NEES acquires new resources through competitive bidding.

Granite State's long term avoided costs are based on NEES' system costs. NEES anticipates no new capacity needed until 2002, due to the termination of the Hydro Quebec II contract and NEES' Canal 1 entitlement.

NEES uses an 80/50 confidence level as a planning guide, meaning it is 80% certain of

**Page 196**

meeting its NEPOOL capability responsibility for the first five years, then plans at a decreasing level of confidence over the second five years, down to a 50% confidence level by the tenth year.

NEES's option theory planning involves use of financial options valuation methods in order to identify the benefit or value of a resource option. Its development is still in the early stages and NEES is seeking partners to defray some of the considerable software costs in refining the analysis.

#### *B. Conservation Law Foundation*

CLF did not file testimony in the case but participated in negotiations regarding the LCIRP which it generally supported.

#### *C. Office of Consumer Advocate*

OCA did not file testimony in the case but participated in negotiations regarding the LCIRP which it generally supported.

#### *D. Commission Staff*

John C. Cutting, Scott W. Harrold and Chester A. Kokoszka of the Staff filed testimony on the LCIRP on November 30, 1994 in which it commended Granite State for its use of improved forecasting processes and development of new analytical techniques, including the development of demand-side management resource blocks, the use of a high certainty forecast and the application of options theory to resource planning. Staff asserted that Granite State "is the only New Hampshire electric utility to truly integrate DSM into its resource planning processes."

Staff recommended approval of the LCIRP subject to Granite State addressing the "80/50 criteria" issue prior to the hearing on the 1994 LCIRP. Staff also recommended that: 1) the long-term resources sufficient to meet resource requirements up to the high certainty level is appropriate under all circumstances; 2) the 1996 LCIRP should address the impact of retail competition on planning and the broader transmission system policy issues resulting from the Federal Energy Regulatory Commission's (FERC) open access policies; and 3) in all future LCIRP filings, Granite State should include both a long term projection of the average cost of power from New England Power Company that is consistent with the recommended plan and Granite State's share of the DSM resources identified in the plan.

### III. SETTLEMENT AGREEMENT

Granite State, CLF, OCA and the Staff entered into a Settlement Agreement which recommended approval of the 1994 LCIRP as supplemented, provided the LCIRP were amended to reflect the avoided cost attachment to the Settlement Agreement.

The Parties and Staff also agreed that when there is a demonstrable need for new supply, competitive bidding for new utility supply resources is appropriate. Granite State agreed to cooperate should the Commission decide to open an investigation to determine appropriate rules and procedures for utility competitive bidding programs for supply-side resources.

Granite State also agreed to the following conditions of future LCIRP filings, beginning with the 1996 plan:

1) Granite State shall include an analysis of its strategy, including its use of the high certainty forecast and the 80/50 planning guideline, for determining the appropriate level of long-term commitments, short-term commitments, and resource options. Granite State shall also evaluate and discuss those circumstances where long-term commitments may be more or less desirable;

2) Granite State shall include a discussion of the effects of major policy changes on planning, including the impact of proposals for retail competition or retail access, and open access to transmission for wholesale transactions pursuant to the open access, comparable service policies of the FERC or the implementation of a New England-wide Regional Transmission Group;

3) Granite State shall include a projection of the average cost of power from New England Power Company that is consistent with the recommended plan, and that extends through the

Page 197

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planning period;

4) Granite State shall include an identification of its share of the DSM resources identified in the recommended plan and projection of Granite State's spending on demand-side programs over

the planning horizon that can be used as a guideline for annual DSM budget filings. It is agreed that the long-term plan does not produce budget quality projections but forms a guide for the appropriate level of resource commitments to DSM programs.

#### IV. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony and Settlement Agreement reached between the Parties and Staff in this case and believe the Settlement Agreement is a fair and appropriate resolution of this docket. We will approve the 1994 LCIRP as supplemented and amended by the Settlement Agreement.

We commend Granite State in its efforts to make demand side management a critical component of its resource planning. We are also impressed by its efforts to develop better forecasting processes and new analytical techniques, including the development of demand-side management resource blocks, the use of a high certainty forecast and the application of options theory to resource planning.

We find that the 1994 LCIRP meets most of the standards of RSA 378:38, I through IX, in that it contains a forecast of future electrical demand for the service area, assesses DSM programs, assesses supply options, assesses transmission requirements, provides for diversity of supply sources, integrates demand side and supply side options, complies with CAAA requirements, complies with the Energy Policy Act of 1992 and addresses the long and short term environmental impact on the state. It does not address the economic and energy price and supply impact on the state. However, RSA 378:38 was amended in 1994 to add three assessments to the plan: plan integration and impact on state compliance with the Clean Air Act Amendments of 1990, plan integration and impact on state compliance with the National Energy Policy Act of 1992, and long and short term environmental, economic and energy price and supply impact on the state. We read these new plan components as being required for all plans filed after June 8, 1994 (the effective date of the amendments to RSA 378:38), but not for any plans, like the one before us now, that were filed before this date. Therefore, we will expect Granite State to address all of these new components, including the long and short term economic and energy price and supply impacts, in its 1996 LCIRP.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement reached between Granite State, CLF, OCA and the Staff is approved; and it is

FURTHER ORDERED, that the 1994 Least Cost Integrated Resource Plan, as supplemented and amended by the Settlement Agreement, is approved.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Granite State Electric Co., DE 94-063, Order No. 21,336, 79 NH PUC 470, Aug. 31, 1994. [N.H.] Re Granite State Electric Co., DE 93-155, Order No. 21,414, 79 NH PUC 623, 159

PUR4th 100, Nov. 3, 1994.

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NH.PUC\*04/11/95\*[80895]\*80 NH PUC 199\*Merrimack County Telephone Company

[Go to End of 80895]

80 NH PUC 199

**Re Merrimack County Telephone Company**

DF 95-026

Order No. 21,610

New Hampshire Public Utilities Commission

April 11, 1995

ORDER authorizing a local exchange telephone carrier to issue a promissory note in an amount up to \$2.1 million, so as to secure financing from the Rural Telephone Finance Cooperative for the installation of both a new host central office switch and new remote central office switches.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of promissory notes — Purposes — Additions and betterments — Installation of central office switches — Local exchange telephone carrier. p. 199.

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BY THE COMMISSION:

**ORDER**

[1] On February 3, 1995 Merrimack County Telephone Company (MCT), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval and authority under RSA 369:1-4 to issue its promissory note in the principal amount of \$2,105,263 and to mortgage its properties, tangible and intangible, including franchises, as security for such promissory note.

MCT proposes to enter into a loan agreement with the Rural Telephone Finance Cooperative (RTFC) providing for the issuance, subject to the Commission's approval, of a promissory note in the principal amount of \$2,105,263 having a term of fifteen (15) years.

The initial interest rate or rates will be determined by the RTFC based on market conditions at the time of the closing. The proceeds from the issuance of the promissory note will be used (a) to finance the acquisition and installation of a new host central office switch to be located in the MCT's Contoocook central office and new remote central office switches to be located in MCT's Bradford, Sutton and Warner central offices; and (b) to purchase a subordinated capital certificate in the amount of \$105,263 from the RTFC.



On March 21, 1995 MCT filed an Addendum to the Petition and proposed that the promissory note bear interest at variable rates per annum to be fixed monthly in accordance with standard RTFC loan policies. MCT further proposed that in the event the variable interest rate fixed by the RTFC at any time is equal to or greater than 9.45% per annum, MCT will within 30 days thereafter either (a) exercise the option granted in the loan documents to convert the interest rate to a fixed rate of interest for the duration of the loan or (b) apply by petition to the Commission for an order staying the requirement to convert the interest rate to a fixed rate, in which event the time for converting the interest rate to a fixed rate shall be extended until not later than 30 days following the date of the filing of such petition or until otherwise ordered by the Commission.

Staff and MCT discussed the interest rate levels at length. The Staff recommended that the interest rate be capped at 100 basis points over the RTFC's fixed rate for 15-year loans in effect on the date of closing. This cap would be applicable for any option which MCT adopts for the life of the loan, including fixed, variable or blended rates. Staff states that MCT will be billed monthly on the variable rate option and, therefore, should be able to anticipate when the loan should be converted to a fixed rate option, or some combination of fixed, variable options to keep interest costs to a minimum.

Staff and MCT agreed that in the event the interest rate per annum established under the RTFC procedures rise to a level equal to a rate which is 100 basis points higher than the fixed fifteen year rate at the time of closing, that the

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interest rate on the Note would immediately be converted to a fixed rate for the balance of the term of the loan. The Commission has reviewed the MCT's petition, and all exhibits submitted therewith and Staff's recommendation.

Based upon the foregoing, it is hereby

ORDERED, that the issuance of a promissory note of MCT in the principal amount of \$2,105,263 to the RTFC upon the terms represented in the proposed loan documents is consistent with the public good; and it is

FURTHER ORDERED, that MCT is authorized to issue a promissory note in the principal amount of \$2,150,263; and it is

FURTHER ORDERED, that the promissory note will bear interest at variable rates, or fixed rates over such periods as MCT may elect in accordance with standard RTFC loan policies; and it is

FURTHER ORDERED, that in the event that the interest rate per annum established under the RTFC procedures for fixed rate fifteen year loans rises to a level equal to a rate which is 100 basis points higher than the fixed rate in effect for fifteen year loans on the date of the closing, the interest rate on the Note shall immediately and automatically be converted to a fixed rate for the balance of the term of the loan; and it is

FURTHER ORDERED, that MCT file executed loan documents, containing the definitive

terms of the loan, including initial interest rate or rates immediately upon closing; and it is

FURTHER ORDERED, that the mortgaging of MCT's property to secure the repayment of such promissory note is approved; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year MCT, shall file with the Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed financing until the expenditures of the whole proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1995.

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NH.PUC\*04/11/95\*[80896]\*80 NH PUC 200\*LCI International Telecom Corporation

[Go to End of 80896]

80 NH PUC 200

**Re LCI International Telecom Corporation**

DE 95-066

Order No. 21,611

New Hampshire Public Utilities Commission

April 11, 1995

ORDER authorizing an interexchange telephone carrier to introduce an alternative switched service for small business customers that generate less than \$150 a month in toll charges, with a basic monthly minimum of \$20.

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1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Small business customers — Alternative switched service — Monthly minimums — Interexchange telephone carrier. p. 200.

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BY THE COMMISSION:

ORDER

[1] On March 13, 1995, LCI International Telecom Corp. (LCI) filed to introduce LCI Alternative. LCI Alternative is designed for small business customers who generate less than \$150 in toll charges per month. LCI Alternative service requires a minimum of \$20 in monthly usage. If the customer incurs a bill of less than \$20 in charges, he will be billed for the difference between the \$20 minimum monthly requirement and the amount actually billed.

LCI Alternative service is timed in six (6) second increments, with a six (6) second, initial

increment. Call duration is calculated on a per-call basis, rounding up to the next full increment. Call rating is on a bulk basis (all call duration totaled and then rated). The total is

**Page 200**

rounded to the nearest full cent.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of LCI's LCI Alternative service offering.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff are approved as filed:

- LCI International Telecom Corp.,
- PUC No. 2
- Page 1 1st Revised
- Page 2 1st Revised
- Page 3 3rd Revised
- Section 2 Page 18 Original
- Section 4 Page 22 Original;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of April, 1995.

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NH.PUC\*04/11/95\*[80897]\*80 NH PUC 201\*Iron Dragon Corporation

[Go to End of 80897]

80 NH PUC 201

**Re Iron Dragon Corporation**

DE 95-075

Order No. 21,612

New Hampshire Public Utilities Commission

April 11, 1995

ORDER authorizing a hydro generation facility to construct aerial electric lines across the Exeter River, to allow for connection of a replaced hydro generator with the intrastate electrical grid.

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## 1. ELECTRICITY, § 6

[N.H.] Wires and cables — Overhead electric circuits — Crossing of public waters — Factors affecting approval — Necessity of connecting replaced hydro generator. p. 201.

## 2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Overhead electric lines — Crossing of public waters — Factors affecting approval — Necessity of connecting replaced hydro generator. p. 201.

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BY THE COMMISSION:

## ORDER

[1, 2] The Petitioner, Iron Dragon Corporation, on behalf of Exeter River Hydro, filed with the New Hampshire Public Utilities Commission (Commission), on March 21, 1995, a petition under RSA 371:17 for the initial licensing of aerial electric lines over and across the Exeter River, a public water within the definition of RSA 371:17. Subsequently on March 22, 1995, the Petitioner filed supplemental documentation to clarify its request.

In order to connect a replacement hydro generator to the electrical grid, Exeter River Hydro must construct electric lines over and across the Exeter River. 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 subject crossings are over and across public waters.

In order to connect the proposed replacement hydro generator to the existing power house it is necessary to construct aerial electric circuits for the generator output, station service and control, from the proposed replacement generator to the existing power house. The crossings of these circuits are noted on the Petitioner's Plan, dated March 22, 1995, crossing the Exeter River from pole ERH #2 on the

Page 201

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southern side of the river to pole ERH #1 on the northern side of the river. The Petitioner's profile, Section A-A, dated March 22, 1995, shows the proposed clearance of the circuits. Upon review of the filed documentation, Staff has verified that these clearances meet the requirements of the 1993 National Electrical Safety Code.

The Commission finds such crossings necessary for Exeter River Hydro to provide hydropower generated electric energy, and are in the public good.

The public should be offered the opportunity to respond in support of, or in opposition to said petition.

Based upon the foregoing, it is hereby

ORDERED *IN SI*, that authority be, and hereby is granted, pursuant to RSA 371:17 *et seq.*, to Iron Dragon Corporation, to construct electric lines over Public Waters of the State of New

Hampshire at Brentwood, New Hampshire; and it is

FURTHER ORDERED, that Exeter River Hydro be authorized, pursuant to RSA 371:17 *et seq.*, to maintain and operate the proposed electric lines over the Exeter River as described in this petition; and it is

FURTHER ORDERED, that all reconstruction hereafter performed shall 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 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 April 25, 1995 and to be documented by affidavit filed with this office on or before May 8, 1995; 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 8, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 11, 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 eleventh day of April, 1995.

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NH.PUC\*04/11/95\*[80898]\*80 NH PUC 202\*GTE Card Services, Inc.

[Go to End of 80898]

80 NH PUC 202

**Re GTE Card Services, Inc.**

DE 95-025

Order No. 21,613

New Hampshire Public Utilities Commission

April 11, 1995

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

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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 services. p. 202.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 202.

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BY THE COMMISSION:

### ORDER

[1, 2] On February 3, 1995, GTE Card Services, Inc. (GTECS), 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)

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pursuant to, *inter alia*, RSA 374:22 and RSA 374:26.

GTECS 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 GTECS 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. GTECS 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, GTECS shall notify the Commission of the change.
5. GTECS 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. GTECS shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. GTECS 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. GTECS 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. GTECS 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. GTECS shall compensate the appropriate Local Exchange Company for all originating and terminating access used by GTECS 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 GTECS 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

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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 GTECS to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that GTECS shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than April 25, 1995, and an affidavit proving publication shall be filed with the Commission on or before May 8, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. GTECS 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 GTECS shall file a compliance tariff with the Commission on or before April 25, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 11, 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 eleventh day of April, 1995.

Notice of Conditional Approval of  
GTE CARD SERVICES, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On February 3, 1995, GTE Card Services, Inc. (GTECS), 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. 21,613, issued in Docket No. DE 95-025, the Commission granted GTECS conditional approval to operate as of May 11, 1995, subject to the right of the public and



interested parties to comment on GTECS 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 GTECS's petition to do business in the State should submit written comments no later than May 8, 1995, to:

Dr. Sarah P. Voll  
Executive Director and Secretary  
Public Utilities Commission  
8 Old Suncook Road  
Concord, New Hampshire 03301-7319

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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\*04/17/95\*[80899]\*80 NH PUC 205\*New Hampshire Electric Cooperative, Inc.

[Go to End of 80899]

80 NH PUC 205

**Re New Hampshire Electric Cooperative, Inc.**

DR 95-031  
Order No. 21,615

New Hampshire Public Utilities Commission

April 17, 1995

ORDER noting interventions and adopting a procedural schedule for addressing a proposal by an electric cooperative for permanent implementation of discounted rates for certain sawmill customers with self-generation capabilities.

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1. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Targeting of sawmill facilities — Self-generation capabilities as a factor — Antibypass proposals — Discount rates for qualifying minimum loads — Trial basis — Procedural schedule for considering permanent implementation. p. 205.

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BY THE COMMISSION:

ORDER

[1] On February 8, 1995, New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a Sawmill Generation Deferral Service Rate SGDS (Sawmill Rate) and supporting testimony and exhibits. The Sawmill Rate is designed to retain sawmill customers on the NHEC system.

The Commission set a prehearing conference for April 12, 1995, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff).

Public Service Company of New Hampshire (PSNH) sought intervention, without objection. PSNH supports the filing and has been involved in the analysis of the Sawmill Rate and its effect under the Amended Partial Requirements Agreement (APRA) between PSNH and NHEC.

At the prehearing conference NHEC, PSNH, the Office of Consumer Advocate (OCA) (which is a statutorily recognized intervenor), and Staff agreed to the following procedural schedule:

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

Data Requests from Staff and OCA to NHEC and PSNH	April 17, 1995
NHEC and PSNH Data Responses	May 2, 1995
Technical Session at 10 a.m.	May 4, 1995
Testimony by Staff, OCA and PSNH	May 8, 1995
Data Requests by all parties and Staff regarding May 8, 1995 testimony	May 11, 1995
Data Responses by all	May 17, 1995
Settlement Conference, 2 p.m.	May 18, 1995
File Settlement Agreement, if any	May 23, 1995
Hearing on merits, 2 p.m.	June 1, 1995

Also at the prehearing conference, in accordance with the Order of Notice, NHEC stated that it believed the significant issues to be addressed in this proceeding are: 1) the benefits of retaining sawmill customers on NHEC's load; 2) demonstrating that there will be no impact on revenues or on fixed costs; and 3) demonstrating the similarity between this case and the sawmill rate approved for PSNH.

PSNH supported the application, stating that it believes sawmills are vulnerable to self-generation and that loss of sawmill load would result in loss of sales from PSNH to NHEC, under the APRA. PSNH also argued that sawmills should be treated similarly throughout the state, such that the discount approved for sawmills in PSNH's territory should be similarly

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approved for sawmills in NHEC's territory. PSNH stated this is not a form of retail wheeling because there is no contractual relationship between PSNH and NHEC's sawmills, and offered to state its position on that matter in writing. PSNH stated it might wish to call one or more

witnesses to support the filing.

OCA stated that it currently could take no position on the filing, but would explore whether approval of the rate would be to the benefit or detriment of other NHEC customers.

Staff stated it particularly intended to review: 1) the potential for "free riders" on the rate; 2) whether the rate is unduly discriminatory; 3) whether the rate constituted a form of retail wheeling in that it is a wholesale discount from PSNH to NHEC on the basis of particular NHEC customers' load characteristics; 4) determination of the impact on costs and revenues (and the resulting impact on other customers); and 5) impact on sawmill competitors who might not meet the eligibility criteria for the rate.

We will grant PSNH's request for full intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

Based upon the foregoing, it is hereby

ORDERED, that PSNH is granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1995.

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NH.PUC\*04/17/95\*[80900]\*80 NH PUC 206\*LCI International Telecom Corporation

[Go to End of 80900]

80 NH PUC 206

**Re LCI International Telecom Corporation**

DR 95-077

Order No. 21,616

New Hampshire Public Utilities Commission

April 17, 1995

ORDER approving an interexchange telephone carrier's proposed revisions to credit card/debit card service rates as well as certain new promotional features for business and residential 800 services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Credit card/debit card rates — New promotional features for certain 800 services — Business and residential 800 service — Interexchange carrier. p. 206.

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BY THE COMMISSION:

ORDER

[1] On March 21, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corp. (LCI) for authority to make various revisions to its tariff.

The proposed revisions include adding language to the Integrity tariff that protects the customer's rates and discounts when the customer executes a term agreement. A re-charge feature for credit cards to LCI International Debit Card service is being added which will allow customers to charge more time on the debit card once the card is depleted. Language is being added to the Rules and Regulations section of 800 service which prohibits use of LCI 800 numbers for pay-per-call services and prohibits use of 800 automatic number identification to invoice customers who call the 800 number.

LCI is adding two new charges for 800 account codes, and is introducing a promotion for WorldCard Plus and LCI Home 800 which provides 60 minutes for each service at one cent per minute through December 31, 1995.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire

Page 206

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's NHPUC Tariff No. 2 are approved for effect as filed:

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

Check Sheet2nd Revised Page 1

Section 21st Revised Page 8  
1st Revised Page 10

Section 31st Revised Page 5

Section 41st Revised Page 18  
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 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1995.

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NH.PUC\*04/17/95\*[80901]\*80 NH PUC 207\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80901]

80 NH PUC 207

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-078

Order No. 21,617

New Hampshire Public Utilities Commission

April 17, 1995

ORDER authorizing an interexchange telephone carrier to revise certain tariffed rates such that operator-assisted calls for "Sprint Sense" customers would be billed at "Sprint Sense" rates.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Operator-assisted services — "Sprint Sense" customers — Uniformity of rates — Interexchange carrier. p. 207.

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BY THE COMMISSION:

ORDER

[1] On March 22, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) requesting authority to rate operator service calls handled for Sprint Sense subscribers at Sprint Sense rates, add an offering to Sprint's Hospitality Connection called Hospitality Connection Plus and make minor text changes for effect April 21, 1995.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's NHPUC Tariff No. 4 are approved for effect as filed:

- 14th Revised Page 1
- 2nd Revised Page 34
- 1st Revised Page 35

2nd Revised Page 48  
2nd Revised Page 49  
1st Revised Page 73-C  
1st Revised Page 75  
2nd Revised Page 86;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as

**Page 207**

required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1995.

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NH.PUC\*04/17/95\*[80902]\*80 NH PUC 208\*Connecticut Valley Electric Company

[Go to End of 80902]

80 NH PUC 208

**Re Connecticut Valley Electric Company**

DR 94-237

Order No. 21,618

New Hampshire Public Utilities Commission

April 17, 1995

ORDER adopting a settlement agreement with respect to an electric utility's 1995 conservation and load management program. The utility is allowed to continue three previously underperforming programs, with the idea that an improving state economy will spur improvements in their performance as well. However, certain new oversight and reporting requirements are implemented.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Settlement agreement — 1995 budget — Continuation of underperforming programs — Improvements in state economy as a factor — Associated new oversight and reporting requirements. p. 209.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management programs — Settlement terms — New annual budget — Continuation of underperforming programs — Improvements in

state economy as a factor — Associated new oversight and reporting requirements. p. 209.

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APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company and E. Barclay Jackson, Esq. on behalf of Commission Staff. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On October 17, 1994, Connecticut Valley Electric Company (CVEC or Company) filed a petition (the Filing) with the New Hampshire Public Utilities Commission (Commission) to open a proceeding on its 1995 conservation and load management (C&LM) programs and C&LM percentage adjustment (C&LMPA).

A duly noticed prehearing conference was held on December 6, 1994 at which a procedural schedule was agreed upon by the Commission Staff (Staff) and CVEC. The procedural schedule approved by the Commission by Order No. 21,458, allowed for the filing of data requests and responses by CVEC and Staff as well as the filing of Staff testimony. The Commission further ordered that the 1995 C&LM programs commence on January 1, 1995 at the proposed 1995 C&LM Percentage Adjustment, subject to reconciliation, pending full review and final Commission Order.

CVEC requested confidential treatment of certain pages requested by Staff during the discovery process. The Commission granted CVEC's request by Order No. 21,542, dated February 22, 1995.

Staff did not file testimony in this case.

By Settlement Conference Call on March 6, 1995, Staff and CVEC agreed that the proposed 1995 C&LM program, the expenditure and lost revenue recovery, and incentive collection, as presented by CVEC in the Filing, should be recommended to the Commission for approval. Staff and CVEC agreed that the five additions they wished to add to the Filing were minor and could be made during the hearing.

The Office of Consumer Advocate (OCA), a statutory party to this docket, received all filings and notice of the hearings, technical

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session and settlement conference. However, OCA did not participate in any part of this proceeding.

At hearing on March 16, 1995, CVEC and Staff presented their joint recommendation to the Commission.

### II. POSITIONS OF THE PARTIES AND STAFF

CVEC's 1995 Filing proposes a stable portfolio of programs similar to that offered and approved in 1994. Three programs did not perform as well as anticipated in 1994: the Residential New Construction, the Commercial and Industrial New Construction, and the Large Commercial Retrofit programs. However, their performance was affected by several factors which could change in 1995, including improvements in the economy and the culmination of new marketing efforts begun in 1994. Therefore, Staff and CVEC agreed that those programs should continue for 1995, with the understanding that termination of the programs may be appropriate for 1996, depending upon their performance.

As detailed in the March 14, 1995 letter from CVEC to Staff, introduced at the hearing as Exhibit 4, CVEC and Staff agreed upon five additions to the Filing. These five additions are summarized as follows:

(1) A Program Budget Notification method whereby CVEC will notify the Commission of anticipated budget deviations. Notification will occur when either of two situations arise: when an existing C&LM measure rebate percentage needs to change by 20% or more due to changes in market conditions; and when expenditures in any specific C&LM program seems likely to exceed or underspend the approved budget by 25%. If, as a result of the notification, Staff or CVEC or any other party believes a Commission decision is necessary, that party may file a petition requesting Commission action. If CVEC receives no response within two weeks of notifying the Commission, the change in budget shall be implemented.

(2) In the future, CVEC will report its actual annual energy savings in its Annual Report as well as in the lost revenue calculation in rate adjustment filings.

(3) In the future, CVEC's Annual Report will include a listing of participating retail outlets in its service territory and a discussion of customer accessibility to the retail outlet network.

(4) Upon the effective date of the pending new wholesale rate (RS- 3), CVEC will recalculate incentives and lost revenues based upon RS-3. Unless the recalculation results in significant overcollection or undercollection, the recalculated amounts will be reconciled in CVEC's next C&LM filing.

(5) Pursuant to Order No. 21,458, which permitted CVEC to implement an interim C&LM percentage rate adjustment pending final review by the Commission, an adjustment to the interim rate is now necessary. The adjustment necessary is an increase of 0.33% for residential classes and a decrease of 0.4% for nonresidential classes. Staff and CVEC agree that these adjustments should take effect as of April 1, 1995, in order to avoid accruing amounts for later reconciliation.

### III. COMMISSION ANALYSIS

[1, 2] The C&LM programs proposed in the Filing are reasonable and in the public good. After careful consideration of the five additional points raised by Staff and CVEC, we find the Notification Program, the two reports to expand CVEC's Annual Report, the proposed reconciliation of differences caused by the implementation of RS-3, and the proposed implementation date for the C&LM Percentage Adjustment to be reasonable and in the public good.

Based upon the foregoing, it is hereby



ORDERED, that the CVEC C&LM Filing is hereby APPROVED; and it is FURTHER ORDERED, that the five additional points enumerated above are also APPROVED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 1995.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 94-237, Order No. 21,458, 79 NH PUC 682, Dec. 13, 1994.

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NH.PUC\*04/18/95\*[80903]\*80 NH PUC 210\*Public Service Company of New Hampshire

[Go to End of 80903]

80 NH PUC 210

**Re Public Service Company of New Hampshire**

DR 95-048

Order No. 21,619

New Hampshire Public Utilities Commission

April 18, 1995

MOTION by electric utility for approval of a 10-year special rate contract with an industrial customer, Batesville Casket Company; granted, with the commission citing to the associated economic development initiatives and ratepayer benefits emanating therefrom.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Long-term special rate contract — Purposes — Load retention — Promotion of local employment/economic development initiatives — Contribution to cost as a factor affecting approval. p. 211.

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BY THE COMMISSION:

ORDER

On March 3, 1995, Public Service Company of New Hampshire (PSNH) filed a request for

approval of a ten-year special contract between PSNH and Batesville Casket Company (Batesville). Batesville is an Indiana corporation with a manufacturing facility located in Nashua, New Hampshire. Batesville manufactures premium wooden caskets at its Nashua location. Special Contract No. NHPUC-107 is effective upon Commission approval.

PSNH's filing included redacted and unredacted testimony and exhibits supporting a discounted rate for Batesville. Concurrent with its filing, PSNH filed a Motion for Protective Order of certain information considered confidential in the redacted Testimony and Technical Statement. On March 20, 1995, the Commission issued Order No. 21,576 granting protective treatment of redacted materials, pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08(b)(4).

Special Contract No. NHPUC-107 provides for rates of electric service lower than those otherwise available under applicable tariff Rate LG. The rates include a customer charge, a Base Demand Charge, a Base Energy Charge, an Excess Demand Charge, and an Excess Energy Charge. The Excess Demand Charge will apply to all kVA demand above the Base Demand level specified in Special Contract No. NHPUC-107. The Base Demand Charge is \$10.30 per kVA effective June 1, 1995. The Excess Demand Charge applies to applicable demand above Base Demand and is approximately one-half the Base Demand Charge.

The Base Energy Charge equals the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC) plus the FPPAC rate plus the Nuclear Decommissioning Charge (NDC) plus 1.5 cents per kWh. The Excess Energy Charge applies to all usage greater than the monthly Base Energy level. The Excess Energy Charge equals FPPAC "BA" plus the FPPAC rate plus the NDC rate plus 1.1 cents per kWh.

PSNH states that the revenue received under Special Contract No. NHPUC-107 will exceed the marginal cost of serving Batesville during each year of the ten-year special contract. Either party may terminate Special Contract No. NHPUC-107 prior to the end of the ten-year period based on the early termination provisions of the contract, but neither party may terminate earlier than sixty (60) months from

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the effective date. PSNH and Batesville assert that this special contract is necessary for Batesville to retain its manufacturing facilities in Nashua, New Hampshire. Batesville further asserts that approval of Special Contract No. NHPUC-107 will also allow Batesville to increase its production capability and employment at its Nashua facility. Batesville had been receiving discounted electric service as part of the Pilot Load Management program which expired on December 1, 1994. Special Contract No. NHPUC-107 will provide service to Batesville at rates that are slightly above the rates Batesville received under the Pilot Load Management program.

PSNH claims that Special Contract No. NHPUC-107 meets the guidelines in the Commission's Checklist on Economic Development and Business Retention Special Contracts. PSNH further states that Special Contract No. NHPUC-107 will benefit PSNH and PSNH's other customers by the additional revenue contribution toward fixed costs, a portion of which will go to reduce the FPPAC rate.

[1] Both PSNH and Batesville have made representations that approval of Special Contract

No. NHPUC-107 will provide the incentive to not only retain the existing production facilities in Nashua, New Hampshire, but will enable Batesville to increase its production capabilities and employment. We will, therefore, require PSNH to provide us with notification if 1) Batesville falls below the annual Base Energy Level during the term of the contract; and 2) if Batesville fails to add the additional load and employment as Batesville has represented in the filing. Upon review of the filing and the Staff recommendation, the Commission finds Special Contract No. NHPUC-107 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-107 between Public Service Company of New Hampshire and Batesville Casket is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-107, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rate afforded Batesville in Special Contract No. NHPUC-107; 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 May 2, 1995 and to be documented by affidavit filed with this office on or before May 15, 1995; 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 15, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 18, 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 eighteenth day of April, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*04/18/95\*[80904]\*80 NH PUC 212\*IXC Long Distance, Inc.

[Go to End of 80904]

**Re IXC Long Distance, Inc.**

DE 95-052  
Order No. 21,620

New Hampshire Public Utilities Commission

April 18, 1995

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

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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 services. p. 212.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 212.

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BY THE COMMISSION:

ORDER

[1, 2] On March 6, 1995, IXC Long Distance, Inc. (IXC), 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.

IXC 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 IXC 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. IXC 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, IXC shall notify the Commission of the change.

5. IXC 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. IXC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. IXC 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. IXC shall be subject to all statutes and administrative rules including those related to quality and terms and conditions of service,

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disconnections, deposits and billing, except those specifically waived herein.

9. IXC 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. IXC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by IXC 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 IXC 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 IXC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that IXC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than May 2, 1995, and an affidavit proving publication shall be filed with the Commission on or before May 15, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. IXC 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 IXC shall file a compliance tariff with the Commission on or before May 2, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 18, 1995, unless the Commission provides otherwise in a

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supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1995.

Notice of Conditional Approval of  
IXC Long Distance, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 6, 1995, IXC Long Distance, Inc. (IXC), 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. 21,620, issued in Docket No. DE 95-052, the Commission granted IXC conditional approval to operate as of May 18, 1995, subject to the right of the public and interested parties to comment on IXC 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 IXC's petition to do business in the State should submit written comments no later than May 15, 1995, 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\*04/18/95\*[80905]\*80 NH PUC 214\*West Coast Telecommunications, Inc.

[Go to End of 80905]

80 NH PUC 214

### **Re West Coast Telecommunications, Inc.**

Additional applicant: Frontier Corporation

DE 94-287  
Order No. 21,621

New Hampshire Public Utilities Commission

April 18, 1995

ORDER confirming the authority granted West Coast Telecommunications, Inc., in Order No. 21,527 (80 NH PUC 71, *supra*) to transfer its own operating authorities plus those of a subsidiary to its parent company, Frontier Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 22

[N.H.] Factors affecting approval — Intercorporate transfers — Transfer of operating authority to parent company — Concomitant assumption of control of subsidiary — No change in day-to-day operations or tariffs — Telecommunications carrier — Affirmation. p. 215.

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BY THE COMMISSION:

ORDER

On December 2, 1994, the Petitioner, Frontier Corporation (Frontier) formerly Rochester Telephone Corporation (RTC), WCT Communications, Inc. (WCT), and WCT's wholly-owned subsidiary West Coast Telecommunications of New Hampshire, Inc. (West Coast) (Petitioner) collectively filed with the New

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Hampshire Public Utilities Commission (Commission) a petition (Petition) requesting Commission approval of a transaction whereby RTC [now Frontier] will acquire operating control of WCT, and, in turn, West Coast. The Petitioner further sought approval prior to February 15, 1995.

In Docket DE 93-117, by Order No. 20,983 (October 1, 1993) the Commission granted West Coast authority to conduct business as a telecommunications utility in New Hampshire. Order No. 20,983 also granted West Coast waivers from NH Admin. Rules, Puc 406.03 Accounting Records; 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies. The Petitioner has requested that the waivers granted to West Coast be continued and that West Coast be permitted to continue to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP).

West Coast evidenced its technical, managerial, and financial competence in the record of DE 93-117. After the transfer of control, West Coast expects that these capabilities will be enhanced by the ability to draw upon the resources of its new parent company, Frontier.

Frontier Corporation, formerly Rochester Telephone Corporation prior to January 1, 1995, is a publicly held New York corporation. Frontier is also the parent of Long Distance North of New Hampshire, Inc. and another long-distance subsidiary, RCI Long Distance, Inc. After completion of the transaction described in the Petition, Frontier will be the ultimate corporate parent of both WCT and West Coast. West Coast will continue to provide service under the same name and pursuant to its tariff currently on file with the Commission.



[1] On February 8, 1995, the Commission issued Order No. 21,527 granting the petition *nisi*. It required the Petitioner to publish an attested copy of the Order no later than February 22, 1995 and to file a compliance tariff with the Commission also on or before February 22, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b). After discussions with the Commission Staff, WCT filed a letter on April 10, 1995 noting that the transfer of control did not affect the operating authority of WCT, WCT will continue to operate under its existing tariff and that therefore it would be redundant to file a new tariff. On April 12, 1995, following further inquiry by the Commission Staff, Frontier filed a letter informing the Commission that it had neglected to publish as ordered.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the approvals in Order No. 21,527 are confirmed; and it is

FURTHER ORDERED, that WCT may continue to operate under its existing tariff and that Frontier need not file a compliance tariff under N.H. Admin. Rules, Puc 1601.04(b); 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 May 2, 1995, and to be documented by affidavit filed with this office on or before May 15, 1995; 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 15, 1995; and it is

FURTHER ORDERED, that this Order *nisi* shall be effective May 18, 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 eighteenth day of April, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re West Coast Telecommunications of New Hampshire, Inc., DE 93-117, Order No. 20,983, 78 NH PUC 556, Oct. 1, 1993.

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NH.PUC\*04/24/95\*[80906]\*80 NH PUC 216\*West Epping Water Company, Inc.

[Go to End of 80906]

80 NH PUC 216

### Re West Epping Water Company, Inc.

DE 95-108  
Order No. 21,622

New Hampshire Public Utilities Commission

April 24, 1995

ORDER directing a water utility to submit requested information on its source(s) of supply, well configurations, and affiliate transactions. Pending commission review of such data, a moratorium is placed on the utility's construction, decommissioning, or modification of its well system.

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1. WATER, § 12

[N.H.] Water utility operations — Construction and equipment — Source(s) of supply — Configuration of wells — Affiliate relations — Submission of data and information — Moratorium on changes to well system. p. 216.

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BY THE COMMISSION:

ORDER

[1] An investigation by Commission Staff in conjunction with the staffs of several other state agencies has revealed serious concerns about, among other things, what water source or sources supply the water system of the West Epping Water Company (Company) in the Town of Epping; what interconnections may exist between the system and other facilities such as the Epping Indian Springs and the EIS Corporation bottling plant in the Town of Raymond; what water may have been or is being imported to or exported from the system through such interconnections; the possible interrelationship of some 14 known wells and the possibility of other unknown wells owned or operated by Mr. Richard Fisher or other principals of West Epping Water Company, or otherwise related to the operations of the Company; the possibility of adverse health impacts to customers; the extent of misrepresentations made by the Company to Commission Staff regarding such interconnections and sources and other matters; and possible violations of various state statutes and rules of this Commission.

Based upon the foregoing, it is hereby

ORDERED, that by the authority of this Commission to perform independent inquiries pursuant to RSA 365:5, West Epping Water Company submit the information required by Attachment A of this Order by May 12, 1995; and it is

FURTHER ORDERED, that the Executive Director and Secretary add to this docket's service list, and mail a copy of this notice, to the Town Clerks of Epping and Raymond; the NH Department of Environmental Services (NHDES) Engineering Bureau; the NHDES Water Resources Division; the NHDES Wetlands Board; the NH Department of Health and Human Services, Division of Public Health Services; the NHDOT Bureau of Railroads; and the Office of Attorney General; and it is

FURTHER ORDERED, that the Company provide copies of its responses to all parties on the service list; and it is

FURTHER ORDERED, that no wells be either decommissioned or installed; that no splitting

of the system be accomplished; and that no other significant changes be made to the wells, mains or other facilities of the system apart from necessary routine or emergency maintenance, without the express written pre-approval of this Commission; and it is

FURTHER ORDERED, that failure to provide full and complete responses by the date specified, or to heed the above stop-work order, will result in a hearing in which West Epping Water Company will be required to show cause why it should not be fined \$ 25,000 pursuant to RSA 365:41, or why its officers and agents should not be fined \$10,000 for each violation or day of continuing violation, pursuant to RSA 365:42.

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

**Page 216**

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of April, 1995.

#### Attachment A

Information to be Submitted by West Epping Water Company On or Before May 12, 1995

1. Submit an accurate, to-scale map showing the following:

a. All wells owned or used, or formerly owned or used, by West Epping Water Company or its principals, or in any way related to the operations or activity of the Company or its principals, in the Towns of Epping or Raymond, including those on or near Mill Road, Hickory Hill Road and Holt Road in Epping; at or in the vicinity of Epping Indian Springs; at or in the vicinity of the EIS Corporation bottling plant in Raymond; or in the vicinity of the NHDOT railroad right-of-way; whether active, inactive or abandoned.

b. All water mains in Epping or Raymond that currently connect or formerly connected to any of the above wells, spring or bottling plant, whether active, inactive or abandoned.

c. All tanks, well tiles, pumps, valve manholes, valves, blowoffs and other facilities in any way associated with any of the above wells, spring, bottling plant or mains, whether active, inactive or abandoned.

2. For each well state the following:

- a. Date installed
- b. Who installed
- c. Reason installed
- d. Type
- e. Depth
- f. Casing size
- g. Safe yield
- h. Copies of pump test results
- i. Whether a pump is installed
- j. Electric meter number serving well

- k. Original owner
- l. Original operator
- m. Present owner
- n. Present operator
- o. Current use of well.

3. For each water main state the following:

- a. Date installed
- b. Who installed
- c. Size
- d. Reason installed
- e. Original owner
- f. Original operator
- g. Present owner
- h. Present operator
- i. Current purpose.

4. For each tank, well tile, non-well pump, valve manhole, valve, blowoff or other facility, state the following:

- a. When installed
- b. Who installed
- c. Size
- d. Reason installed
- e. Original owner
- f. Original operator
- g. Present owner
- h. Present operator
- i. Current purpose.

5. State any and all past or present relationships of West Epping Water Company or its principals to each of the following; and, to the extent applicable, state the principals, purpose and incorporation date of each:

- a. West Epping Water Company
- b. Crossroads Water Corporation
- c. Waterview Farm Realty Trust
- d. EIS Corporation

- e. Epping Indian Springs Corp
- f. Pure Products
- g. Carpenito Professional Association.

6. List any other past or present corporations significant to a full understanding of the construction, ownership and operation of any of the above-referenced wells, water mains, spring or bottling plant.

7. List the names and addresses of all West Epping Water Company customers currently or formerly served at any sites other than Hickory Hill Road and the School Street apartments, including any and all current or former customers on Mill Road. Include the history and current status of each.

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NH.PUC\*04/24/95\*[80907]\*80 NH PUC 218\*Public Service Company of New Hampshire

[Go to End of 80907]

80 NH PUC 218

## Re Public Service Company of New Hampshire

DR 94-256

Order No. 21,623

New Hampshire Public Utilities Commission

April 24, 1995

ORDER adopting a settlement agreement with respect to an electric utility's 1995 conservation and load management program, approving a budget of \$3.058 million. The utility is authorized to continue its residential programs and educational efforts, and also to introduce new programs aimed at small and medium commercial and industrial customers and at nonresidential premises associated with retrofit projects. The utility is granted flexibility to shift funds among approved programs, but is subject to a monetary penalty should it underspend its total budget by more than 25%.

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### 1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Settlement agreement — 1995 budget — Continuation of residential and educational projects — Introduction of new commercial/industrial/retrofit programs — Maximization of benefits among broad customer segments — Shifting of funds between approved programs — Limits — Penalties for underspending. p. 221.

### 2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management programs — Settlement

terms — New annual budget — Continuation of residential and educational projects — Introduction of new commercial/industrial/retrofit programs — Transfer of funds between approved programs — Limits — Penalties for underspending. p. 221.

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APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; Maurice R. Lamy on behalf of RPL Energy Enterprises, Inc.; James Anderson, Esq. and Kenneth E. Traum of the Office of Consumer Advocate on behalf of residential ratepayers; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

The purpose of this proceeding is to review the proposed 1995 Conservation and Load Management (C&LM) program of Public Service Company of New Hampshire (PSNH). PSNH filed its 1995 C&LM "Pre-Approval Filing" on October 31, 1994.

Timely requests for intervention were filed by Maurice R. Lamy, President of RPL Energy Enterprises, Inc., and by George E. Sansoucy, P.E. The Commission's Executive Director and Secretary, Dr. Sarah P. Voll, requested by letter that both Mssrs. Lamy and Sansoucy supplement their intervention requests with further information regarding their "rights, duties, privileges, immunities or other substantial interests" which may be affected by the proceeding. *See*, N.H. Admin. Rule, Puc 203.02(a)(2). Mr. Lamy responded by an undated letter with several objections to PSNH's current C&LM program activities, which he indicated mirrored the views held by members of the public with whom he was in contact on a daily basis.

Mr. Sansoucy responded to Dr. Voll's request by a February 10, 1995 letter stating that he represents a number of New Hampshire municipalities which have an interest in understanding how PSNH calculates its contribution to net fixed costs for conservation efforts, that the nature of this interest arises from the

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defense of municipalities in Superior Court tax abatement litigation and that the C&LM docket is "of significant importance in their fact-finding mission." Mr. Sansoucy further stated that he believed that as customers of PSNH, municipalities are not given serious consideration for C&LM programs. Finally, Mr. Sansoucy indicated that he represented Waste Management of New Hampshire (Waste Management) which "may be in the position to offer innovative methods of conservation."

PSNH objected to Mr. Sansoucy's amended intervention request and alleged that (a) Mr. Sansoucy had failed to identify the municipalities which he was allegedly representing, (b) Mr. Sansoucy's real motive was to use this proceeding as a means of obtaining discovery for use in the tax appeal cases involving the unidentified municipalities, and (c) Mr. Sansoucy should be required to make a clear representation that he had been retained by Waste Management to

represent it in this proceeding regarding an issue relating to C&LM. PSNH offered no objection to Mr. Lamy's intervention request.

At our February 21, 1995 public meeting we approved a stipulated procedural schedule and granted Mr. Lamy's request for full intervention on behalf. At the same public meeting we denied Mr. Sansoucy's request for intervention on behalf of the unidentified municipalities, but agreed to permit him to renew his intervention request if he provided documentation by identifiable municipalities whose interest he had been retained to represent in this proceeding. We granted Mr. Sansoucy's intervention request on behalf of Waste Management, but held that he would not be permitted to seek discovery in this proceeding for use in litigation of issues unrelated to C&LM.

Based upon our ruling relative to Mr. Sansoucy's intervention request, on February 22, 1995, PSNH filed an "Objection to George Sansoucy's Data Request". Mr. Sansoucy filed no response.

Prior to the merits hearing on April 6, 1995, Staff filed the combined testimony of Patrick J. Moast, George R. McCluskey and James J. Cunningham, Jr., respectively the Commission's Chief Economist, Manager of Energy Planning, and Finance Examiner. The Office of Consumer Advocate (OCA) filed the joint testimony of the Kenneth E. Traum, the OCA's Finance Director, and of Thomas S. Lyle, an Economist with the OCA. PSNH filed joint rebuttal testimony of Gary A. Long, PSNH's Vice-President of Customer Service and Economic development, and Michael W. Townsley, the Manager of Energy Planning for Northeast Utilities Service Company (NUSCO). Mssrs. Sansoucy and Lamy filed no testimony prior to the final hearing.

On April 5, 1995 Staff filed an Offer of Settlement which had been entered into by PSNH, OCA and Staff. The final hearing was held on April 6, 1995.

## II. POSITIONS OF STAFF AND THE PARTIES

### *A. The Offer of Settlement*

At the hearing on the merits, PSNH presented the testimony of Gary Long and Michael Townsley in support of the Offer of Settlement. The Settlement (Exhibit 1) outlines the various components of PSNH's projected 1995 C&LM activities and addresses additional issues which will be discussed below.

The Settlement provides generally that PSNH will continue to implement its 1994 C&LM programs. These include the Residential Conservation Program, Residential Home Energy Conservation Program, Energy Service Program, Energy Crafted Home Program, and C&LM Educational Programs. Descriptions of these programs are contained in PSNH's original filing in this matter and in previous C&LM filings, most recently in DR 93-237, Report and Order No. 21,366.

In addition to continuing the existing programs, two new program offerings are proposed for 1995: the EnergyCHECK Program and the Energy Conscious Construction Program. These programs are discussed below.

#### *1. 1994 Expenditures*

Staff and the stipulating parties agreed that, subject to audit, PSNH properly incurred

expenditures for 1994 C&LM activities in the amount of \$1,280,131. A breakdown of those expenditures by program is attached to the Offer of Settlement.

## *2. Proposed New Programs*

### *a. EnergyCHECK Program*

The proposed EnergyCHECK program targets small and medium commercial and industrial customers<sup>1(23)</sup>. Participants receive an "Energy Analysis Survey" by an auditor who then consults with the participants to determine what cost-effective measures can be installed. Incentives will be paid to buy down the cost of energy efficiency measures to produce a one-year payback for customers with demands of 50 kW or less and a two-year payback for customers with a demand of 50 kW to 250 kW.

### *b. Energy Conscious Construction Program*

This proposed program is intended to target conservation opportunities for new or renovated non-residential buildings. The program will provide technical assistance and financial incentives for the design, purchase and installation of energy efficient technologies that are beyond current practice and code requirements. Toward that end, PSNH will work with architects, engineers, developers and building owners in order to implement the program.

## *3. Interest on Underspending*

The Settlement provides that interest will continue to be applied on C&LM underspending consistent with our order in last year's C&LM proceeding. (DR 93-237, Order No. 21,366). Interest will accrue monthly at the prime rate on accumulated unspent funds. The stipulated interest calculation for the period January 1, 1994 through December 31, 1994 is \$221,319; this amount will be added to the unspent accumulated balance of C&LM funds.

## *4. Underspending Charge*

In addition to the accrual of interest, the Settlement calls for a monetary penalty if PSNH fails to prudently spend 75% of its accrued C&LM funds at the end of the fixed rate period<sup>2(24)</sup>. In the event that PSNH fails to achieve this level of spending on approved C&LM programs, PSNH will be penalized an amount equal to 150% of prime rate multiplied by the total underspending. Any penalty imposed on PSNH for underspending will be returned to ratepayers. If PSNH spends more than the accrued C&LM funds at the end of the fixed rate period, the Settlement provides that it may seek recovery for those expenditures after the fixed rate period.

## *5. Transfer of C&LM Funds Among Approved Programs*

The Settlement also provided that PSNH shall have the discretion to reallocate program funding up to 30% without Commission approval. During the hearing, PSNH offered testimony that this provision was necessary in order to ensure that it meets the stipulated spending goals during the fixed rate period.

During the hearing, the OCA expressed concern that this spending flexibility might result in



the disruption or termination of certain residential programs. In response to cross-examination relative to this concern, Mr. Townsley testified that PSNH would endeavor to maintain a reasonable level of activity in all residential conservation programs.

#### *6. Miscellaneous*

PSNH will continue to file monthly, quarterly, semiannual and annual reports which detail its C&LM activities. In addition, PSNH will continue to seek annual pre-approval of proposed C&LM activities, including monthly budgets for those activities.

During the hearing, PSNH testified that OCA and the Staff agreed that issues concerning lost fixed cost revenues would be handled consistent with the provisions of the Settlement in the previous C&LM docket<sup>3(25)</sup>.

#### *B. Mr. Lamy*

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Mr. Lamy appeared at the final hearing and offered an unsworn statement with regard to PSNH's C&LM programs. He stated that PSNH's proposed 1995 C&LM program was an improvement over its previous filing, but that it should revisit its programs for large industrial and commercial customers. Mr. Lamy expressed concern that the money spent on administrative costs could be used to pay for a portion of the conservation equipment which is used by program participants.

#### *C. Mr. Sansoucy*

Mr. Sansoucy did not participate in the final hearing.

### III. COMMISSION ANALYSIS

[1, 2] We believe that PSNH's filing and the Offer of Settlement establish a 1995 C&LM program and budget which reasonably utilize PSNH's limited C&LM funds. PSNH has established a total 1995 budget which will result in expenditures in the amount of \$3.058 million. We anticipate that the projected 1995 budget reflects an intent on the part of PSNH to significantly improve upon its performance in 1994. The total spending in 1994 amounted to approximately \$1.2 million, a performance which falls far short of the expectations which we expressed in DR 93-237, Order No. 21,366.

The proposed program additions are consistent with the objective stated in previous orders which is to maximize the benefits of C&LM for a wide range of customers. The EnergyCHECK Program targets small and medium industrial and commercial customers, a market group which legitimately warrants increased activity.

The Energy Conscious Construction Program is aimed at taking advantage of conservation opportunities during new construction or when the planned replacement of a unit provides an opportunity to install a more energy efficient measure. From a policy standpoint, these expenditures encourage the efficient utilization of C&LM resources.

We believe that the ongoing accumulation of interest on unspent C&LM funds is appropriate and consistent with Order 21,366, DR 93-237. It is also consistent with our requirements for other utilities in the area of C&LM.

With regard to the provision in the Settlement which allows PSNH the discretion to shift funds among approved programs, we acknowledge the concern expressed by the OCA that such flexibility could negatively impact existing residential programs. We expect that PSNH will utilize this flexibility in a responsible manner consistent with Mr. Townsley's testimony.

Finally, with regard to the underspending charge, we believe that the mechanism set forth in the Settlement provides a reasonable means of evaluating PSNH's performance at the end of the fixed rate period. Although we are generally reluctant to prospectively relinquish any discretion to fashion penalties in the event that a utility fails to comply with a Commission order, we have abdicated such discretion only as it relates to PSNH's spending levels, and only until the end of the fixed rate period. Accordingly, we will defer any penalty for underspending until the end of the fixed rate period and then only according to the terms set forth in the Settlement. Aside from the issue of underspending, our acceptance of the stipulated underspending charge should not be interpreted as a limitation of our authority to take any other appropriate enforcement action in order to ensure that PSNH complies with this order and all previous orders relating to C&LM activities.

Based on the foregoing, it is

Ordered, that the Settlement Agreement is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1995.

#### FOOTNOTES

<sup>1</sup>Small industrial and commercial customers are defined as those with average demands of 50 kW or less, and medium customers are those with average demands of 50 kW to 250 kW.

<sup>2</sup>The fixed rate period ends on May 31, 1997.

<sup>3</sup>See, Report and Order No. 21,366, DR 93-237.

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#### 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\*04/24/95\*[80908]\*80 NH PUC 222\*Public Service Company of New Hampshire

[Go to End of 80908]

80 NH PUC 222

## Re Public Service Company of New Hampshire

DR 95-058  
Order No. 21,624

New Hampshire Public Utilities Commission

April 24, 1995

ORDER noting interventions and adopting a procedural schedule for considering an electric utility's most recent fuel and purchased power adjustment clause rate filing. For the interim, its existing rate of 0.335 cents per kilowatt-hour will remain in effect.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Factors to be addressed — Prudence of plant outages — Extension of refueling outages — Procedural schedule — Electric utility. p. 222.

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BY THE COMMISSION:

### ORDER

On March 9, 1995, Public Service Company of New Hampshire, Inc. (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Fuel and Purchased Power Adjustment Clause (FPPAC). On March 15, 1995, PSNH filed supporting testimony and exhibits. On March 23, 1995, PSNH filed additional testimony.

The Commission set a prehearing conference for April 19, 1995, set deadlines for intervention requests and objections to intervention requests, set forth discovery to be accomplished prior to the prehearing conference and called for the initial positions of the Parties and Commission Staff (Staff).

New Hampshire Electric Cooperative, Inc. (NHEC) sought intervention in order to monitor the proceeding. No objections were filed to its intervention.

Campaign for Ratepayers Rights (CRR) filed an untimely Motion to Intervene and did not appear at the prehearing conference. PSNH argued that because CRR did not make an appearance or submit a position paper, issues to be raised by CRR are unknown. Therefore, PSNH stated that if intervention were ultimately granted to CRR, it be conditional in order that objections could be raised at a later date. PSNH also requested that if CRR impeded the flow of the hearing, objections could be raised at a later date.

At the prehearing conference PSNH, NHEC, the Office of Consumer Advocate (OCA) (a statutorily recognized intervenor), and Staff agreed to the following procedural schedule:

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

PSNH Responses to Oral  
Requests April 26, 1995  
PSNH Updated Exhibits with

March, 1995 Actual Data	April 27, 1995
Testimony by Staff and Intervenors	May 2, 1995
PSNH Rebuttal Testimony/ Statement of Issues	May 5, 1995
Hearing on the Merits	May 9, 10, 11, 1995
Revised Statement of Issues	May 15, 1995
Briefs	May 22, 1995

At the prehearing conference, it was agreed by all parties for "one day turn around" for transcripts, to be paid for by PSNH.

[1] Also at the prehearing conference, in accordance with the Order of Notice, PSNH stated that it believed the significant issues to be addressed in this proceeding are: 1) that the rate

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of \$ 0.00335 per Kwh be continued until the outcome of DR 95-068; 2) that the request for deferral of issues such as the reactor coolant pump and the refueling outage extension at Maine Yankee must be submitted by motion, from this time forward at the commencement of each FPPAC proceeding.

OCA and Staff concurred with PSNH on the significant issues in this proceeding, stating the only substantive issues in this phase of the proceeding were the prudence of certain plant outages. Staff further noted that it needed to conduct discovery to reach its conclusions on this issue. NHEC stated that it is monitoring the proceeding in order to evaluate the issues that may come before the Federal Energy Regulatory Commission.

We will grant NHEC's request for intervention. We will grant CRR's motion to intervene. However, given its failure to appear at the prehearing conference and indicate to us its preliminary position, we will grant its motion subject to objections raised at a later date. We approve the joint recommendation that deferral of issues be submitted by motion prior to the commencement of each FPPAC proceeding and that the deferral request be limited to the pending FPPAC period. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

Based upon the foregoing, it is hereby

ORDERED, that NHEC is granted full intervention; and it is

FURTHER ORDERED, that CRR is granted full intervention subject to objections raised at a later date; and it is

FURTHER ORDERED, that requests for deferral of issues be submitted by motion; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1995.

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NH.PUC\*04/24/95\*[80909]\*80 NH PUC 223\*Public Service Company of New Hampshire

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80 NH PUC 223

## Re Public Service Company of New Hampshire

DR 95-068

Order No. 21,625

New Hampshire Public Utilities Commission

April 24, 1995

ORDER noting interventions and adopting a procedural schedule for considering an electric utility's proposal to recover its costs of complying with the Clean Air Act Amendments through its fuel and purchased power adjustment clause rate rather than through base rates.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect energy costs — Compliance with Clean Air Act Amendment requirements — Proposed recovery via fuel and purchased power adjustment clause rates — Factors to be addressed — Sulphur dioxide allowances — Facility-specific versus systemwide cost analyses — Effect on plant depreciation values — Treatment of carrying costs — Procedural schedule — Electric utility. p. 224.

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BY THE COMMISSION:

### ORDER

On March 9, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) for Cost Recovery for Compliance with the 1990 Clean Air Act Amendments (CAAA) through the Fuel and Purchased Power Adjustment Clause (FPPAC) PSNH filed supporting testimony and exhibits. On March 23, 1995, PSNH filed additional testimony.

The Commission set a prehearing conference for April 19, 1995, set a deadline for intervention requests and called for initial positions

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of the Parties and Commission Staff (Staff).

The New Hampshire Electric Cooperative, Inc. (NHEC) sought intervention, without objection.

By letter dated April 13, 1995, PSNH notified the Commission and interested parties that it wished to expand the scope of its initial filing to include issues relating to its compliance with sulphur dioxide emissions requirements of the CAAA.

At the prehearing conference PSNH, NHEC, the Office of Consumer Advocate (OCA) (a

statutorily recognized intervenor) and Staff generally agreed to the following procedural schedule with the exception that Staff did not concur with PSNH's proposal that rebuttal testimony be allowed:

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

Amended Testimony by PSNH	May 1, 1995
Written Responses to Oral Data Requests Posed at the First Technical Session	May 3, 1995
Follow-up Data Requests by Staff and Intervenors	May 17, 1995
PSNH Data Responses	May 25, 1995
Technical Session	June 6, 1995
Testimony by Staff and Intervenors	June 20, 1995
Data Requests by PSNH	July 5, 1995
Data Responses by Staff and Intervenors	July 19, 1995
Settlement Conference	August 1, 1995
File Settlement and or Rebuttal Testimony	August 8, 1995
Statement of Contested Issues	August 11, 1995
Hearing	August 15, 16, 1995

[1] In accordance with the Order of Notice which provided that each party would provide a preliminary summary of its position, PSNH stated that in addition to the information set forth in its filing, its position is that: 1) all CAAA compliance costs, including costs of sulphur dioxide allowances, are recoverable under the Rate Agreement through FPPAC; and 2) this Commission's final order in DR 89-244 interpreting the Rate Agreement indicates that all costs of compliance with environmental requirements which affect production facilities ought to be recovered through FPPAC and not base rates.

NHEC stated that it sought intervention in order to monitor and evaluate issues that may affect it as a wholesale customer of PSNH and which may relate to matters in which the NHEC may participate before the Federal Energy Regulatory Commission. The OCA made no statement.

Staff indicated that in addition to the issues raised by PSNH, it had identified the following issues: 1) whether carrying costs on capital expenses to comply with environmental requirements should flow through FPPAC under the Rate Agreement; 2) whether it is appropriate to address CAAA compliance expenditures on a facility- by-facility basis or on a cumulative basis (as proposed by PSNH) for purposes of determining whether the threshold expenditure levels of the Rate Agreement have been met; 3) the appropriate annual depreciation rates of plants whose lives have been extended by retrofits; 4) the appropriate level of depreciation on retrofits themselves; 5) the prudence of the CAAA compliance option selected by PSNH; and 6) whether the costs incurred by PSNH related solely to Phase I of the CAAA or whether costs could have been delayed until implementation of Phase II thereby reducing necessary expenditures to levels below those specified in the Rate Agreement as triggering recovery through FPPAC.

We will grant NHEC's request for full intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. The rebuttal testimony

shall be limited to five pages, double spaced.

Based upon the foregoing, it is hereby

ORDERED, that NHEC is granted full intervention; and it is

FURTHER ORDERED, that the proposed procedural schedule is approved with the condition that rebuttal testimony be limited to five pages double spaced.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of April, 1995.

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NH.PUC\*04/25/95\*[80910]\*80 NH PUC 225\*Keene Gas Corporation

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80 NH PUC 225

## Re Keene Gas Corporation

DR 95-057

Order No. 21,626

New Hampshire Public Utilities Commission

April 25, 1995

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 9.68 cents per therm (a seven-cent increase), attributable to the combined effects of significant numbers of lost customers, a large prior-period undercollection, increases in unaccounted-for gas losses, and environmental testing at possibly contaminated gas plant sites.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Lost customers — Increases in unaccounted-for gas — Large prior-period undercollections — Ongoing environmental testing at possibly contaminated gas plant sites — Local distribution company. p. 226.

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APPEARANCES: John F. DiBernardo, Assistant General Manager and Gary Patnode, Vice President for Keene Gas Corporation; For the Staff of the Public Utilities Commission: Richard B. Deres, PUC Examiner for the Finance Department; Robert F. Egan, Utility Analyst for the Engineering Department; and Kenneth E. Yasuda, Sr., Utility Analyst for the Economics Department.

BY THE COMMISSION:

## ORDER

## I. PROCEDURAL HISTORY

On April 3, 1995, Keene Gas Corporation, (Keene Gas), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) certain revisions to its tariff providing for a 1995 Summer Cost of Gas Adjustment (CGA), effective May 1, 1995. The filing requests a CGA rate of \$0.0968 per therm, which is a \$0.0740 per therm increase from the rate of \$0.0228 approved by the Commission for the 1994 Summer period.

There were no requests for intervention filed in this proceeding. A duly noticed public hearing was held at the Commission's office in Concord, New Hampshire on April 17, 1995.

## II. POSITIONS OF KEENE GAS AND STAFF

A. *Keene Gas*

Keene Gas Assistant General Manager, John F. DiBernardo, presented the proposed CGA tariff and answered a number of questions by the Commission Staff (Staff) regarding the derivation of the numbers, as well as the projections about the forthcoming period. With regard to the more than \$0.07 per therm increase between the two Summer CGAs, Mr. DiBernardo explained that this was due primarily to a large undercollection during the prior period, an increase in Keene Gas's use of gas, and an increase in "unaccounted for gas". Mr. DiBernardo also described gas contracts for the coming Summer CGA Period, explaining that Keene Gas President Harry B. Sheldon, Jr., who handles gas procurement, entered into several contracts which secure approximately 51 percent of the estimated propane gas needs for the Summer CGA Period. If the price becomes favorable, Mr. Sheldon may contract for more gas; however, for most summer periods, he chooses to stay somewhat flexible to respond to the propane market.

Mr. DiBernardo responded to a Staff exhibit which demonstrated, among other things, a marked decline in total customers over the last four gas years, and an apparent increase

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in the unaccounted for gas during the past several years. Mr. DiBernardo testified that Keene Gas is working to reduce its unaccounted for gas and will provide a report on this issue to the Commission by August 1, 1995.

He also stated that because the current level of unaccounted for gas has exceeded the 8 percent limit that the Commission set in prior CGA proceedings, Keene Gas has not included any amounts over 8 percent in their CGA calculations.

Gary Patnode, Vice President of Keene Gas, answered questions regarding the apparent decline of customers over the last four years and how that issue was being addressed by Keene Gas. He explained that an aggressive marketing campaign by a relatively new retail propane competitor was one of the primary reasons for this decline in the customer base. Mr. Patnode stated that Keene Gas recently implemented a more active marketing/sales plan which attempts to generate new business in areas where city gas service can be furnished. Mr. Patnode agreed to keep the Commission updated as to the success of Keene Gas' marketing strategy in future CGA



proceedings.

*B. Commission Staff*

Staff questioned Mr. DiBernardo on the concept of thermal billing. He stated that the cost of the equipment necessary for this type of a system is too high to be cost effective for Keene Gas to pursue.

Mr. Patnode was asked by Staff if Keene Gas had contemplated filing a rate case in order to try and increase its earnings. He indicated that Keene Gas felt this action would be more detrimental than beneficial. The retail propane competition has the ability to underprice their product and has done so in order to take customers away from Keene Gas. If successful in raising its rates, Mr. Patnode argued that this would probably play right into the competitions' hands and drive even more utility customers away.

Although not directly related to the CGA, Staff asked Mr. DiBernardo to report on the status of environmental concerns on Emerald Street in Keene and what effect this might have on Keene Gas, given that its production plant is located there. Mr. DiBernardo noted that there exists the distinct possibility that the grounds beneath Emerald Street have been contaminated, given the number of incidents which have occurred in the past. The street has been the location of an earlier gas manufacturing plant, a fuel oil company, several metal shops, and a railroad machining shop. It was also the site of a major gasoline leak in the early 1980's. If the ground is found to be contaminated, it is unclear if Keene Gas will have any liability for any clean up activities. Prior to 1979, Keene Gas was owned by Gas Service, Inc., and earlier it belonged to Public Service Company of New Hampshire. In addition, Emerald Street has seen a number of non-gas related industrial businesses over the years, so the liability of any particular business may take time to sort out. Keene Gas agreed to keep the Commission informed of the test results as soon as they are received.

### III. COMMISSION ANALYSIS

[1] Based upon our review of the record, we find 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 \$.0968 per therm is just and reasonable and in the public good and therefore accepts such as filed.

Further, we appreciate the willingness of Keene Gas to keep the Staff informed of its customer level, its unaccounted for gas and the results of the environmental testing underway on Emerald Street.

Based on the foregoing, it is hereby

ORDERED, that 17th Revised Page 27, superseding 16th Revised Page 27 of Keene Gas Corporation Tariff, NHPUC No. 1 - Gas, providing for a Cost of Gas Adjustment of \$0.0968 per therm for the period May 1, 1995 through October 31, 1995 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, 1995; 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 twenty-fifth day of April, 1995.

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NH.PUC\*04/25/95\*[80911]\*80 NH PUC 227\*Northern Utilities, Inc., New Hampshire Division

[Go to End of 80911]

80 NH PUC 227

**Re Northern Utilities, Inc., New Hampshire Division**

DR 95-055  
Order No. 21,627

New Hampshire Public Utilities Commission

April 25, 1995

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a credit of 2.22 cents per therm, attributable to the combined effects of lower commodity costs and significant interstate pipeline supplier refunds.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — Per-therm credit mechanism — Overall reductions in commodity costs — Substantial refunds from upstream interstate pipeline suppliers — Local distribution company. p. 228.

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APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Kenneth E. Yasuda, Sr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 7, 1995, Northern Utilities, Inc., New Hampshire Division (Northern), filed with the New Hampshire Public Utilities Commission (Commission) a motion seeking protective

treatment of portions of its Cost of Gas Adjustment (CGA) petition for the 1995 Summer CGA Period, which it subsequently filed on March 15, 1995. The CGA filing consisted of Proposed Eleventh Revised Page 32, Sheet No. 1 and Proposed Seventh Revised Page 32, Sheet No. 2, superseding Tenth Revised Page 32, Sheet No. 1 and Sixth Revised Page 32, Sheet No. 2, respectively, NHPUC No. 1 - Gas, which provides for a 1995 Summer CGA effective May 1, 1995. The CGA filing was accompanied by the pre-filed direct testimony and supporting attachments of Elizabeth S. McDonough, Manager of Gas Costing and Rate Analysis. The Commission granted the requested protective treatment on March 16, 1995 in Order No. 21,572.

On April 14, 1995, Northern filed with the Commission Proposed Twelfth Revised Page 32, Sheet No. 1 and Proposed Eighth Revised Page 32, Sheet No. 2, superseding Proposed Eleventh Revised Page 32, Sheet No. 1 and Proposed Seventh Revised Page 32, Sheet No. 2, respectively. Northern's updated 1995 Summer CGA is a credit of \$0.0222 per therm, exclusive of the New Hampshire State Franchise Tax which was eliminated in the summer of 1994. This represents a decrease of \$0.0399 per therm over the 1994 Summer CGA Period per therm charge of \$0.0177.

There were no requests for intervention filed in this matter. The Commission heard evidence on the filing on April 18, 1995.

## II. POSITION OF NORTHERN AND STAFF

### A. *Northern*

Northern seeks a 1995 Summer CGA credit of \$0.0222 per therm. This proposed

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CGA was revised from the original filing in which Northern requested a credit of \$0.0477 per therm. Ms. McDonough stated during the hearing that the revised filing was the result of inquiries and analyses initiated by the Commission Staff (Staff). These revisions dealt with the following components of the filing: (1) revised supplier commodity prices, (2) supplier pipeline refunds, and (3) the allocation of projected capacity release revenues. The net result of these revisions was to reduce the proposed CGA credit by \$0.0255 per therm.

Ms. McDonough further testified to the components of the CGA calculation, including Northern's projected gas sales and the costs associated with the anticipated purchases. Northern's total anticipated costs associated with these purchases is \$3,247,747. This figure includes a net credit of \$13,401 as a result of projected capacity release and exchange revenues. Northern reported a prior period deficiency of \$369,147 and related interest of \$3,906. A refund from the various upstream interstate pipelines of \$497,635 will be credited to ratepayers in this CGA. Thus, Northern seeks to collect a total of \$3,123,166 through the 1995 Summer CGA Period. After projecting total therm sales of 10,087,120, the resulting rate is \$0.3096 per therm. Deducting from this rate Northern's base unit cost of gas of \$0.3318 per therm yields the proposed CGA credit of \$0.0222 per therm.

Several other areas were addressed during Ms. McDonough's testimony. The proposed CGA credit rate represents a \$0.0399 per therm decrease over last summer's positive CGA, a decrease which Northern attributes primarily to lower gas commodity costs and the quite large interstate pipeline refunds. Northern also conducted a bill impact analysis for the proposed CGA which

showed decreases ranging from 2.07 percent to 6.98 percent from last summer's CGA for residential customers using a low of 5 therms to a high of 200 therms used per month. Ms. McDonough further explained that the proposed CGA reflects a lost and unaccounted for gas percentage of 2.78 percent, which is based on a rolling three year average.

Finally, in compliance with Order No. 21,407 from DR 94-226, the New Hampshire Division's 1994-95 Winter CGA docket, on January 18, 1995 Northern filed with the Commission an analysis on the treatment of interruptible margins and the role of prior period adjustments. James Cunningham of the Finance Department responded to this analysis with his own study, which he submitted to Northern on February 9, 1995. On March 24, 1995, Northern filed a further analysis, which Staff is now reviewing. Ms. McDonough stated that the issues of interruptible margins treatment and prior period adjustments were still being discussed with Staff and that they would be resolved in the next winter's CGA hearing. She noted that these issues have no rate impact on the instant CGA.

#### B. Staff

Staff presented no testimony but indicated that it had reviewed the filing and determined that the proposed CGA was consistent with previous CGA filings. As such, Staff recommended approval of Northern's revised 1995 Summer CGA filing.

### III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that Northern's 1995 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept the filing as revised and modified during the hearing. Northern's New Hampshire Division CGA for the 1995 Summer period shall be a credit of \$0.0222 per therm.

Based on the foregoing; it is hereby

ORDERED, that Northern's Twelfth Revised Page 32, Sheet No. 1 superseding Tenth Revised Page 32, Sheet No. 1, NHPUC No. 1 - Gas tariff of Northern Utilities, Inc. providing for a Summer 1995 Cost of Gas Adjustment credit of \$0.0222 per therm for the period May 1, 1995 through October 31, 1995 is hereby approved; and it is

FURTHER ORDERED, that consistent with previous Commission orders, should Northern's monthly reconciliation of known and projected gas costs activate the 10 percent trigger mechanism, Northern shall file a revised

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Cost of Gas Adjustment.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1995.

### EDITOR'S APPENDIX

#### Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 94-226, Order No. 21,407, 79 NH PUC 612, Nov. 2, 1994.

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NH.PUC\*04/25/95\*[80912]\*80 NH PUC 229\*Northern Utilities, Inc., Salem Division

[Go to End of 80912]

80 NH PUC 229

**Re Northern Utilities, Inc., Salem Division**

DR 95-056

Order No. 21,628

New Hampshire Public Utilities Commission

April 25, 1995

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 34.71 cents per therm (a 15-cent increase), attributable to the combined effects of higher propane commodity prices and larger prior-period undercollections.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Overall increases in propane commodity costs — Larger prior-period undercollections — Local distribution company. p. 230.

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APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Kenneth E. Yasuda, Sr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 15, 1995, Northern Utilities, Inc. (Northern), filed with the New Hampshire Public Utilities Commission (Commission) its Salem Division's Cost of Gas Adjustment (CGA) for the 1995 Summer Period, May 1, 1995 through October 31, 1995. The filing consisted of a two page cover letter, a tariff page with Northern's proposed CGA (6th Revised Page 33, superseding 5th Revised Page 33), and several other attachments related to the CGA calculation.

There were no requests for intervention filed in this proceeding. The Commission heard evidence on the filing on April 18, 1995.

II. POSITION OF NORTHERN AND STAFF

A. *Northern*

Northern's Salem Division seeks a 1995 Summer CGA rate of \$0.3471 per therm. During the hearing, Elizabeth S. McDonough, Northern's Manager of Gas Costing and Rate Analysis, testified generally about the proposed CGA. She stated that Northern is projecting firm gas sales of 14,642 therms and, to satisfy that demand, it intends to draw down inventories from the Salem Division as well as purchase propane from Northern Propane; the value of both supply sources totals \$8,208. Northern also is carrying forward a prior period undercollection of \$1,626 plus \$107 of associated interest. This prior period undercollection is more than double that found in last summer's CGA. This present undercollection is due primarily to a shortfall in actual gas cost revenues collected relative to the forecasted amounts. The resulting Salem Division CGA is \$0.3471 per therm after taking into account the unit cost of gas of \$0.3318 per therm.

*B. Staff*

Staff presented no testimony but indicated

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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 1995 Summer CGA of \$0.3471 per therm is reasonable and supported by the evidence. The proposed CGA rate is considerably higher than last summer's CGA rate of \$0.1944 per therm, but as Northern pointed out, the increase of \$0.1527 per therm is attributed primarily to the prior period undercollection as well as to the increase in propane commodity prices.

Based on the foregoing; it is hereby

ORDERED, that Northern's Sixth Revised Page 33 superseding Fifth Revised Page 33, NHPUC No. 1 - Gas tariff of Northern Utilities, Inc. providing for a Summer 1995 Cost of Gas Adjustment charge of \$0.3471 per therm for the period May 1, 1995 through October 31, 1995 is hereby approved; and it is

FURTHER ORDERED, that consistent with previous Commission orders, should Northern's monthly reconciliation of known and projected gas costs activate 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 twenty-fifth day of April, 1995.

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NH.PUC\*04/25/95\*[80913]\*80 NH PUC 230\*White Rock Water Company, Inc.

[Go to End of 80913]

80 NH PUC 230

**Re White Rock Water Company, Inc.**

DR 94-139  
Order No. 21,629

New Hampshire Public Utilities Commission

April 25, 1995

APPLICATION by water utility for authority to increase rates by 37%; granted as modified, pursuant to stipulation, in the amount of a 38% increase. The increase is seen as justified given the utility's commitment to making needed capital improvements to its wells as necessary for compliance with the Safe Drinking Water Act. Given the utility's capital structure of 100% equity, its return on equity and overall rate of return are the same, namely, 10.12%.

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1. RETURN, § 26.1

[N.H.] Capital structure — Impact of 100% equity — Uniformity of return on equity and overall return — Water utility — Settlement — 10.12% rate of return. p. 231.

2. RATES, § 604

[N.H.] Water rate design — Service charges — Quarterly customer charge — Usage-based consumption charge — Elimination of base consumption allowance. p. 232.

3. RATES, § 595

[N.H.] Water rate design — Factors affecting need for increase — Commitment to capital improvements — Upgrading of wells — Compliance with Safe Drinking Water Act standards — Settlement. p. 232.

4. SERVICE, § 473

[N.H.] Water utility — Equipment and facilities — Need for capital improvements — Upgrading of wells — Compliance with Safe Drinking Water Act standards — As purpose of rate increase. p. 232.

5. EXPENSES, § 89

[N.H.] Rate case expense — Recovery via surcharge — Necessity of submitting final accounting — Showing of prudence — Settlement process — Water utility. p. 232.

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APPEARANCES: Jordan, Gfroerer & Weddleton by David W. Jordan, Esquire for White Rock Water Company; Ted Mottola for Village Shore Homeowners Association; Robert J. Frank, Esquire for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

## I. PROCEDURAL HISTORY

On August 29, 1994, White Rock Water Company, Inc. (White Rock) filed with the New Hampshire Public Utilities Commission (Commission) a request for rate increase. This was supplemented by additional documentation on September 21, 1994.

The Village Shores Homeowners Association (Association), a group of customers of White Rock, was granted full intervention but chose not to participate in discovery, settlement negotiations or the hearing on the merits of the case. The Office of Consumer Advocate (OCA), a statutorily recognized intervenor, did not participate in the case.

The Commission Staff (Staff) submitted direct testimony, on February 15, 1994, of Richard B. Deres, James L. Lenihan, Jane A. Emerson and James R. Thyng. On April 6, 1995 White Rock and the Staff filed a settlement agreement (Settlement Agreement) addressing all issues in the case.

The Commission heard evidence in support of the Settlement Agreement on April 11, 1995.

## II. POSITIONS OF PARTIES AND STAFF

### A. *White Rock Water Company*

White Rock sought a rate increase of 37% due to increased expenses, improvements to Well No. 2 and improvements necessary to comply with the Safe Drinking Water Act.

### B. *Commission Staff*

The Staff expressed concern about a number of accounting matters it felt were improperly included as well as a number of engineering issues to be addressed in coming months. The Staff recommended a cost of equity of 10.12%, a finding that White Rock's capital structure is 100% equity, resulting in an overall rate of return of 10.12%. The Staff also recommended a change in White Rock's rate design.

## III. SETTLEMENT AGREEMENT

White Rock and the Staff entered into the following Settlement Agreement:

[1] A. *Rate of Return*. For ratemaking purposes, White Rock's capital structure shall be 100% equity. The cost of equity shall be 10.12% and, therefore, the overall rate of return shall be 10.12%.

B. *Rate Base*. White Rock's rate base consists of the adjusted plant in service, less accumulated depreciation, plus working capital, as set forth on Schedule 2 of Mr. Deres' testimony. The adjusted plant in service is the average of the year-end figures for the test year (1993) and 1992, plus the \$12,163.00 cost of deepening Well No. 2 in June of 1994, after the close of the test year. That adjusted plant is \$163,127.00. The accumulated depreciation is the average of the year-end figures for 1993 and 1992, and is \$82,491.00. The working capital is \$7,597.00. Thus, White Rock's rate base is \$88,233.00.

C. *Rate Increase*. The increase in the revenue requirement for White Rock is \$15,268.00, as detailed in Schedule 1 to Mr. Deres' testimony. Mr. Deres' Schedule 3B contains the pro forma adjustments which were made to the expenses in this case, which are as follows:

- (1) Retainer for legal services for the rate case. White Rock chose to remove



\$5,000.00 from its test year administrative and general expense, and handle it afterwards as a surcharge;

(2) Adjustment for arsenic removal medium. Because this material is purchased every two years, the test year expense was reduced by half, for an expense of \$353.00.

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(3) Audit Expenses. White Rock indicates that this expense should not have been incurred, as the work performed should have been provided at no expense by the Trust which is the shareholder of White Rock. The test year customer accounting expense was reduced by \$250.00.

(4) Bill Filing Expenses. White Rock indicates that this expense should not have been incurred, as the work performed should have been provided at no expense by the Trust which is the shareholder of White Rock. The test year customer accounting expense was further reduced by \$1,050.00.

[2] *D. Rate Design.* Currently, White Rock's rate design consists of a quarterly customer charge of \$35.33, which entitles the customer to 500 cubic feet of water, and a consumption charge of \$4.27 per hundred cubic feet which was applied to all water used in excess of the first 500 cubic feet. White Rock and the Staff recommend that the customer charge should no longer include an allowance for consumption. The elimination of the 500 cubic foot allowance would ensure that customers using less than 500 cubic feet minimum would not be charged for such usage. Accordingly, the current customer charge shall be reduced by the current cost of 500 cubic feet of water. The percent increase in revenue requirement shall apply to both the customer charge and the consumption charge, resulting in a customer charge of \$20.00 per quarter, plus a consumption charge of \$5.99 per hundred cubic feet.

*E. Engineering Issues.* In the course of the Staff's investigation, certain engineering concerns were raised by the Staff. White Rock and the Staff agree that, over the next two years, White Rock shall:

(1) Install gate valves on the Shoreview Main at the intersection with Rocky Point, on the Blueberry Main at the intersection with Rocky Point, on the Rocky Point Main at the intersection with Shoreview, and on the Rocky Point Main south of the well area;

(2) Repair or replace the inoperable gate valve on the Rocky Point Main;

(3) Within the immediate vicinity of the intersection of Rocky Point Drive and Shore View Drive, pin point the location of the pressure reducing valve believed to be on the Rocky Point Main; and

(4) Install blow-offs at the South end of the Rocky Point Main and the West end of the Westgate Main.

#### IV. COMMISSION ANALYSIS

[3, 4] We have reviewed the testimony and Settlement Agreement in this case and find it to be a sound resolution of the request for rate increase, which will result in just and reasonable rates. The rate base reflects investment in plant in service which was prudently incurred and is

used and useful in provision of utility service. White Rock has not had an increase in over 10 years and has met its burden of proof that it is entitled to the adjustment of revenue requirement as detailed in the Settlement Agreement.

Although not contained in the Settlement Agreement, the evidence at the hearing demonstrated that the resulting rates for an average residential user of twenty-two hundred cubic feet would be approximately \$150 per quarter or approximately \$600 per year. This is approximately a 38% increase over current rates. Temporary rates were not requested by the Company and not established in this case.

We note that the Association did not participate in the negotiations or hearing in this case. It is clear from the record that White Rock made numerous attempts to inform the Association of the negotiations and sent each of the Settlement Agreement drafts to the Association for its review and comment.

[5] White Rock has not yet submitted its rate case expenses. In approving the Settlement Agreement, we recognize that a surcharge for prudently incurred, reasonable rate case expenses will be included in rates. We order White Rock to submit its final accounting of rate case expenses within ten days of this order for Staff review. We anticipate that within the next 30 days the new rates, including surcharge for approved rate case expenses, can be implemented. Until review and approval of the rate

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case expense, however, we will not authorize implementation of the new rates.

Finally, we appreciate the willingness of White Rock and the Staff to work cooperatively to reach a negotiated recommendation.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement reached between White Rock and the Staff is approved; and it is

FURTHER ORDERED, that White Rock submit its rate case expenses within ten days of this order for Staff review and Commission approval; and it is

FURTHER ORDERED, that the implementation date of the new permanent rates is deferred until approval of White Rock's rate case expenses; and it is

FURTHER ORDERED, that within 14 days after the order concerning rate case expenses White Rock submit compliance tariffs for the permanent rate increase as well as the rate case expenses for effect on service rendered on or after the date of said order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1995.

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NH.PUC\*04/25/95\*[80914]\*80 NH PUC 233\*Great Bay Water Company, Inc.

[Go to End of 80914]

80 NH PUC 233

**Re Great Bay Water Company, Inc.**

DR 94-185  
Order No. 21,630

New Hampshire Public Utilities Commission

April 25, 1995

APPLICATION by water utility for authority to increase rates by 45%; denied, pursuant to stipulation, and a rate decrease ordered instead. The decrease is seen as warranted given the utility's continued inability to address water pressure and quality-of-service problems. It is instructed to hire a qualified engineer and to develop a report and plan of action for improving its system, responding to complaints, and solving water quality and low-pressure problems.

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1. RATES, § 133

[N.H.] Factors affecting reasonableness — Character of service — Poor quality of service — Resulting rate decreases — Stipulation — Water utility. p. 235.

2. RATES, § 601

[N.H.] Water rate design — Special factors — Quality of water — Rate decrease as remedy for poor quality of water — Stipulation. p. 235.

3. SERVICE, § 480

[N.H.] Water utility — Quality of water and service — Remedies for poor quality — Rate decrease — Mandate to hire qualified engineer — Development of report and plan of action for system improvements — Stipulation. p. 235.

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APPEARANCES: Robert Fabian and Henneberry & Richard Certified Public Accountants by Karen Chamberlain, C.P.A. on behalf of Great Bay Water Company, Inc.; Bruce J. Oronte and Robert J. Carpenter, residents on behalf of the Schanda Farms Community Association-Water Committee; and Eugene F. Sullivan III, Esq. for the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 21, 1994 Great Bay Water Company, Inc. (Great Bay or Company) filed proposed rate schedules and supporting documentation which if approved would have resulted in a 45% increase over its present annual revenues. On October 12, 1994 Great Bay amended its

filing and the Commission suspended the taking effect of the proposed rates by Order No. 21,388 (October 17, 1994).

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On October 17, 1994 an Order of Notice was issued by the Commission setting a prehearing conference for November 8, 1994.

At the duly noticed prehearing conference held on November 8, 1994, the Schanda Farms Community Association (Association) requested and was granted full intervenor status.

On November 18, 1994 the Commission issued Order No. 21,435 setting a procedural schedule to govern its investigation into the proposed rate increase.

A final hearing was held on March 27, 1995 at which the Staff and Great Bay presented a stipulation reducing the current rates. The Commission also heard testimony from Staff Engineer Douglas W. Brogan, and Bruce J. Oronte and Robert J. Carpenter of the Association relative to the poor quality of service provided by Great Bay to its customers.

## II. POSITIONS OF THE PARTIES AND STAFF

### 1. *Revenue Requirement.*

As is set forth above, the Staff and the Company entered into a stipulation reducing Great Bay's annual revenue requirement and hence the customers' annual rates for service. The stipulation results in a decrease from \$189 per year to \$187 per year in annual rates to the average customer (excluding any rate case expense surcharges).

Staff Accountant Thomas Scully, testifying in support of the agreement, noted that some relevant questions remained outstanding. The most important of which was Great Bay's failure to provide and substantiate the amount of "other revenues" received by the Company for such services as disconnections, reconnections, etc.

### 2. *Quality of Service.*

#### A. *Great Bay.*

Robert Hanna, the owner and operator of Great Bay, did not appear at the hearing. Mr. Robert Fabian appeared for Mr. Hanna to address the operation of the system, but he did not proffer testimony.

#### B. *Staff.*

Staff Engineer Brogan submitted prefiled testimony, which was adopted and supplemented at the March 27, 1995 hearing outlining the inadequate service being provided by Great Bay to its customers. Exhibit #4.

Mr. Brogan's testimony outlined numerous water quality problems, including 1) dirty water, resulting in stained laundry, fixtures and dishes, 2) foul taste and smell, which in conjunction with the dirty water led 55% of the customers to use bottled water for consumption, 3) water which exceeded the New Hampshire Department of Environmental Services Secondary Maximum Contaminant Levels by as much as ten times for iron and two times for manganese, 4) failure to flush the system of sedimentation via "blow-offs" which significantly contributes to the

problems of dirty water and foul taste and smell, 5) low pressure problems in residents homes, 6) poor record keeping on pumpage figures, 7) outages that are not responded to, and 8) a lack of response by management to customer complaints.

Mr. Brogan recommended that the Commission order Great Bay to immediately institute five affirmative steps to address these quality of service problems:

1. Hire an engineer to analyze and make recommendations on the quality of service deficiencies;
2. Submit to the Commission the Company's plans regarding the recommendations of the engineer;
3. Make certain specific improvements to the system;
4. Keep a complaint log strictly for Schanda Farms; and
5. Establish a working relationship with the Schanda Farms Community Association

*C. Community Association.*

Mr. Oronte and Mr. Carpenter supported and supplemented Mr. Brogan's testimony.

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Both customers brought in examples of the water from their taps, one of which was black, the other orange. Exhibits #6 and #8. They indicated that one outage continued for 48 hours before Great Bay responded. When they requested a meeting with Mr. Hanna to discuss water quality problems, they were informed that he would meet with the Association, if they paid him \$50 per hour.

### III. COMMISSION ANALYSIS

[1-3] The issues before us are 1) the rate reduction that was stipulated by Staff and Great Bay, and 2) the quality of service.

The stipulation results in a rate reduction. We will approve it as it results in just and reasonable rates based on the available information. However, we will order Great Bay to provide the Commission with all other revenues by May 8, 1995 in order to determine whether further reductions are appropriate.

With regard to quality of service, RSA 374:1 provides that "[e]very public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." Based on the record before us, we find that Great Bay is providing only a marginal level of adequate and reasonable service to its customers. Thus we will adopt Mr. Brogan's five recommended steps to improve the quality of service, and we order Great Bay to comply with those steps as detailed below.

Should Great Bay fail to comply with these steps as ordered, we will recall them to consider whether it is appropriate to reduce rates to customers to reflect the level of service provided, impose fines against the utility and its agents pursuant to RSA 365:41 and 42 (Supp. 1994), place the utility in receivership pursuant to RSA 374::47-a (Supp. 1994) with the ultimate goal of transferring the utility and its franchise to a competent individual or entity, 374:28, or refer the

matter to the Attorney General's Office for criminal prosecution, RSA 365:41 and 42 (Supp. 1994).

Based upon the foregoing, it is hereby

ORDERED, that Great Bay Water Company, Inc. provide our Finance Department with documents concerning the total amount of all other revenues received during the test year within 14 days of the date of this order or face the possibility of fines or further rate reductions; and it is

FURTHER ORDERED, that Great Bay Water Company, Inc.:

1) Hire, by May 20, 1995, an engineer approved by the Commission, to review records; do appropriate tests; meet at least once with representatives of the Homeowners Association for input they may have about system construction, etc.; and determine the causes of and make specific recommendations regarding water quality and pressure deficiencies, including cost estimates, with a report to be completed and submitted to the Commission by July 30, 1995 with a copy to the Schanda Farms Community Association;

2) Submit to the Commission by August 20, 1995, with a copy to the Schanda Farms Community Association, the actions the company proposes regarding each recommendation in the above report, and the dates by which it commits to do them;

3) Accomplish the following by June 15, 1995;

a) Install an automatic notification system that will immediately alert the company of at least low tank level;

b) Mount the booster pumps on a stable foundation; and

c) Restore the source meters to proper working order;

4) Keep a complaint log strictly for Schanda Farms complaints, beginning immediately, with copies forwarded monthly to the PUC and the Schanda Farms Community Association;

5) Meet with the Schanda Farms Community Association (at no cost to the Association) or their representatives by June 1, 1995 at a location of the Association's choice and at least twice yearly thereafter for the purpose of allowing the Association to advise the Company and give the Association the option of witnessing any testing or flushing of the system and any significant work done on the system. If the Association is able to adequately demonstrate continued significant unresponsiveness, lack of

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courtesy or unwillingness of the Company to address system deficiencies at any time within the next 24 months, a show cause hearing be held to consider the options set forth above; and it is

FURTHER ORDERED, that Great Bay Water Company, Inc. provide each of its customers with a copy of this order via first class mail postmarked no later than one week from the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Great Bay Water Co., Inc., DR 94-185, Order No. 21,388, 79 NH PUC 567, Oct. 17, 1994.

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NH.PUC\*04/25/95\*[80915]\*80 NH PUC 236\*Carleton Water Company Trust

[Go to End of 80915]

80 NH PUC 236

**Re Carleton Water Company Trust**

DR 95-028

Order No. 21,631

New Hampshire Public Utilities Commission

April 25, 1995

ORDER granting interventions and adopting a procedural schedule for considering a water utility's proposed 62.9% rate increase. Commission notes the extent of ratepayer opposition to the filing, given other recent rate increases and the apparent lack of service and system improvements resulting therefrom. Still, the commission declines to dismiss the application as deficient outright, but warns the utility that it must prove the prudence of its filing before it can recover associated rate case expenses from ratepayers.

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1. RATES, § 649

[N.H.] Procedure — Hearing and notice — Announcement of procedural schedule — Relative to substantial rate increase proposal — Significant ratepayer opposition as a factor — Water utility. p. 238.

2. EXPENSES, § 91

[N.H.] Rate case expense — Factors affecting disallowance — Unnecessary or imprudent rate filings — Frequency of filings — Deterioration in service despite other recent rate increases — Water utility. p. 238.

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BY THE COMMISSION:

ORDER

On March 17, 1995, Carleton Water Company Trust (Carleton) filed with the New

Hampshire Public Utilities Commission (Commission) a petition for rate increase and supporting testimony and exhibits. Carleton proposes an overall revenue increase of 62.9%. The increases for each of the four developments are as follows: Birch Hill 107%, Hidden Valley 140%, Sunrise Estates 144%, and 175 Estates 133%.

The Commission set a prehearing conference for April 18, 1995, set a deadline for intervention requests, proposed a draft procedural schedule and called for initial positions of the Parties and Commission Staff (Staff). Order No. 21,599 (March 31, 1995).

The following customers sought intervention, without objection: Paul DegliAngeli of Birch Hill, William DeProfio of Sunrise Estates, Lawrence Fallon of Sunrise Estates and Robert A. Manzelli of Birch Hill. In addition, Richard Fairbank of Birch Hill and Ed Davis of Hidden Valley sought limited intervention, without objection.

At the duly noticed prehearing conference Carleton, the customers seeking intervention, the Office of Consumer Advocate (OCA)

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(which is a statutorily recognized intervenor), and Staff agreed to the following procedural schedule:

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

Carleton Responses to Questions raised at First Technical Session	May 4, 1995
Data Requests from Staff and Intervenors to Carleton	May 15, 1995
Carleton Data Responses	June 1, 1995
Technical Session at 10 a.m.	June 13, 1995
Testimony by Staff and Intervenors	June 29, 1995
Data Requests by Carleton	July 14, 1995
Data Responses by Staff and Intervenors	July 27, 1995
Settlement Conference, 10 a.m.	August 7, 1995
File Settlement Agreement, if any	August 15, 1995
Hearing on merits, 10 a.m.	August 22-23, 1995

Carleton expressed hope that the full procedural schedule might not be necessary, if Carleton had no discovery requests for the Staff or Intervenors. The Staff agreed to notify the Commission if the schedule could be shortened and amended, and asked that August 1 and 2, 1995 be reserved as well for hearing on the merits.

Also at the prehearing conference, in accordance with the Order of Notice, Carleton stated that it believed the significant issues to be addressed in this proceeding are: 1) insufficient revenues; 2) non-payment of the management agreement with Water Industries; and 3) addition of a pump required by the Department of Environmental Services.

Mr. DegliAngeli stated that he recognized that Mr. Carleton was entitled to a reasonable return on his investment but sought more information on the company's operations, amount of profit, use of competitive bids for services and similar ways to ensure low cost efficient



operations. Mr. DegliAngeli noted he is the Public Works Director for North Conway and will be applying that experience in his involvement in this case.

Mr. DeProfio agreed with the comments of many of the other customers and did not repeat those concerns. He stated that since the last rate increase service has deteriorated rather than improved, such that water quantity and quality is now reduced. Water is at times cloudy or dirty with sediment and at other times extremely chlorinated. Water usage bans are commonplace.

Mr. Fallon stated that like Mr. DeProfio he found the water quality to be poor and would no longer drink it. He stated that he has a contract from Carleton's predecessor that the water rate would never go above \$50 per year which the Commission should recognize. A copy of his agreement was submitted to the Commission file.

Mr. Davis read into the record a letter in opposition to the increases. He stated that he too recognized Mr. Carleton's right to earn a fair return on his system but disagreed with the need for an increase so soon after the last rate case, in that he was not aware of any significant improvements or repairs in the Hidden Valley system. He also questioned how long the surcharge for rate case expenses would be in place. Mr. Davis stated that he had never heard of Water Industries before, despite his years on the Board and thus did not understand the basis for the claim that the Water Industries contract was a reason for a rate increase. He also stated that Mr. Carleton had, in his opinion, demonstrated poor business judgement and poor communication with ratepayers. He noted that he is employed by Massachusetts Electric Company and therefore understands some of the constraints of a regulated utility; he will be relying on that experience in his involvement in the case.

Mr. Fairbank stated he agreed with the comments read into the record of other customers, particularly the magnitude of the increases. He noted that in addition, Mr. Carleton used to discount a portion of the quarterly bill if paid ahead of time but is no longer doing so. He questioned why.

OCA argued that the filing appeared so deficient perhaps the Commission should consider dismissing it immediately. OCA argued that the filing was vague and did not warrant a full investigation. Further, if the case were to proceed and be found to be without merit, OCA would argue that all rate case expenses incurred

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in preparing and litigating the case be disallowed. OCA noted that some of the supporting documentation did not address the claims in the petition. OCA also stated that an issue in the case would be the management agreement and close relationship between Carleton and Water Industries, Inc.

Staff stated it particularly intended to review, in addition to the issues raised by customers and the OCA: 1) why rate case expenses of the prior case have not been removed; 2) whether \$20,000 for outside services are legitimately included; 3) whether the well to be built should be included in rate base, given the Anti-CWIP provisions of RSA 378:30-a; 4) whether a service contract with Water Industries is appropriate; and 5) why Carleton had not submitted a plan for metering or explanation why metering should not occur, as required by Order No. 21,052. Staff also noted that the Finance Department was now auditing Carleton; results of the audit may raise

additional issues.

In addition to statements of positions from those attending the prehearing conference, letters from five customers, were read into the record, in accordance with requests of the customers that the letters be read aloud. All five letters strenuously objected to the proposed rate increase. Also noted were four letters from customers received by the Commission, all in opposition to the rate increase.

[1, 2] We will grant the requests of Mr. DegliAngeli, Mr. DeProfio, Mr. Fallon and Mr. Manzelli for full intervention and the requests of Mr. Davis and Mr. Fairbank for limited intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

We will not at this time rule on OCA's suggestion that the case be dismissed, as it has not been filed as a motion but merely mentioned as a possibility by the OCA. We agree with the comments of the OCA and Staff, however, that imprudently incurred rate case expenses should not be allowed into rates and if, in the course of this docket, it becomes apparent that this case was imprudently filed or that any expenses are imprudently incurred, we will disallow rate case expenses as appropriate.

Based upon the foregoing, it is hereby

ORDERED, that Paul DegliAngeli, William DeProfio, Lawrence Fallon and Robert Manzelli are granted full intervention; and it is

FURTHER ORDERED, that Ed Davis and Richard Fairbank are granted limited intervention; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1995.

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NH.PUC\*04/25/95\*[80916]\*80 NH PUC 238\*Bretton Woods Telephone Company

[Go to End of 80916]

80 NH PUC 238

**Re Bretton Woods Telephone Company**

DF 95-104

Order No. 21,632

New Hampshire Public Utilities Commission

April 25, 1995

ORDER authorizing a local exchange telephone carrier to issue a promissory note in an amount up to \$180,000, so as to secure financing from the Federal Financing Bank for improving and upgrading its existing in-service switching system.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of promissory notes — Purposes — Additions and betterments — Improvements and upgrades to switching system — Local exchange telephone carrier. p. 238.  
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BY THE COMMISSION:

## ORDER

[1] On April 18, 1995 Bretton Woods

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Telephone Company (BWT), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval and authority under RSA 369:1-4 to issue its promissory note in the principal amount of \$180,000 and to mortgage its properties, tangible and intangible, including franchises, as security for such promissory note.

BWT proposes to enter into a loan agreement with the Federal Financing Bank (FFB) providing for the issuance, subject to the Commission's approval, of a promissory note in the principal amount of \$180,000 having a term of 15 years. The initial interest rate or rates will be determined by the FFB based on market conditions at the time of the closing. The proceeds from the issuance of the promissory note will be used to finance upgrades to the Company's in-service Northern Telecom DMS 10 switching system.

Staff and BWT discussed the interest rate levels at length. BWT represented that it is the intention of the Company to lock into the fixed rate for 15-year loans in effect on the date of closing.

The Commission has reviewed the BWT's petition, and all exhibits submitted therewith and Staff's recommendation, and finds that the issuance of a promissory note of BWT in the principal amount of \$180,000 to the FFB upon the terms represented in the proposed loan documents is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that BWT is authorized to issue a promissory note in the principal amount of \$180,000; and it is

FURTHER ORDERED, that the promissory note will bear interest at a fixed rate, determined at the time of closing, over a 15 year period, in accordance with standard FFB loan policies; and it is

FURTHER ORDERED, that BWT file executed loan documents, containing the definitive terms of the loan immediately upon closing; and it is

FURTHER ORDERED, that the mortgaging of BWT's property to secure the repayment of such promissory note is approved; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year BWT, shall file with the Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed financing until the expenditures of the whole proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of April, 1995.

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NH.PUC\*04/25/95\*[80917]\*80 NH PUC 239\*MTC Telemanagement Corporation

[Go to End of 80917]

80 NH PUC 239

**Re MTC Telemanagement Corporation**

DE 95-033

Order No. 21,633

New Hampshire Public Utilities Commission

April 25, 1995

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

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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 services. p. 240.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 240.

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BY THE COMMISSION:

ORDER

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[1, 2] On February 13, 1995, MTC Telemanagement Corporation (MTC), a California 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.

MTC 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 MTC 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. MTC 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, MTC shall notify the Commission of the change.
5. MTC 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. MTC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. MTC 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. MTC 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. MTC 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. MTC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by MTC 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 MTC 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;

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(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

MTC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that MTC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than May 9, 1995, and an affidavit proving publication shall be filed with the Commission on or before May 22, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. MTC 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 MTC shall file a compliance tariff with the Commission on or before May 9, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 25, 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 twenty-fifth day of April, 1995.

Notice of Conditional Approval of  
MTC Telemangement Corporation

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On February 13, 1995, MTC Telemangement Corporation (MTC), a California 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. 21,633, issued in Docket No. DE 95-033, the Commission granted MTC conditional approval to operate as of May 25, 1995, subject to the right of the public and interested parties to comment on MTC 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 MTC's petition to do business in the State should submit written comments no later than May 22, 1995, to:

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Dr. Sarah P. Voll  
Executive Director and Secretary  
Public Utilities Commission  
8 Old Suncook Road  
Concord, New Hampshire 03301-7319

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\*04/25/95\*[80918]\*80 NH PUC 242\*Westinghouse Electric Corporation dba Westinghouse Communications

[Go to End of 80918]

80 NH PUC 242

**Re Westinghouse Electric Corporation dba Westinghouse Communications**

DE 95-034

Order No. 21,634

New Hampshire Public Utilities Commission

April 25, 1995

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

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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 services. p. 242.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 242.

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BY THE COMMISSION:

ORDER

[1, 2] On February 13, 1995, Westinghouse Electric Corporation d/b/a Westinghouse Communications (Westinghouse), a Pennsylvania 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.

Westinghouse 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 Westinghouse 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. Westinghouse 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, Westinghouse shall notify the Commission of the change.

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5. Westinghouse 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. Westinghouse shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. Westinghouse 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. Westinghouse 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. Westinghouse 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. Westinghouse shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Westinghouse 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 Westinghouse 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 Westinghouse to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

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FURTHER ORDERED, that Westinghouse shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than May 9, 1995, and an affidavit proving publication shall be filed with the Commission on or before May 22, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Westinghouse 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 Westinghouse shall file a compliance tariff with the Commission on or before May 9, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective May 25, 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 twenty-fifth day of April, 1995.

Notice of Conditional Approval of  
Westinghouse Electric Corporation  
d/b/a Westinghouse Communications

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On February 13, 1995, Westinghouse Electric Corporation d/b/a Westinghouse Communications (Westinghouse), a Pennsylvania 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. 21,634, issued in Docket No. DE 95-034, the Commission granted Westinghouse conditional approval to operate as of May 25, 1995, subject to the right of the public and interested parties to comment on Westinghouse 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 Westinghouse's petition to do business in the State should submit written comments no later than May 22, 1995, 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\*05/01/95\*[80919]\*80 NH PUC 244\*Granite State Telephone

[Go to End of 80919]

80 NH PUC 244

**Re Granite State Telephone**

DR 95-043  
Order No. 21,635

New Hampshire Public Utilities Commission

May 1, 1995

ORDER authorizing a local exchange telephone carrier to provide switched high-speed data transmission services, to meet customer demand.

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1. RATES, § 572

[N.H.] Telephone rate design — Switching service — High-speed data transmission service — New offerings — To satisfy customer requests — Local exchange carrier. p. 245.

**Page 244**

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BY THE COMMISSION:

ORDER

[1] On February 21, 1995, Granite State Telephone (GST or Company) filed a petition seeking to introduce Switched 56 Kilobits Per Second Service for effect March 17, 1995. Switched 56 Kilobits Per Second Service is a digital, end-to-end public switched service that provides full duplex, synchronous information transport via a specially equipped measured access line.

Staff requested that the proposed tariff pages be suspended to allow for a thorough review of the filing and the accompanying supporting material. On March 17, 1995, the Commission issued Order No. 21,575 suspending the proposed revisions.

GST proposes to introduce this service in response to recent requests from several customers for high speed data transmission services. GST's forecast for increasing demand is based, in part, on results of a 1994 customer survey.

Staff reviewed the Company's filing and the accompanying materials and noted that the proposed rates appear to cover their incremental costs and provide a contribution. Consequently, Staff recommended that the proposed tariff be approved.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Granite State Telephone are approved:

NHPUC No. 6

Section 2 - Original Sheets 8 through 11.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1995.

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NH.PUC\*05/01/95\*[80920]\*80 NH PUC 245\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80920]

80 NH PUC 245

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-081

Order No. 21,636

New Hampshire Public Utilities Commission

May 1, 1995

ORDER authorizing an interexchange telephone carrier to introduce its "Clear Advantage Service," an add-on service providing discounts for certain volume usage and offering service packages of inward 800, outward toll, and credit card calling options.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Offering of "Clear Advantage Service" — Discounts for volume usage — Add-on package plans consisting of inward 800, outward toll, and credit card calling services — Interexchange telephone carrier. p. 245.

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BY THE COMMISSION:

## ORDER

On March 29, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to introduce AT&T Clear Advantage Service for effect May 1, 1995.

[1] Clear Advantage is a combined package of inward 800, outward toll and credit card calling services to and from locations within New Hampshire. It is an add-on service to the interstate service and volume and term discounts apply to the combined interstate and intrastate usage. Rates do not vary depending on distance or time of day. Rather, there is one

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flat per minute rate for outbound toll, one per minute rate for inbound 800 and one per minute rate for credit card calls. The proposed per minute rates for inbound 800 and credit card calls is the same. Charges are billed with 30 second minimums and six second additional increments. There is an additional 80 cent per call surcharge for credit card calls.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T Clear Advantage Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff NH PUC No. 1 are approved for effect as filed:

*Master Table of Contents*  
1st Revised Page 1.1

*Table of Contents*  
Original Page 26

*Section 24*  
Original Pages 1-6;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1995.

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NH.PUC\*05/01/95\*[80921]\*80 NH PUC 246\*LDDS Communications, Inc.

[Go to End of 80921]

80 NH PUC 246

**Re LDDS Communications, Inc.**

DR 95-082  
Order No. 21,637

New Hampshire Public Utilities Commission

May 1, 1995

ORDER authorizing an interexchange telephone carrier to amend an acquired carrier's tariffs to reflect its own name and to make their tariffs consistent.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Notice of correct corporate name upon acquisition of another carrier — Uniformity and consistency — Interexchange telephone carrier. p. 246.

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BY THE COMMISSION:

**ORDER**

[1] On March 30, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc. (LDDS) and its wholly owned subsidiary ATC New Hampshire, Inc. (ATC) requesting authority to substantially revise ATC's NHPUC Tariff No. 1 and incorporate the revisions into an LDDS Tariff.

On December 6, 1994 by Order No. 21,452, the Commission granted ATC's and LDDS's request to transfer authority of ATC to LDDS. The order further directed LDDS to file a cover page to the ATC Tariff stating: "LDDS Communications Inc., wholly absorbs and will continue to operate under the tariff of ATC of New Hampshire, Inc., as of December 6, 1994." The proposed tariff changes all ATC references to LDDS, reorganizes the tariff and makes substantial changes to the Regulations section of

**Page 246**

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the tariff consistent with other LDDS state tariffs. In addition, language is added which will allow LDDS to file Promotional Offerings on seven days notice to the Commission.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that LDDS NHPUC Tariff No. 2 is approved as filed; and it is

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

this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re WilTel of New Hampshire, Inc., DE 94-202, Order No. 21,452, 79 NH PUC 671, Dec. 6, 1994.

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NH.PUC\*05/01/95\*[80922]\*80 NH PUC 247\*Frontier Communications International Inc.

[Go to End of 80922]

80 NH PUC 247

**Re Frontier Communications International Inc.**

DR 95-093

Order No. 21,638

New Hampshire Public Utilities Commission

May 1, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, including the introduction of a debit card service, clarification of usage tiers and billing increments, and increases in voice grade and high-capacity circuit service charges.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Offering of new debit card service — Addition of new usage tiers — Simplification of billing increments — Rate increases for voice grade and high-capacity service — Interexchange carrier. p. 247.

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BY THE COMMISSION:

ORDER

[1] On April 6, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Frontier Communications International Inc. (Frontier International) requesting authority to make various tariff revisions for effect May 6, 1995.

The proposed revisions include adding a section to detail and centralize billing increments and removal of references to billing increments in each section and product. Several additions



are proposed, including addition of a new usage tier for Frontrunner Service, charges for installation of Voice Grade and High Capacity T1 circuits, and certain holidays to the Holiday Promotion. Debit Card Service is being introduced, and the per month charges for Voice Grade and High Capacity T1 circuits are being increased. Option II of Consumer OMNI is being eliminated.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Frontier International to revise its tariff as outlined above.

Based upon the foregoing, it is hereby  
ORDERED, that the following pages of

**Page 247**

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Frontier International's tariff NHPUC No. 1 are approved for effect May 6, 1995:

2nd Revised Page 2  
 1st Revised Page 4  
 2nd Revised Page 10 in lieu of  
 1st Revision  
 1st Revised Page 21  
 Original Page 21.a  
 1st Revised Page 22  
 1st Revised Page 23  
 1st Revised Page 24  
 1st Revised Page 29  
 1st Revised Page 31  
 1st Revised Page 39  
 1st Revised Page 41  
 1st Revised Page 43  
 2nd Revised Page 45 in lieu of  
 1st Revision  
 2nd Revised Page 46 in lieu of  
 1st Revision  
 1st Revised Page 47  
 1st Revised Page 48  
 1st Revised Page 53  
 1st Revised Page 55  
 2nd Revised Page 56  
 Original Page 56.a  
 Original Page 56.b  
 1st Revised Page 57;

and it is

FURTHER ORDERED, that Frontier International file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of May, 1995.

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NH.PUC\*05/02/95\*[80923]\*80 NH PUC 248\*Pittsfield Aqueduct Company, Inc.

[Go to End of 80923]

80 NH PUC 248

**Re Pittsfield Aqueduct Company, Inc.**

DF 95-016

Order No. 21,639

New Hampshire Public Utilities Commission

May 2, 1995

ORDER noting interventions and adopting a procedural schedule for considering a water utility's proposed \$1.4 million borrowing and concomitant step rate increase. Commission denies a request for expedited proceedings, finding a thorough investigation necessary given the amount of financing at stake.

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1. SECURITY ISSUES, § 131

[N.H.] Procedure — Notice and hearing — Announcement of procedural schedule — Denial of expedited process — Factors — Extent of borrowing planned — Investigation into need for associated capital project — Water utility. p. 249.

2. RATES, § 649

[N.H.] Procedure — Hearing and notice — Announcement of procedural schedule — Relative to proposed borrowing — Associated step rate increase — Denial of expedited process — Factors — Extent of borrowing planned — Impact on ratepayers — Water utility. p. 249.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 27, 1995, Pittsfield Aqueduct Company, Inc. (Pittsfield) concurrently filed a

Petition for Authority to Borrow up to \$1.4 Million and a Petition for a Step Increase. The Petitions relate to Pittsfield's need to undertake a capital project in order to comply with the Safe Drinking Water Act (SDWA).

The Commission's Chief Engineer, Michael Cannata, forwarded a February 2, 1995 letter to Pittsfield requesting additional information on or before February 16, 1995. Pittsfield responded with the requested information on February, 15, 1995.

An Order of Notice was issued on February 21, 1995 scheduling a prehearing conference for April 25, 1995. Prior to the prehearing conference, the docket reflects various exchanges of correspondence relative to Pittsfield's efforts to obtain financing and to evaluate SDWA compliance options.

Timely requests for intervention were filed by Raymond Chapman on behalf of the Town of Pittsfield's Water Rates Study Committee and by David Barker on behalf of the Town's Board of Selectmen. Pittsfield filed a March 22, 1995 letter suggesting that the Commission consolidate the interventions of Messrs. Chapman and Barker.

On April 14, 1995, Pittsfield timely filed testimony and supporting exhibits in accordance with the aforementioned Order of Notice.

A duly noticed prehearing conference was held on April 25, 1995 before Commission Hearing Examiner, Robert J. Frank. There were no objections to the requests for intervention, but Staff and Pittsfield were unable to reach concurrence with regard to a procedural schedule.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Pittsfield*

Pittsfield requests that the Commission schedule the final hearing for May 4, 1995, which is three days from the date of this order. According to Pittsfield, it will be subject to civil fines if it does not award the construction contract for the compliance project by June 1, 1995. The New Hampshire Department of Environmental Services is the agency responsible for enforcing the mandates of the Safe Drinking Water Act.

Aside from the disagreement over the procedural schedule, Pittsfield provided a preliminary overview of the issues raised by its filing. The primary issue is whether it is in the public interest to grant the relief requested in its Petitions and whether it should construct a treatment facility known as "Microfloc" in order to comply with the SDWA.

### B. *Staff*

Staff argues that the schedule proposed by Pittsfield will deny Staff the opportunity to conduct discovery and prepare testimony. Staff proposes a May 4, 1995 technical session and if a settlement is reached, a May 30, 1995 hearing. In the event that a settlement is not reached by May 23, 1995, Staff proposes to inform the Commission in order to request an extended procedural schedule.

Staff also provided a preliminary assessment of the issues raised by the filing. According to Staff, Pittsfield should further evaluate the possibility of seeking groundwater supplies. Pittsfield should conduct a cost of service study in order to determine cost allocation before any rate increase goes into effect.

*C. The Town of Pittsfield*

Both intervenors on behalf of the Town of Pittsfield support Staff's proposed procedural schedule. The Water Rates Study Committee requested that a cost of service study be conducted prior to the requested step increase to ensure the proper allocation of costs among customer classes.

*D. OCA*

The OCA did not state a position on the record.

III. COMMISSION ANALYSIS

[1, 2] Although we appreciate Pittsfield's desire to expedite this matter, we nonetheless adopt Staff's proposed procedural schedule.

Page 249

We believe that Pittsfield's request to borrow \$1.4 million clearly warrants a thorough investigation by Staff in order for us to make an informed decision. We will direct the Commission's Executive Director to advise the appropriate State agencies of the status of this proceeding and the need for Staff to investigate Pittsfield's chosen SDWA compliance option.

We grant the requests for intervention filed by the Town of Pittsfield and consolidate their appearance in this proceeding as requested by the Petitioner.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule in this matter shall be that which Staff proposed at the prehearing conference as set forth above; and it is

FURTHER ORDERED, that the requests for intervention filed on behalf of the Town of Pittsfield are hereby granted and consolidated.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1995.

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NH.PUC\*05/02/95\*[80924]\*80 NH PUC 250\*Working Assets Funding Service, Inc., dba Working Assets Long Distance

[Go to End of 80924]

80 NH PUC 250

**Re Working Assets Funding Service, Inc., dba Working Assets Long Distance**

DR 95-084

Order No. 21,640

New Hampshire Public Utilities Commission

May 2, 1995

ORDER approving an interexchange telephone carrier's proposed tariff revisions, which clarify holiday billing periods, introduce prepaid calling card plans, and offer volume discounts to certain business subscribers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Tariff revisions — Clarification of holiday billing periods — Offering of prepaid calling card service — Introduction of volume discounts for certain business subscribers — Interexchange carrier. p. 250.

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BY THE COMMISSION:

ORDER

[1] On March 31, 1995, Working Assets Funding Services, Inc., d/b/a Working Assets Long Distance (Working Assets), filed a petition to correct the Definitions section of its tariff so as to correctly state the Holiday calling rate; introduce prepaid calling card services; delete certain call placement charges; and introduce volume discounts for commercial subscribers.

The intra-network, volume discount of ten percent offered to commercial customers applies to those calls which terminate to other subscribers of Working Assets' communication services. The call placement charges, which are being deleted, related to the use of a Local Exchange Carrier's calling card to place operator-assisted calls on the Working Assets system.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Working Assets to revise its tariff as outlined above.

Based on the foregoing, it is hereby

ORDERED, that the following pages:

1st Revised Page 1  
 1st Revised Page 2  
 1st Revised Page 5  
 1st Revised Page 6  
 1st Revised Page 8  
 2nd Revised Page 9  
 1st Revised Page 10  
 1st Revised Page 16  
 1st Revised Page 17

Page 250

Original Page 18

of Working Assets's NHPUC Tariff No. 1 are approved as filed; and it is

FURTHER ORDERED, that Working Assets file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this second day of May, 1995.

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NH.PUC\*05/02/95\*[80925]\*80 NH PUC 251\*Public Service Company of New Hampshire

[Go to End of 80925]

80 NH PUC 251

**Re Public Service Company of New Hampshire**

DR 95-064

Order No. 21,641

New Hampshire Public Utilities Commission

May 2, 1995

MOTION by electric utility for approval of a 10-year special rate contract with an industrial customer, New Hampshire Ball Bearings, Inc.; granted, with the commission noting that the customer has participated in various conservation and load management programs and has applied for certification in the state's economic development programs.

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Long-term special rate contract — Factors affecting approval — Load retention — Conservation and load management efforts — Economic development initiatives — Contribution to cost. p. 251.

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BY THE COMMISSION:

**ORDER**

The Petitioner, Public Service Company of New Hampshire (PSNH) filed on March 13, 1995 a request for approval of a ten-year special contract, Special Contract No. NHPUC-108 (NHPUC-108), between PSNH and New Hampshire Ball Bearings, Inc. (NHBB). NHBB is a manufacturer of ball bearings at its Peterborough, New Hampshire facility (Hitech Division) and rod end and special bearings at its Laconia, New Hampshire facility (Astro Division). NHBB is a wholly-owned subsidiary of NMB (USA) Inc., which is owned by Minebea Co., Ltd of Tokyo,

Japan. Minebea has world-wide operations in Asia, Europe, and North America.

This filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. NHPUC-108 will be effective the first day of the month following Commission approval. Either party may terminate NHPUC-108 prior to the end of the ten-year period upon payment of an early termination fee, but neither party may terminate earlier than sixty (60) months from the effective date.

PSNH's filing included the special contract, testimony, and a technical statement supporting a discounted rate for NHBB in both redacted and unredacted form. PSNH requested protective treatment for certain information considered confidential in the special contract and technical statement. On March 27, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,588).

[1] PSNH contends that this special contract is designed to assist NHBB's efforts to remain a viable New Hampshire manufacturing business. NHBB employs approximately 870 people in New Hampshire (450 in Peterborough and 420 in Laconia) according to Tower Publishing's 1994 New Hampshire Manufacturing Directory. Hence, PSNH characterizes NHPUC-108 as business retention application. By retaining service to NHBB, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH

Page 251

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and its other customers.

NHPUC-108 provides for rates of electric service lower than those otherwise available under applicable tariffed rates. The rates consist of fixed customer and demand charges that escalate each year, and an energy charge of 1.5 cents per kWh above FPPAC costs and the Nuclear Decommissioning charge. For the second and third year of the contract, the energy charge is reduced by 0.5 cents per kWh. NHBB will be charged no less than 103% of PSNH's short-term avoided costs.

PSNH represents that NHBB has installed various devices to promote conservation and load management, and is currently participating under PSNH's Energy Services Program. In addition, NHBB has undertaken certain new marketing strategies, changed its production processes, and implemented cost cutting measures along with other steps in an effort to improve its financial situation. NHBB agrees to seek assistance from the Department of Resources and Economic Development (DRED) to determine if they qualify for any state economic development programs. PSNH has identified one New Hampshire company that is in direct competition with NHBB. PSNH states that it is currently working with that customer, and is willing to offer it similar terms and conditions.

Upon review of the filing, and the recommendation of Staff, the Commission finds that Special Contract No. NHPUC-108 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633), as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-108 between PSNH and New Hampshire Ball Bearings, Inc. is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-108, 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 NHBB by our approval today of this special contract; 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 May 16, 1995 and to be documented by affidavit filed with this office on or before May 30, 1995; 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 30, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 1, 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 second day of May, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*05/02/95\*[80926]\*80 NH PUC 252\*Allnet Communication Services, Inc.

[Go to End of 80926]

80 NH PUC 252

### **Re Allnet Communication Services, Inc.**

DE 95-094

Order No. 21,642

New Hampshire Public Utilities Commission

May 2, 1995

ORDER granting an interexchange telephone

**Page 252**



carrier interim authority to offer intrastate long-distance services.

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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 services. p. 253.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 253.

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BY THE COMMISSION:

ORDER

[1, 2] On April 7, 1995, Allnet Communication Services, Inc. (Allnet), a Michigan 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.

Allnet 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 Allnet 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. Allnet 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, Allnet shall notify the Commission of the change.

5. Allnet 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. Allnet shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. Allnet 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. Allnet 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. Allnet 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. Allnet shall compensate the appropriate Local Exchange Company for all originating

**Page 253**

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and terminating access used by Allnet 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 Allnet 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 Allnet to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Allnet shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than May 16, 1995, and an affidavit proving publication shall be filed with the Commission on or before May 30, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Allnet 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 Allnet shall file a compliance tariff with the Commission on or before May 16, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 1, 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 second day of May, 1995.

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Notice of Conditional Approval of  
Allnet Communication Services, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in  
the State of New Hampshire

On April 7, 1995, Allnet Communication Services, Inc. (Allnet), a Michigan Corporation,  
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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. 21,642, issued in Docket No. DE 95-094, the Commission granted Allnet conditional approval to operate as of June 1, 1995, subject to the right of the public and interested parties to comment on Allnet 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 Allnet's petition to do business in the State should submit written comments no later than May 30, 1995, 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\*05/02/95\*[80927]\*80 NH PUC 255\*Consumers New Hampshire Water Company, Inc.

[Go to End of 80927]

80 NH PUC 255

### **Re Consumers New Hampshire Water Company, Inc.**

DR 95-092  
Order No. 21,643

New Hampshire Public Utilities Commission

May 2, 1995

ORDER suspending a water utility's proposed rate increase for service in a limited part of the Town of Londonderry.

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1. PROCEDURE, § 42

[N.H.] Suspension — Of proposed tariff terms — For rate increase — Water utility. p. 255.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed tariff revisions — For rate increase — To allow for adequate investigatory period — Water utility. p. 255.

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BY THE COMMISSION:

ORDER

[1, 2] On April 5, 1995 Consumers New Hampshire Water Company, Inc. (Consumers) filed with the New Hampshire Public Utilities Commission (Commission) proposed rate schedules and supporting documentation which, if approved, would apply Consumers' currently effective GMS-A rate to a limited area in the Town of Londonderry, New Hampshire known as Harvest Village.

The tariff page pertaining to service to Harvest Village is proposed for effect on May 5, 1995. A thorough investigation as to the appropriateness of applying Consumers' GMS-A rate to the customers at Harvest Village is necessary prior to rendering a decision thereon.

**Page 255**

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In addition the Commission Staff (Staff) has requested that the Commission approve an abbreviated schedule to allow discovery relative to the proposed rate and the terms and conditions of the agreement under which Consumers intends to acquire the water system to serve Harvest Village.

Based upon the foregoing, it is hereby

ORDERED, that Consumers New Hampshire Water Company, Inc. NHPUC No. Nine Water Tariff First Revised Page No. 43 is hereby suspended; and it is

FURTHER ORDERED, that the Staff issue its data requests on or before May 11, 1995 to Consumers, and Consumers respond to the data requests no later than May 25, 1995.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1995.

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NH.PUC\*05/02/95\*[80928]\*80 NH PUC 256\*Rosebrook Water Company, Inc.

[Go to End of 80928]

80 NH PUC 256

**Re Rosebrook Water Company, Inc.**

DR 95-098  
Order No. 21,644

New Hampshire Public Utilities Commission

May 2, 1995

ORDER approving a new, one-year special rate contract executed by a water utility and the owners of a large resort hotel, the Mount Washington Hotel. The agreement provides for a fixed rate of \$25,000 per year, with an additional charge of 20 cents per 100 gallons for consumption in excess of 28 million gallons. The efficacy of the fixed rate will be compared to rates that otherwise would apply based on readings from recently installed meters at the hotel complex.

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1. RATES, § 611

[N.H.] Water rate design — Service to hotel structures — Large resort hotel — Special one-year rate contract — Fixed annual rate — Additional charges for excessive usage — Necessity of conservation efforts by hotel — Recently installed meters as providing benchmark. p. 256.

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BY THE COMMISSION:

ORDER

On April 11, 1995, Rosebrook Water Company, Inc. (Rosebrook) filed with the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 378:18 a special contract it entered into with MWH Preservation Limited Partnership (MWH), owners of the Mount Washington Hotel (Hotel). The contract, executed on April 6, 1995, is effective for a one year period commencing on May 1, 1995 and will terminate on April 30, 1996.

[1] Under the terms of the Contract, Rosebrook will provide water service to the Mount Washington Hotel, Hotel Administration Building, Bretton Arms (an inn located near the Hotel), and Fabyans Restaurant. Rosebrook previously installed metering equipment at the Hotel Administration Building, Bretton Arms and Fabyans Restaurant, and recently a meter was installed at the Hotel. During the term of the contract MWH shall pay a fixed amount of \$25,000, an additional charge of \$.20 per 100 gallons for MWH consumption in excess of 28,000,000 gallons plus \$30.00 per day for each day after July 31, 1995 the MWH outdoor fountain remains connected to the Rosebrook water supply. The contract also provides that MWH shall use its best efforts to take reasonable measures to prevent the waste of water.

Staff has reviewed the terms and conditions of the contract and recommends that the contract be approved as submitted. Staff believes that the fixed \$25,000 rate is justified for the one year contract by the special circumstance of Rosebrook's recent installation of metering equipment. The equipment will allow

Page 256

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Rosebrook to determine the exact amount of water that the Hotel will consume on an annual basis and make possible an appropriate consumption charge for the Hotel for future years. Staff has also reviewed Rosebrook's projected revenue from the proceeds of the contract and notes that

it will cover the incremental operating expenses to serve MWH.

The Commission has reviewed the contract and the Staff recommendation and finds that the one year contract is justified by the special circumstances and is in the public good.

Based on the foregoing, it is hereby

ORDERED *NISI*, that the special contract between Rosebrook Water Company, Inc. and MWH Preservation Limited Partnership commencing on May 1, 1995 and ending on April 30, 1996 is approved subject to the condition that Rosebrook evaluate the consumption data for the Hotel during the term of the contract and file a consumption rate for the Hotel no later than February 29, 1996 for effect May 1, 1996; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Rosebrook 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 May 16, 1995 and to be documented by affidavit filed with this office on or before May 30, 1995; 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 30, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 1, 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 second day of May, 1995.

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NH.PUC\*05/08/95\*[80929]\*80 NH PUC 257\*Integrated Water Systems, Inc.

[Go to End of 80929]

80 NH PUC 257

**Re Integrated Water Systems, Inc.**

DF 95-117

Order No. 21,645

New Hampshire Public Utilities Commission

May 8, 1995

ORDER authorizing a water utility to establish a commercial line of credit of up to \$100,000 through the Community Bank and Trust Company of Wolfeboro, so as to facilitate completion of a mandatory water meter installation project.

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1. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Commercial line of credit — Limits and interest rate — To

finance completion of a meter installation project — Water utility. p. 257.

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BY THE COMMISSION:

ORDER

[1] On April 28, 1995, Integrated Water Systems, Inc. (Integrated or the Company), a public utility providing water service in the portion of the Town of Barnstead, New Hampshire known as Locke Lake Colony, filed a petition with the New Hampshire Public Utilities Commission (the Commission) seeking authority, pursuant to RSA 369, to accept the terms and conditions of a Commercial Line of Credit (the Line of Credit) from Community Bank & Trust Company (the Bank) of Wolfeboro, New Hampshire.

In Order No. 21,547, issued by the Commission on February 22, 1995, the Commission accepted a Settlement Agreement entered into by the parties to the Company's rate case, DR 94-094. The Commission, in this Order, noted

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the provision of the Settlement Agreement regarding the installation of water meters in Integrated's franchise area on or before December 31, 1995, and accepted a step adjustment mechanism to modify Integrated's rates to its customers to reflect the capital cost of the metering project once completed. The financing request in the instant docket is intended to facilitate the completion of Integrated's metering project by establishing a Line of Credit for use as needed.

The Line of Credit is for a maximum of \$100,000 at a rate of interest of 3% over the base rate of the Bank. The rate of interest can be adjusted daily with changes in the base rate, and interest is payable monthly on the outstanding balance. The term of the Line of Credit is one year, at which time the outstanding balance shall be due in full. The Line of Credit is to be secured by a second lien on all accounts receivable, inventory and equipment now owned or later acquired by the Company.

It is Integrated's intention, upon completion of the metering project, to petition the Commission for authority to convert the outstanding balance of the Line of Credit to a long term loan with the Bank, subject to the terms and conditions required by the Bank at that time.

Based upon the foregoing, it is hereby

ORDERED, that Integrated is granted authorization to accept the terms and conditions of the Line of Credit, as detailed above, with Community Bank & Trust to secure financing in an amount not to exceed \$100,000; and it is

FURTHER ORDERED, that Integrated shall file, on each July 1 and January 1, as well as at the time of its submission of a petition for conversion of this Line of Credit to a long term note, a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing; and it is

FURTHER ORDERED, that Integrated shall restrict the use of the funds available to it through the Line of Credit to the purchase and installation of meters in its franchise area.



By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,547, 80 NH PUC 95, Aug. 22, 1995.

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NH.PUC\*05/08/95\*[80930]\*80 NH PUC 258\*MCI Telecommunications Corporation

[Go to End of 80930]

80 NH PUC 258

**Re MCI Telecommunications Corporation**

DR 95-099

Order No. 21,646

New Hampshire Public Utilities Commission

May 8, 1995

ORDER authorizing an interexchange telephone carrier to provide add-on "Vnet" and "MCI Vision" services to those governmental customers that already subscribe to the carrier's interstate services, and also to introduce "MCI MASTERS" service, designed to provide special rates to students and faculty at educational institutions.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Governmental subscribers of interstate services — New add-on service — "Vnet" and "MCI Vision" switched voice communication service — Interexchange telephone carrier. p. 259.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of new package plans for schools — Available to students, faculty, and administrators — Interexchange telephone carrier. p. 259.

**Page 258**

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BY THE COMMISSION:

## ORDER

[1, 2] On April 12, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to introduce Government Pricing Plan for Vnet and MCI Vision, introduce MCI PrePaid and MCI MASTERS, and make various revisions, for effect May 12, 1995.

The Government Pricing Plan identifies intrastate rates for customers currently enrolled in a Special Customer Arrangement Type 11, 12, 13 or 14 as described in MCI's Interstate tariff. MCI PrePaid is a prepaid calling card service that allows customers to acquire cards that are used to originate outbound direct dial calls via an MCI 800 number. Cards may be acquired by customers for their own internal or promotional use.

MCI MASTERS is a toll service available to students, faculty, and administrators of educational institutions that agree to act as MCI's agent in connection with the provision of service.

Other proposed revisions to the tariff include lowering the spending threshold associated with Friends & Family Option B from \$10.00 to \$9.50, and changing the name of MCI Option V from MCI Prepaid Calling Card Service to MCI Phonecash. Finally, a footnote has been added to MCI Vision that explains that customers currently enrolled in the Vision RPP Plan will receive the usage rates and discounts in effect on February 1, 1995, throughout the Plan.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect on May 12, 1995:

37th Revised Page 1 in lieu of  
36th Revision  
19th Revised Page 2  
18th Revised Page 3  
24th Revised Page 3.1 in lieu of  
23rd Revision  
9th Revised Page 4  
3rd Revised Page 25.3  
3rd Revised Page 40  
12th Revised Page 54 in lieu of  
11th Revision  
2nd Revised Page 55.1  
2nd Revised Page 59.7  
2nd Revised Page 59.8 in lieu of  
1st Revision  
Original Page 59.10;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 1995.

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NH.PUC\*05/08/95\*[80931]\*80 NH PUC 259\*Public Service Company of New Hampshire

[Go to End of 80931]

80 NH PUC 259

**Re Public Service Company of New Hampshire**

DR 95-012

Order No. 21,647

New Hampshire Public Utilities Commission

May 8, 1995

MOTION by electric utility for approval of a 10-year special rate contract with an industrial customer, Summit Packaging Systems, Inc.; granted, with the commission citing to the load retention and business expansion benefits emanating therefrom.

**Page 259**

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1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Long-term special rate contract — Purposes — Load retention — Economic development and local business expansion — Contribution to cost as a factor. p. 260.

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BY THE COMMISSION:

**ORDER**

The Petitioner, Public Service Company of New Hampshire (PSNH) filed on January 25, 1995 a request for approval of a ten-year special contract, Special Contract No. NHPUC-105 (NHPUC-105), between PSNH and Summit Packaging Systems, Inc. (Summit). Summit is a manufacturer of aerosol valves for the packaging industry located in Manchester, New Hampshire. This filing was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. NHPUC-105 will be effective the first

day of the month following Commission approval.

PSNH's filing included the special contract, testimony, and a technical statement supporting a discounted rate for Summit in both redacted and unredacted form. PSNH requested protective treatment for certain information considered confidential in the supporting materials. On February 14, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,529).

On February 8, 1995, the Office of the Consumer Advocate (OCA) requested that the Commission schedule a procedural hearing on the Summit Contract. On February 21, 1995, the Staff of the Commission filed an Objection to the OCA's request. On March 2, 1995, the OCA filed a Response to Staff's Objection, and on March 3, Cabletron Systems, Inc. (Cabletron) filed its notice of intent to intervene in this docket or any generic docket opened to explore the issues raised by the OCA. On March 13, 1995, PSNH filed its Statement in Opposition to the OCA's Response.

On March 27, 1995 the Commission denied the OCA's request for a procedural hearing (Order No. 21,586). In that order, the Commission stated that "[w]e will consider the Summit Contract in light of DR 91-172 and the Checklist for Economic Development and Business Retention Special Contracts and, should we decide to approve it, do so by issuing an order *nisi*."

[1] PSNH contends that this special contract is designed to eliminate the load erosion that was occurring at Summit's Manchester facility, and to encourage expansion in New Hampshire. PSNH represents that, absent the contract, Summit will continue phasing out its manufacturing in New Hampshire and will locate new machinery at its facility in Wisconsin. Summit employs approximately 300 people in New Hampshire according to Tower Publishing's 1994 New Hampshire Manufacturing Directory. Hence, PSNH characterizes NHPUC-105 as containing elements of both business retention and business expansion.

By retaining service to Summit, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers, while any expansion at Summit will increase the contributions to fixed costs. PSNH represents that Summit does not directly compete with any other New Hampshire company.

NHPUC-105 provides for rates of electric service lower than those otherwise available under applicable tariffed rates in the form of discounted demand charges. NHPUC-105 also provides for an elimination of the demand charge for demand above a specified level to provide an economic incentive for production expansion, and a minimum energy usage for billing purposes each month to ensure retention of existing load. PSNH retains the right to terminate the agreement if Summit's average daily kilowatt-hour usage (Minimum Energy) falls below a specified level for three months within a twelve-month period. Summit will be charged no less than 103% of PSNH's short-term avoided energy and capacity costs.

PSNH represents that Summit worked with the Department of Resources and Economic

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Development (DRED) during the Spring of 1993, and has taken advantage of the services offered by the State that were appropriate for Summit. Summit will consult with DRED to

determine if any further assistance is available. PSNH attests that Summit has implemented measures to maintain an energy efficient facility, and will continue to work with PSNH to refine and implement appropriate energy conservation measures. PSNH asserts that Summit has also worked with vendors to control its internal costs.

Upon review of the filing, and the recommendation of Staff, the Commission finds that Special Contract No. NHPUC-105 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633), as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good. However, we will require PSNH to notify the Commission if Summit's usage falls below the Minimum Energy threshold specified in NHPUC-105.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-105 between PSNH and Summit Packaging Systems, Inc. is approved as filed; and it is

FURTHER ORDERED, that PSNH will notify the Commission if Summit's average daily kilowatt-hour usage falls below the Minimum Energy amount for three or more billing months within a twelve-month period during the term of the contract.

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-105, 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 Summit by our approval today of this special contract; 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 May 22, 1995 and to be documented by affidavit filed with this office on or before June 2, 1995; 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 2, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 7, 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 eighth day of May, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 95-012, Order No. 21,586, 80 NH PUC 158, Mar. 27, 1995.

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NH.PUC\*05/15/95\*[80932]\*80 NH PUC 261\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80932]

80 NH PUC 261

## Re New England Telephone and Telegraph Company dba NYNEX

DR 95-073

Order No. 21,648

New Hampshire Public Utilities Commission

May 15, 1995

ORDER authorizing a local exchange telephone carrier to institute "Call Connect" service, whereby a customer using directory assistance service can, for an additional charge, have the operator go ahead and connect the call to the number for which information was sought.

Page 261

1. SERVICE, § 449

[N.H.] Telephone — Special service — "Call Connect" options — Automatic connection following directory assistance requests — Additional per-connection fee. p. 262.

2. RATES, § 553

[N.H.] Telephone rate design — Special service — Directory assistance — "Call Connect" options — Automatic connection following directory assistance requests — Additional per-connection fee. p. 262.

BY THE COMMISSION:

### ORDER

On March 16, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Call Connect Service for effect April 15, 1995. On April 14, 1995, the Commission issued Order No. 21,614 suspending the proposed tariff pages so that Staff could review the filing.

[1, 2] Call Connect Service offers customers calling Directory Assistance (DA) Service the option of having their call automatically connected to the requested telephone number for a surcharge of \$0.35 per completed call. Residence and Business customers would select the Call Connect option by pressing a single touch-tone key (#1) or by saying the word "yes" if calling from a rotary equipped telephone in response to a prompt embedded in the DA announcement.

The announcement will advise the customer of the \$0.35 surcharge. Customers who do not want their calls automatically completed may simply hang up the phone after receiving the requested DA number. In addition, customers may have the Call Connect option permanently blocked from their line without incurring a charge.

Residence and Business subscribers may have Call Connect service billed directly or on a collect, billed to a third party or Calling Card basis. NYNEX has assured Staff that the Company will verify that the third party is willing to accept all the applicable charges (regular local or toll usage charges and operator handled charges will apply in addition to the \$0.35 surcharge) for calls completed using the Call Connect service under the billed to third party option. Also, when DA is accessed by a customer from a telephone line equipped with Curb-A-Charge Service, NYNEX Call Connect service is only available on a collect, billed to third party or Calling Card basis.

NYNEX has provided a demand and cost analysis demonstrating a present value of contribution over a three year period of \$365,273. Based on a review of the materials submitted in support of this filing, Staff recommended the filing be approved.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX's Tariff PUC No. 75 are approved:

Part A - Section 5

Fourth Revision of Table of Contents

Page 2

Original Page 35.1

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 NYNEX file a compliance tariff with the Commission on or before May 29, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1995.

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NH.PUC\*05/15/95\*[80933]\*80 NH PUC 263\*Great Bay Water Company, Inc.

[Go to End of 80933]

80 NH PUC 263

**Re Great Bay Water Company, Inc.**

DR 94-185

Order No. 21,649

New Hampshire Public Utilities Commission

May 15, 1995

ORDER finding that a water utility had no other previously unreported sources of revenue and therefore concluding that further rate reductions are unnecessary. However, the commission affirms the rate decreases required in Order No. 21,630 (80 NH PUC 233, *supra*) as a remedy for poor quality of water and service.

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1. RATES, § 133

[N.H.] Factors affecting reasonableness — Character of service — Poor quality of service — Resulting rate decreases — Other revenues as affecting need for further reductions — Stipulation — Water utility. p. 263.

2. RATES, § 601

[N.H.] Water rate design — Special factors — Quality of water — Rate decrease as remedy for poor quality of water — Affirmation — Stipulation. p. 263.

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BY THE COMMISSION:

ORDER

[1, 2] On April 25, 1995 the Commission issued Order No. 21,630 requiring, among other things, Great Bay Water Company, Inc. (Great Bay) to provide our Finance Department with documents concerning the total amount of all other revenues received during the test year by May 9, 1995.

On May 12, 1995 Great Bay responded that it received no "other revenues" from Schanda Farms during the 1994 test year. We therefore find the rate reduction set forth in the settlement presented at the March 27, 1995 hearing just and reasonable.

Based upon the foregoing, it is hereby

ORDERED, that Great Bay Water Company, Inc. decrease its consumption rate of 31 cents per 100 gallons of usage to 29 cents and apply the annual minimum charge of \$ 10.60, billed in quarterly payments of \$2.65 per quarter.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Great Bay Water Co., Inc., DR 94-185, Order No. 21,630, 80 NH PUC 233, Apr. 25, 1995.



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NH.PUC\*05/15/95\*[80934]\*80 NH PUC 263\*One Call Communications, Inc., dba OPTICOM

[Go to End of 80934]

80 NH PUC 263

**Re One Call Communications, Inc., dba OPTICOM**

DR 95-118

Order No. 21,651

New Hampshire Public Utilities Commission

May 15, 1995

ORDER authorizing an interexchange telephone carrier to revise its calling card service offerings, so as to eliminate a particular service option for which it had no intrastate subscribers, to eliminate a monthly usage requirement of \$500 for "Travel America" service, and to introduce "Protocall Ambassador" travel card service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll

**Page 263**

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service — Calling card services — Special travel options — Tariff revisions —  
Interexchange carrier. p. 264.

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BY THE COMMISSION:

ORDER

[1] On April 28, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from One Call Communications Inc., dba OPTICOM (Opticom) requesting authority to introduce Protocall Ambassador, to discontinue One Call Travel and make a text change to Travel America for effect May 30, 1995.

Protocall Ambassador is a travel card service that allows customers to place toll calls using a calling card at a rate of 35 cents per minute. Deletion of One Call Travel will not effect any New Hampshire intrastate customers because Opticom does not have any customers who subscribe to One Call Travel. Finally, the usage requirement of \$500 a month has been deleted from Travel America.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Opticom to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's NHPUC Tariff No. 1 are approved for effect as filed:

- 4th Revised Page 2
- 3rd Revised Page 2.1
- 3rd Revised Page 2.2
- 1st Revised Page 48
- 1st Revised Page 53;

and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of May, 1995.

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NH.PUC\*05/15/95\*[80935]\*80 NH PUC 264\*Public Service Company of New Hampshire

[Go to End of 80935]

80 NH PUC 264

## Re Public Service Company of New Hampshire

DR 95-113  
Order No. 21,652

New Hampshire Public Utilities Commission

May 15, 1995

MOTION by electric utility for protective treatment of the customer-specific usage data cited in its proposed special rate contract with an industrial customer, Elliott and Williams Roses, Inc.; granted.

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### 1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Granted as to customer-specific usage data relied upon — Competitive forces as a factor — Electric utility and industrial customer. p. 264.

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BY THE COMMISSION:

ORDER

[1] On April 25, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-111 with Elliott and Williams Roses, Inc. (Elliott and Williams) for

Page 264

the provision of electric service. Concurrent with the special contract, PSNH filed a Motion for Protective Order of portions of the Technical Statement and supporting Testimony.

In its motion PSNH states that the information should be afforded protective treatment, pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08, in that it contains customer specific data.

According to PSNH, the Commission Staff does not object to this motion as long as the motion is consistent with earlier motions regarding customer specific information approved by the Commission in the past. PSNH did not receive a reply from the Office of Consumer Advocate prior to filing.

We recognize 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 Commission Staff, as required by RSA 378:18.

We also recognize 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.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order regarding portions of the Technical Statement and supporting Testimony to special contract number NHPUC-111 between PSNH and Elliott and Williams for the provision of electric service is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raised 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 Public Utilities Commission of New Hampshire this fifteenth day of May, 1995.

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NH.PUC\*05/16/95\*[80936]\*80 NH PUC 265\*Public Service Company of New Hampshire

[Go to End of 80936]

## Re Public Service Company of New Hampshire

DR 95-070  
Order No. 21,656

New Hampshire Public Utilities Commission

May 16, 1995

MOTION by electric utility for approval of a 10-year special rate contract with an industrial customer, Owens-Brockway Plastic Products, Inc.; granted, with the commission noting that the customer has initiated various energy-efficiency measures and has expressed interest in participating in the state's economic development programs.

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### 1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Long-term special rate contract — Factors affecting approval — Load retention — Installation of energy-efficiency measures — Pursuit of economic development initiatives — Contribution to cost. p. 266.

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BY THE COMMISSION:

### ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH) filed on March 14, 1995 a request for approval of a ten-year special contract, Special Contract No. NHPUC-109 (NHPUC-109), between PSNH and Owens-Brockway Plastic Products Inc. (Owens-Brockway). Owens-Brockway, a subsidiary of Owens-Illinois, is a Delaware corporation with a manufacturing facility located in Nashua, New Hampshire. Owens-Brockway is engaged in the manufacture of molded plastic containers for the cosmetic and pharmaceutical industries.

**Page 265**

This filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. NHPUC-109 will be effective the first day of the month following Commission approval. Either party may terminate NHPUC-109 prior to the end of the ten-year period upon payment of an early termination fee, but neither party may terminate earlier than sixty (60) months from the effective date.

PSNH's filing included the special contract, testimony, and a technical statement supporting a discounted rate for Owens-Brockway in both redacted and unredacted form. PSNH requested protective treatment for certain information considered confidential in the special contract and supporting material. On March 27, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,587).

[1] PSNH and Owens-Brockway contend that this special contract is necessary for Owens-Brockway's facilities in Nashua to remain viable and to secure new business at that

facility. Hence, PSNH characterizes NHPUC-109 as both a business retention and an economic development application. PSNH further states that NHPUC-109 will benefit PSNH and PSNH's other customers by the additional revenue contribution toward fixed costs, a portion of which will go to reduce the FPPAC rate.

PSNH and Owens-Brockway assert that absent this agreement the Nashua facility would face substantial risk of closing due to Owens-Brockway's plan to close facilities with high costs. PSNH also maintains that without NHPUC-109 the Nashua facility would not be able to compete with its sister facilities for new business. PSNH attests that electricity is a major component of Owens-Brockway's total operating costs. Owens-Brockway represents that the plant currently employs a work force of 140, and that any expansion resulting from new business is projected to add more employees to their operation.

NHPUC-109 provides for rates of electric service lower than those otherwise available under applicable tariff Rate LG. The rates include a customer charge, a Base Demand Charge, a Base Energy Charge, an Excess Demand Charge, and an Excess Energy Charge. The Excess Demand Charge will apply to all kVA demand above the Base Demand level specified in NHPUC-109. The Base Demand Charge is \$10.30 per kVA effective June 1, 1995, and escalates on the first day of June in each year. The Excess Demand Charge applies to applicable demand above Base Demand and is approximately one-half the Base Demand Charge.

The Energy Charge equals the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC) plus the FPPAC rate plus the Nuclear Decommissioning Charge (NDC) plus an Energy Charge Adder. The Base Energy Charge Adder is 1.5 cents per kWh until June 1, 1999 when it increases to 1.9 cents per kWh. The Excess Energy Charge applies to all usage greater than the monthly Base Energy level.

The Excess Energy Charge Adder equals 1.4 cents per kWh for the first 485,000 kWh of Excess Energy per month, and 1.0 cents per kWh for any additional kWh. Beginning on June 1, 1999 the Excess Energy Charge equals 1.4 cents per kWh for all additional kWh usage. PSNH states that the revenue received under NHPUC-109 will exceed the marginal cost of serving Owens-Brockway during each year of the ten-year special contract.

PSNH represents that Owens-Brockway has installed various measures to promote energy efficiency, and has commenced a substantial cost reduction effort. PSNH asserts that Owens-Brockway has been in contact with both the Department of Resources and Economic Development's Office of Business and Industrial Development and with the Job Training Council. PSNH represents that there are no direct competitor's of Owens-Brockway located within New Hampshire.

Upon review of the filing and the Staff recommendation, the Commission finds Special Contract No. NHPUC-109 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

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Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-109 between PSNH and Owens-Brockway Plastic Products Inc. is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-109, 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 Owens-Brockway by our approval today of this special contract; 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 May 30, 1995 and to be documented by affidavit filed with this office on or before June 12, 1995; 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 12, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 15, 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 sixteenth day of May, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*05/16/95\*[80937]\*80 NH PUC 267\*Budget Call Long Distance, Inc.

[Go to End of 80937]

80 NH PUC 267

### **Re Budget Call Long Distance, Inc.**

DE 95-111

Order No. 21,657

New Hampshire Public Utilities Commission

May 16, 1995

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

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## 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 services. p. 267.

## 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 267.

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BY THE COMMISSION:

## ORDER

[1, 2] On April 24, 1995, Budget Call Long Distance, Inc. (BCLD), 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.

BCLD has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order. Interim authority

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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 BCLD 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. BCLD 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, BCLD shall notify the Commission of the change.
5. BCLD 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. BCLD shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. BCLD 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. BCLD 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. BCLD 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. BCLD shall compensate the appropriate Local Exchange Company for all originating and terminating access used by BCLD 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 BCLD 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 BCLD to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that BCLD shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than May 30, 1995, and an affidavit proving publication shall be filed with the Commission on or before June 12, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. BCLD 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 BCLD shall file a compliance tariff with the Commission on or before May 30, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 15, 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 sixteenth day of May, 1995.

Notice of Conditional Approval of  
Budget Call Long Distance, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On April 24, 1995, Budget Call Long Distance, Inc. (BCLD), 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. 21,657, issued in Docket No. DE 95-111, the Commission granted BCLD conditional approval to operate as of June 15, 1995, subject to the right of the public and interested parties to comment on BCLD 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 BCLD's petition to do business in the State should submit written comments no later than June 12, 1995, to:

Dr. Sarah P. Voll  
Executive Director and Secretary  
Public Utilities Commission  
8 Old Suncook Road  
Concord, New Hampshire 03301-7319

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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\*05/17/95\*[80938]\*80 NH PUC 270\*Granite State Electric Company

[Go to End of 80938]

80 NH PUC 270

### Re Granite State Electric Company

DF 92-219  
Order No. 21,658

New Hampshire Public Utilities Commission

May 17, 1995

ORDER authorizing an electric utility to issue up to \$5 million in unsecured notes through a private placement memorandum.

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#### 1. SECURITY ISSUES, § 84

[N.H.] Issuance of unsecured notes — Via private placement memorandum and bidding process — Purposes — Reimbursement of treasury — Repayment of short-term debt — Electric

utility. p. 270.

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BY THE COMMISSION:

**ORDER**

[1] On May 10, 1995, the Granite State Electric Company ("GSEC" or the "Company") filed for Commission review of its Private Placement Memorandum to solicit bids from institutional investors for \$5 million of unsecured notes (the "New Notes") with a maturity of July 1, 2025. The New Notes will pay interest semi-annually on June 1 and December 1. The proceeds from the sale of the New Notes will be applied by the Company to the payment of short-term borrowings incurred for, or to the cost of, or to the reimbursement of the treasury for, the retirement of outstanding notes, capitalizable additions and improvements to the plant and property of the Company, or other capital expenditures. The interest rate is not specified but, under the Commission authorization in Order No. 21,466, it cannot be greater than 11%.

In the Commission's Order No. 20,741, dated February 4, 1993, the Commission approved Granite State Electric Company's petition for authorization to issue and sell one or more long-term notes in the amount of \$10 million through 1994 at an interest rate not to exceed 10%.

In the Commission's Order No. 21,466, dated December 19, 1994, the Commission approved the extension of the authority for Granite State Electric to issue and sell one or more long-term securities through December 31, 1995, at an interest rate not to exceed 11%.

Under the authority granted in 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.

As stated in Order No. 20,741, the Commission will require that, prior to soliciting bids from potential investors for a note issue, the Company will file a copy of the Private Placement Memorandum for review. The Commission will then review, within a 5-day period, the terms and conditions to determine whether the financing is appropriate and in the public good.

The Commission has reviewed the Company's Private Placement Memorandum for \$5 million of New Notes and believes that the terms and conditions are appropriate and in the public good.

Based upon the foregoing, it is hereby

ORDERED, that Granite State Electric Company may enter into a note agreement with one or more purchasers under the terms and conditions which are substantially similar to those contained in the Private Placement Memorandum; and it is

FURTHER ORDERED, that the Company shall provide a copy to this Commission of the final note or credit agreements and related loan

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documents necessary to complete this transaction; 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 seventeenth day of May, 1995.

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. [N.H.] Re Granite State Electric Co., DF 92-219, Order No. 21,466, 79 NH PUC 693, Dec. 19, 1994.

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NH.PUC\*05/22/95\*[80939]\*80 NH PUC 271\*Union Telephone Company

[Go to End of 80939]

80 NH PUC 271

**Re Union Telephone Company**

DE 95-013

Order No. 21,659

New Hampshire Public Utilities Commission

May 22, 1995

ORDER approving a local exchange telephone carrier's proposed tariff revisions, as further modified, relative to limits on liability for accidents, damages, mistakes, defects, delays, and service failures.

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1. SERVICE, § 166

[N.H.] Company rules and regulations — As to liability — Limits — Relative to accidents and damages — As to mistakes or defects in service — As to service delays or failures — Local exchange telephone carrier. p. 271.

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BY THE COMMISSION:

ORDER

On January 25, 1995, Union Telephone Company (UTC or Company) filed tariff revisions adding language regarding Company liability to its General Regulations section for effect February 25, 1995. In its transmittal letter, UTC stated that it sought to provide the Company with an appropriate level of liability for a public utility and that its proposed level of liability is comparable to that of New England Telephone and Telegraph Company (NYNEX) and to that found in other tariffs by which UTC provides service, including National Exchange Carrier Association, Inc. F.C.C. No. 5 and UTC Tariff NHPUC-No. 10 (Access Service), which was approved by the Commission effective October 1, 1993.

Staff requested additional time to investigate the filing and to discuss its concerns with the Company. Consequently, the proposed tariff pages were suspended by Order No. 21,536 issued February 14, 1995.

[1] Staff reviewed the proposed language and expressed concern that Part I, General Regulations, Page 9, Paragraph VIII.D. was overly broad. Following discussions between the Company and Staff, revised language for Paragraph VIII.D. was proposed, which Staff recommends as providing an appropriate level of liability. This revised language is as follows:

Except for damages caused by willful or wanton negligence of the Telephone Company in failing to maintain proper standards of maintenance and operations or to exercise reasonable supervision, the liability of the

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Telephone Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, or failures or defects in facilities furnished by the Telephone Company, occurring in the course of furnishing service or other facilities shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruptions, delay, error or defect in transmission, or failure or defect in facilities occurs.

Staff recommended that the modified tariff pages be approved with the inclusion of the above revised language.

We have reviewed the Petition and the recommendation by Staff and find the proposed revisions provide UTC with an appropriate level of liability and therefore, are in the public good.

Based upon the foregoing, it is hereby

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

NHPUC No. 7 - Telephone

Tariff Check Sheet Page 1

Part I - General Regulations, Page 5,

Second Revision

Part I - General Regulations, Page 6,

First Revision

and it is

FURTHER ORDERED, that Union Telephone Company's, NHPUC No. 7, Part I - General Regulations, Page 9, Second Revision, Paragraph VIII.D. be revised as follows:

Except for damages caused by willful or wanton negligence of the Telephone Company in failing to maintain proper standards of maintenance and operations or to exercise reasonable supervision, the liability of the Telephone Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, or failures or defects in facilities furnished by the Telephone Company, occurring in the course of furnishing service or other facilities shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruptions, delay, error or defect in transmission, or failure or defect in facilities occurs.

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 UTC file a compliance tariff with the Commission on or before June 5, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1995.

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NH.PUC\*05/22/95\*[80940]\*80 NH PUC 272\*Public Service Company of New Hampshire

[Go to End of 80940]

80 NH PUC 272

**Re Public Service Company of New Hampshire**

DR 93-247

Order No. 21,660

New Hampshire Public Utilities Commission

May 22, 1995

ORDER accepting an electric utility's proposed tariff revisions relative to its radio-controlled load management services. As modified, an electric thermal storage system would be eligible for service under the radio-controlled option only if such system were "dynamic" as opposed to "static." Moreover, to assure cost-effectiveness vis-a-vis conservation objectives, eligibility would be partly dependent on a customer's backup source of heat being either wood- or coal-fired, and not fueled by oil, propane, or any other alternative fuel.

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## 1. RATES, § 322

[N.H.] Electric rate design — Load factors — Space-heating customers — Special load

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controlled service rate — Objectives — Conservation via reduced peak demand — Retention of load of alternate fuel customers — Savings to space-heating customers. p. 275.

## 2. RATES, § 322

[N.H.] Electric rate design — Load factors — Space-heating customers — Radio-controlled load management service options — Eligibility criteria — Implementation of stricter criteria — Reliance only on wood- or coal-fired backup sources of heat — "Dynamic" versus "static" electric thermal storage system. p. 275.

## 3. SERVICE, § 320

[N.H.] Electric — Load control programs — For space-heating customers — Eligibility criteria — Implementation of stricter criteria — As to type of thermal storage systems and alternate fuels for backup heat — Annual reports on customer participation and cost-effectiveness. p. 275.

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APPEARANCES: Full Parties: Catherine E. Shively, Esq. for Public Service Company of New Hampshire; Delnoce Whitney Goubert for Whitney and Johnsen; Kenneth E. Traum for Office of the Consumer Advocate; Limited Parties: Roger G. Duhamel for Dana Patterson, Inc.; James Monahan for The Dupont Group; Staff: 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) filed a proposal with the New Hampshire Public Utilities Commission (Commission) to modify its Load Controlled Service (LCS) Rate to permit an interruptible radio-controlled option for separately metered and controlled electric service to electric thermal storage (ETS) devices and electric space heating. Under the LCS rate, a customer would be interrupted when regional load conditions caused NEPEX to take Action 3 of OP4. The Commission suspended the tariff on January 6, 1994 by Order No. 21,096, and by Order No. 21,132 adopted a procedural schedule that culminated in a hearing on the merits on March 24, 1994. Following the hearing, the Commission issued Order No. 21,191 which approved PSNH's proposal for radio-controlled service utilizing ETS devices or electric space heating with back-up non-electric sources of heat. It found that the proposal was in the public interest, based on the conservation and load management characteristics of this interruptible service program, its load retention characteristics which allows PSNH to retain customers on the system who might otherwise have converted to another source of heat, and the savings to space heating customers who can afford

to install an ETS device.

On October 5, 1994, after reviewing PSNH's Rate Bulletin regarding eligibility for LCS service, the Commission Staff filed a memorandum with the Commission that argued that the tariff as filed was insufficiently explicit for customers to make informed decisions on the installation of ETS devices or on separately metering their electric space heating. While the tariff specified only the installation of an ETS device or electric space heating in conjunction with a non-electric back-up source of heat, PSNH's application of the tariff restricted the back-up source of heat to coal and wood stoves, and excluded other heat sources such as oil, natural gas or propane.

In addition to the Staff memorandum, by the Fall of 1994 a number of customers had contacted the Commission's Consumer Assistance Department to raise questions regarding PSNH's interpretation of its LCS tariff. Following a specific customer complaint,<sup>1(26)</sup> the Commission directed PSNH and Staff to file Memoranda of Law on whether PSNH was interpreting its tariff correctly. After review of the tariffs and Memoranda, the Commission found that the plain reading of the tariff did not

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support PSNH's restrictive application. The Commission found that there was a need to balance the interests of customers who believed that the LCS rate was attractive, with the requirement to ensure that PSNH was not financially harmed by being required to fund the installation of meters whose costs it would be unable to recover. It ordered PSNH, the Office of the Consumer Advocate (OCA) and Staff to confer and file on or before January 3, 1995 revised tariff language that was acceptable to all participants and that satisfied the Commission's concerns. Order No. 21,464.

On January 3, 1995, PSNH filed a tariff that specified that eligibility for the LCS rate was limited to: 1) separately metered and controlled electric service to ETS devices and other applications approved by PSNH; and 2) radio-controlled conventional electric space heating when either a *dynamic* (not static) ETS device; or 3) a wood stove or coal stove, was available for use as a back-up during times when service is interrupted by PSNH. Upon review of the tariff, Staff requested additional time for discovery. On January 9, 1995, Delnoce W. Goubert representing Whitney and Johnsen moved to intervene as a full party. By Order No. 21,500, the Commission suspended the tariff, granted Whitney and Johnsen, Inc.'s request for intervention, and scheduled a hearing for February 15, 1995. At the public hearing, PSNH summarized the filing and explained how the revised tariff conformed to the original goals of the program. Mr. Goubert provided an unsworn statement regarding the efficacy of ETS devices and explained his proposal that, rather than back-up sources of heat, customers be allowed to separate their electric heating circuits to allow the circuits on the LCS rate to be interrupted while the remaining heating circuits would continue to operate at the regular domestic rate. The Parties and Staff recommended that the Commission approve the revised tariff as filed, and allow them to continue to meet to determine whether the tariff should be modified to permit additional back-up sources or otherwise changed.

On April 6, 1995, Staff informed the Commission that Staff and the Parties had met and



although Staff and the OCA had some serious reservations concerning certain aspects of the proposed revisions, neither needed to raise them at this time. They therefore recommended that the Commission approve the tariff as filed. Staff noted in a subsequent memorandum that it could not represent that other parties had agreed that the tariff should be approved.

Upon review of the filing and the agreement of PSNH, the OCA and Staff, on April 17, 1995 the Commission scheduled a hearing for May 5, 1995. It stated that it wanted further testimony on the compliance of the revised tariff with its order (No. 21,191), and clarification on the relevance of a distinction between static and dynamic ETS devices.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. PSNH

PSNH supported the revised LCS tariff filed on January 3, 1995, which clarified the availability of the rate. As revised, the rate is available to customers with dynamic ETS devices and to customers who use wood or coal stoves as back-up heating sources. PSNH argues that a dynamic ETS system is the only type of system that is capable of delivering heat through a dwelling to give customers adequate comfort in times of interruption. In contrast, the heat from static ETS systems is uncontrollable, and because customers tend to utilize a lower thermostat setting to avoid over-heating a dwelling, the unit stores less heat and would be unable to provide sufficient heat at times of interruption. Ex. 6 at 2, Tr. at 8.

PSNH believes that the LCS rate should be available to customers with electric space heating only if they have wood or coal stove back-up sources, because of a free rider problem that results in lost revenue and financial harm to PSNH. Wood and coal stoves are relatively inconvenient heating systems and are likely to be used as back-up to electric space heating, especially during shoulder months. The discounted rate would thus allow PSNH to regain lost sales and revenues. In contrast, oil and gas heaters have a lower operating cost than electric space heating even under the LCS rate and,

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once installed, are likely to be used as the primary rather than secondary source of heat. PSNH believes that allowing oil and gas heaters under the LCS rate as back-up would subsidize partial (*i.e.*, less than the entire dwelling) conversions to such units and unnecessarily discount existing sales that are not at risk (electric heat in the remainder of the dwelling). Ex. 6 at 3-4. In addition, PSNH would incur the meter and control costs of \$550 per customer and calculates a ten year free rider cost of \$1,550 per installation for customers with gas or oil heaters on the LCS rate versus the residential Rate D. Ex. 11.

PSNH stated that the parties had considered alternative tariff designs to ensure that the non-electric source was used as the back-up rather than the electric being used as a supplement to the non-electric, but had been unable to devise a practical method to allow other sources and still avoid financial harm to PSNH.

### B. OCA

The OCA supported a settlement that recommended that the rate be approved as revised and reserved its rights to raise other issues at a later time. Through cross-examination, the OCA

established that it would be possible for PSNH to recover the meter and control costs through a higher customer charge. In contrast to charging customers up front the full meter and control costs, a higher customer charge was less likely to act as a barrier to customer acceptance of the rate.

### C. *WHITNEY AND JOHNSEN*

Whitney and Johnsen indicated by letters from Mr. Goubert (Ex. 8 and Ex. 9) that it believed that the rate should be revised. Staff represented that Mr. Goubert had indicated after the first technical conference that he believed that the rate should be open to more alternatives but did not specify the alternative. Mr. Goubert did not respond to the concern of PSNH on free riders and financial harm.

### D. *Staff*

Staff supported a settlement that recommended that the rate be approved as revised and reserved its rights to raise other issues, particularly those related to new construction and self-generation, at a later time. Through cross-examination, Staff established that a combined gas and electric installation in new construction might be economic under the LCS rate, and if so, would promote electric sales that would not otherwise occur. Staff also noted the infrequency of interruptions required by NEPEX's Action 3 of OP 4 in recent years. Thus, while the ability to interrupt space heating customers would become a benefit in the long run when the New England capacity situation tightened, the economic benefits of the program in the short term were limited to load retention.

## III. COMMISSION ANALYSIS

**[1-3]** We will approve Rate LCS as filed on January 3, 1995 and as presented in the informal settlement agreement among PSNH, Staff and the OCA. The settlement recommended that the rate be approved and reserved the rights of Staff and the OCA to raise auxiliary concerns at a later time. We find the rate, as revised, to be in the public interest, as it attempts to meet the three goals set forth in our Order 21,191: conservation and load management by reducing demand during peak periods, load retention for PSNH by keeping customers on the system who might otherwise convert to another heat source, and savings to space heating customers as demonstrated by the one year payback for the program.

We find PSNH's calculations regarding free riders persuasive and sufficient reason to exclude back-up sources other than coal and wood stoves from the tariff. While we are interested in providing customers with as many options as possible for their heating needs, we note that customers wishing to utilize oil or gas heaters may do so under the customary Rate D, and there is no need for PSNH to further discount kilowatt hour sales that are not otherwise at risk. Such a discount would disadvantage PSNH and its other residential customers by actively promoting conversions which would not be economic but for the rate.

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We have considered the possibility of extending the LCS option to oil and gas back-up customers if they pay the meter and control costs in order to limit PSNH's financial loss. However, we agree that adding the \$550 charge to the rewiring costs already borne by the

customer under the LCS rate creates a market barrier that would be difficult to surmount. Further, having the customer absorb the meter and control costs does not address the fundamental free rider issue of discounting kilowatt-hour sales not at risk.

We appreciate the clarification of the relevance of the distinction between static and dynamic ETS systems. We agree that as PSNH is a provider of "heating service", its tariff should not promote the installation of inadequate systems. We find PSNH's conclusions based on the experience of other utilities and the research of the Electric Power Research Institute to be reasonable.

We will continue to require PSNH to file annual reports on the operation of Rate LCS as revised, with the next report due March 31, 1996. As ordered in Report and Order No. 21,191, the report should describe: 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. We will expect our Staff to review and comment on PSNH's report 30 days after it is filed, and incorporate into its review any reaction to the program expressed to our Consumer Assistance Department. We will not require Staff to comment on the report filed March 31, 1995, as the operation of the program up to that point has been fraught with too many uncertainties for such a review to be meaningful.

Based upon the foregoing, it is hereby

ORDERED, that NHPUC No. 35 - Electricity

Public Service Company of New Hampshire

1st Revised Page 39

2nd Revised Page 40

is approved effective as of the date of this order; and it is

FURTHER ORDERED, that PSNH will file annual reports regarding the program on March 31st of each year and Staff will file comments on the report within 30 days of such filing.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1995.

#### FOOTNOTES

<sup>1</sup>DC 94-237 Thomas A. Behrens v. PSNH, in which Mr. Behrens argued that his proposal to build a motel with electric space heating units and a propane power generator for backup electricity qualified for Rate LCS. PSNH and Mr. Behrens settled the dispute through the filing of Special Contract No. NHPUC-100, approved on November 11, 1994 by Order *Nisi* 21,417.

#### 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.

21,096, 79 NH PUC 22, Jan. 6, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,191, 79 NH PUC 220, Apr. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,464, 79 NH PUC 688, Dec. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,500, 80 NH PUC 24, Jan. 16, 1995.

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NH.PUC\*05/22/95\*[80941]\*80 NH PUC 277\*JFC Utility Corporation

[Go to End of 80941]

80 NH PUC 277

## Re JFC Utility Corporation

DE 95-110

Order No. 21,661

New Hampshire Public Utilities Commission

May 22, 1995

ORDER exempting a very small water utility from commission regulation, where the utility served only six customers, maintained an adequate system, and was in compliance with all environmental standards, resulting in the burdens of complying with all regulatory requirements outweighing any benefits to ratepayers stemming therefrom.

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### 1. PUBLIC UTILITIES, § 124

[N.H.] Regulatory status — Exemptions from regulation — Small water utility serving limited, nearby consumers — Factors supporting exemption — Service to a mere six customers — Compliance with environmental standards — Adequacy of service and system — Disproportionate costs of regulatory compliance. p. 277.

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BY THE COMMISSION:

### ORDER

JFC Utility Corp. (JFC) filed with the New Hampshire Public Utilities Commission (Commission) on April 21, 1995 a petition for exemption from the regulatory requirements of RSA Title XXXIV for a water system it owns and operates in the Village of Silver Lake in the Town of Madison. The water system consists of a spring, a 6,000 gallon concrete tank and a distribution system serving six customers. The system has been in operation since approximately 1897. Customers consist of: John F. Chick & Sons, Inc. (Chick), a manufactured wood products company in Silver Lake; the Madison town hall; and four residential users.

At the time of the original franchise docket in 1983 the water system was owned by Chick, whose sole shareholder was W. Richard Kitchen (*Re John F. Chick & Sons, Inc.*, 68 NH PUC

621). Chick formed JFC as a wholly-owned subsidiary in 1989 to own and operate the water system. In 1994, as a result of a series of legal transactions, Mr. Kitchen sold Chick but retained fifty percent of JFC stock. (Order No. 21,341 dated September 1, 1994).

Rates granted in 1985 (*Re John F. Chick & Sons, Inc.*, 70 NH PUC 50) remain in effect at \$244/customer/year. The company has no current plans to increase the rate, but notes the possibility that increased maintenance expenses or future capital expenditures could result in a future rate increase. Various efforts to sell the utility, including discussions or negotiations in 1984, 1986, 1989 and 1994, have failed.

[1] The utility was denied exemption in the 1983 case due in part to certain system deficiencies existing at that time. Factors now supporting exemption include: a) that the deficiencies existing in 1983 were corrected shortly thereafter; b) the system has continued to meet Department of Environmental Services standards, including resolution of all significant deficiencies noted in the latest sanitary survey and installation of a chlorination system in January of this year; and c) the number of customers has dropped from eight in 1983 to the current six.

RSA 362:4 I allows exemption if a water system serves less than 10 consumers, "each family, tenement, store or other establishment being considered a single consumer." In the case of JFC we find, in light of the adequacy of service being provided, that the burden of compliance with the rate-making, tariff filing, reporting, accounting and other requirements associated with regulation by this Commission on a forward looking basis would provide an insufficient correlating benefit to the company's six consumers. We therefore conclude that exemption is in the public good given current circumstances.

Based upon the foregoing, it is hereby

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ORDERED *NISI*, that JFC is exempted from the provisions of RSA Title XXXIV in accordance with RSA 362:4 I; and it is

FURTHER ORDERED, that a significant change in quality of service or other circumstances could require a reconsideration of this exemption; and it is

FURTHER ORDERED, that JFC continue to keep records sufficient to provide adequate accounting in the event the exemption is withdrawn; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall mail a copy of this order by first class mail, or hand-deliver same, to each customer by June 5, 1995, to be documented by affidavit filed with this office on or before June 19, 1995; 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 19, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 20, 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 twenty-second day of

May, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re JFC Utility Corp., DE 94-173, Order No. 21,341, 79 NH PUC 476, Sept. 1, 1994.

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NH.PUC\*05/22/95\*[80942]\*80 NH PUC 278\*IDT America, Corporation

[Go to End of 80942]

80 NH PUC 278

**Re IDT America, Corporation**

DE 94-308

Order No. 21,662

New Hampshire Public Utilities Commission

May 22, 1995

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

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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 services. p. 278.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 278.

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BY THE COMMISSION:

ORDER

[1, 2] On December 19, 1994, IDT America, Corp. (IDT), a New Jersey 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.

IDT 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

Page 278

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 IDT 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. IDT 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, IDT shall notify the Commission of the change.
5. IDT 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. IDT shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. IDT 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. IDT 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. IDT 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. IDT shall compensate the appropriate Local Exchange Company for all originating and terminating access used by IDT 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 IDT 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

**Page 279**

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 IDT



to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that IDT shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than June 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before June 16, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. IDT 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 IDT shall file a compliance tariff with the Commission on or before June 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 21, 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 twenty-second day of May, 1995.

Notice of Conditional Approval of  
IDT AMERICA, CORP.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On December 19, 1994, IDT America, Corp. (IDT), a New Jersey 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. 21,662, issued in Docket No. DE 94-308, the Commission granted IDT conditional approval to operate as of June 21, 1995, subject to the right of the public and interested parties to comment on IDT 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 IDT's petition to do business in the State should submit written comments no later than June 16, 1995, 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\*05/22/95\*[80943]\*80 NH PUC 281\*Paul E. Zimmerman

[Go to End of 80943]

80 NH PUC 281

**Re Paul E. Zimmerman**

DE 94-209

Order No. 21,663

New Hampshire Public Utilities Commission

May 22, 1995

ORDER denying rehearing of Order No. 21,598 (80 NH PUC 180, *supra*), in which the commission found that a realty firm manager had been operating as a public telecommunications utility by virtue of his provision of shared tenant service via a private branch exchange system. Commission affirms the individual's status as being subject to regulation, and also a decision to investigate the propriety of shared tenant services in general.

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1. PUBLIC UTILITIES, § 13

[N.H.] Regulatory status — As question of law or fact — Court and case law precedent — Propriety of long-standing court holdings — Lack of strict adherence — Factors — Change in circumstances — Evolving legislative attitudes toward traditional economic regulation. p. 282.

2. PUBLIC UTILITIES, § 117

[N.H.] Declaration of public utility status — Telephone service — Shared tenant service — Provided by individual realty firm manager — Assertion of limited commission jurisdiction — Affirmation. p. 282.

3. RATES, § 559

[N.H.] Telephone rate design — Joint use — Shared tenant services — Via private branch exchange system — Rolled in versus separately metered billing as a factor — Proceeding to investigate propriety and efficacy of. p. 283.

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BY THE COMMISSION:

**ORDER**

On March 28, 1995 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,598 finding that Paul E. Zimmerman was operating a public telecommunications utility pursuant to RSA 362:2. Specifically, the Commission found that Mr. Zimmerman's shared

tenant system (also known as shared telecommunications system) (STS) operated in a complex of commercial office buildings in the Town of Wolfeboro constituted a public telecommunications utility.

On April 7, 1995 Dwight A. Devork, a former tenant and customer of Mr. Zimmerman, filed a letter in opposition to certain portions of Order No. 21,598, which the Commission treated as a motion for rehearing. On April 17, 1995 Mr. Zimmerman filed a motion for reconsideration which we will treat as a motion for rehearing timely filed pursuant to RSA 541:3. On April 14, 1995 New England Telephone Company, doing business as NYNEX (NYNEX), filed a motion for clarification. On April 25, 1995 Granite State Telephone, Inc. (Granite State) filed a motion for rehearing or clarification. We will address and rule on each motion *seriatim*.

#### A. Mr. Devork

In his April 7, 1995 motion for rehearing, Mr. Devork requested that the Commission order Mr. Zimmerman to refund the unjust and unreasonable telephone rates he has charged both present and former tenants. Mr. Devork takes issue with the Commission's failure to order reparations in Order No. 21,598.

In an April 14, 1995 letter, our executive director notified Mr. Devork that the record in this proceeding was insufficient to order specific refunds but suggested he submit detailed information regarding his claim for reparations. On May 3, 1995 such a submission was received, which has been docketed in DR 95-126. We will withhold any comment on his claim, therefore, as it will proceed independent of this docket.

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#### B. Zimmerman Motion.

In his motion for rehearing Mr. Zimmerman essentially raises three arguments supporting his request for reexamination of Order No. 21,598.

[1] Mr. Zimmerman asserts the Commission's statutory construction of RSA 362:2 is inconsistent with the New Hampshire Supreme Court's interpretation of the term "public" in *Claremont Gas Light Company v. Monadnock Mills, Inc.*, 92 N.H. 468 (1943) and *Dover, Somersworth and Rochester Street Railway Company v. Wentworth & a.*, 84 N.H. 258 (1930).

As we stated in Order No. 21,598 we questioned the vitality of these decisions given changes to the relevant legislation and judicial attitudes towards economic regulation. The motion does not raise any issues that were not considered and rejected in Order No. 21,598. Thus, our analysis of the General Court's intent relative to the Commission's jurisdiction stands.

Mr. Zimmerman asserts that the Commission failed to set forth "findings of fact and conclusions of law, separately stated" in violation of RSA 541-A:35 (Supp. 1994). *Cf.*, RSA 363:17-b. We do not believe RSA 541-A:35 requires the Commission to explicitly entitle or label sections of its decision "Findings of Fact" and "Conclusions of Law". Rather, 541-A:35 is designed to ensure that administrative decisions contain specific findings of fact to support the specific conclusions of law reached in the decision, thereby, providing the parties and the Supreme Court an adequate opportunity to review the decision. *See e.g., Public Service Company of New Hampshire v. Town of Bow*, 139 N.H. 105 (1994) (superior court's failure to

provide specific findings of fact and rulings of law requested by appellant pursuant to RSA 491:15 did not affect the validity of court's decision where the issues were addressed in the court's decision).

[2] Notwithstanding these assertions, Mr. Zimmerman concludes that the Commission's findings of fact are not supported by the evidence. We disagree. Our findings are fully supported by the record in the case, and Order No. 21,598 is replete with citations to the record establishing the basis for those findings.

Finally, Mr. Zimmerman contends that regulation by the Commission is unnecessary. To the contrary, we find Commission regulation is in the public interest because of the potential value of STS services and intraLATA and interLATA competition to New Hampshire's business community, the potential for consumer abuse, and the benefits of competition. In particular, we find a need for some form of regulation to ensure that consumers are provided full disclosure of critical service terms. For example, Mr. Zimmerman failed to disclose, among other things, the non-portability of DID numbers and his billing methods (including billing for 800 calls, billing for calls that are never connected and commencing billing with the first ring). *See e.g.*, April 7, 1995 Motion for Rehearing of Dwight A. Devork. According to certain tenants, he refused to allow NYNEX to provide service, denied them an opportunity to select competitive intraLATA and interLATA service providers. Such actions without clear disclosure are unjust and unreasonable to consumers.

As we stated in Order No. 21,598, "[w]e recognize the value of this type of STS service to the state's business community and do not want to discourage the benefits of competition in telecommunication's options." Order No. 21,598 at 16. We do not believe limited Commission regulation will hinder the expansion of alternative telecommunication services; in fact, we believe it will facilitate the development and expansion of these services.

### C. NYNEX

In its April 14, 1995 letter to the Commission, NYNEX sought to clarify certain issues it had raised in its post-hearing brief.

In response to Order No. 21,598, NYNEX states in its April 14, 1995 letter that it did not argue that Mr. Zimmerman is a public utility, but rather, quoting from its post-hearing brief, that the "'totality of the circumstances' as framed by the above issues [set forth in its brief], should determine *whether* the Zimmermans ... are a public utility." Letter at 1, *Emphasis in Letter*.

NYNEX next takes issue with the

### Page 282

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Commission's assertion that its brief is ambiguous relative its position regarding Mr. Zimmerman's provision of local exchange service. NYNEX contends its position is unambiguous.

Finally, NYNEX takes issue with the "suggest[ion] at pages 3-4 of the Order [Order No. 21,598]" that it contended the pursuit of profit was a controlling standard in a determination of utility status.

We accept NYNEX's requested clarifications as being consistent with the record and therefore grant them.

*D. Granite State*

In its April 25, 1995 motion for clarification or rehearing, Granite State requested that the Commission clarify its position relative to the provision of STS services in New Hampshire. Granite State objects to any finding in Order No. 21,598 that STS services are in the public good based on the notice and record in this case.

[3] As noted in Order No. 21,598, we will commence a generic proceeding to determine the propriety of STS services in the State of New Hampshire and, if approved, the terms and conditions under which STS services may be provided. Any statements in Order No. 21,598 and in this order relative to the public benefit of STS services are based on the limited record before us. Thus, a final determination as to whether these services are in the public interest will be made in the generic docket.

We approved Mr. Zimmerman's provision of these services on an interim basis, as this is a matter of first impression in the State of New Hampshire. Thus, to require Mr. Zimmerman to cease and desist from providing STS services during the pendency of the generic proceeding would irreparably harm not only Mr. Zimmerman, but his customers.

Based upon the foregoing, it is hereby

ORDERED, Dwight A. Devork's Motion for Rehearing is denied but his concerns will be addressed in Docket DR 95-126; and it is

FURTHER ORDERED, Paul E. Zimmerman's Motion for Rehearing is denied; and it is

FURTHER ORDERED, NYNEX's clarifications are granted; and it is

FURTHER ORDERED, Granite State Telephone, Inc.'s Motion for Clarification is granted.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Zimmerman, DE 94-209, Order No. 21,598, 80 NH PUC 180, Mar. 28, 1995.

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NH.PUC\*05/22/95\*[80944]\*80 NH PUC 283\*Dunbarton Telephone Company

[Go to End of 80944]

80 NH PUC 283

**Re Dunbarton Telephone Company**

DR 95-106

Order No. 21,664

New Hampshire Public Utilities Commission

May 22, 1995

ORDER approving a local exchange telephone carrier's proposed introduction of Custom Local Area Signalling Services (CLASS), including such CLASS features as automatic call back, selective call rejection, call forwarding, call waiting, and distinctive ringing. Rates will mirror those of the state's dominant local exchange carrier, and privacy matters will be addressed through the provision of line blocking options.

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## 1. SERVICE, § 449

[N.H.] Telephone — Special service — Custom Local Area Signalling Services — Call waiting and call forwarding — Call back and call rejection features — Privacy issues — Line blocking options — Local exchange carrier. p. 284.

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## 2. RATES, § 553

[N.H.] Telephone rate design — Special service — Custom Local Area Signalling Services — Call waiting and call forwarding — Call back and call rejection features — Mirroring of dominant carrier's rates — Local exchange carrier. p. 284.

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BY THE COMMISSION:

## ORDER

[1, 2] On April 23, 1995, Dunbarton Telephone Company (DTC or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to introduce Custom Local Area Signalling Services (CLASS) and additional Custom Calling Services.

CLASS services utilize the Signalling System 7 network. The CLASS services which DTC proposes to introduce include Automatic Call Back (returns the most recent outgoing call), Calling Number Delivery, Customer Originated Trace, Selective Call Forwarding, Selective Call Rejection, Selective Call Acceptance and Distinctive Ringing/Call Waiting. The additional Custom Calling features which DTC requests approval to introduce include: User Programmable Call Forward, Busy; User Programmable Call Forward, No Answer; User Programmable Call Forward, Busy/No Answer; Call Forward, Remote Access; Fixed Call Forwarding - Telephone Company Administrable; Teen Service; and Ring Again.

Following conversations with Staff, the Company revised two 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 May 15, 1995. Although DTC filed no supporting cost/revenue information with its initial filing, the Company responded to Staff inquiries. DTC's proposed rates for the additional Custom Calling features are based on the tariffed rates the Company is

currently charging for similar Custom Calling features. The rates DTC proposes to charge for the new CLASS services are based on NYNEX tariffed rates.

Staff stated that DTC's proposal to base the rates for the new Custom Calling services on rates for comparable services already offered and for the CLASS services on the current NYNEX rates appears reasonable. In addition, DTC's proposal for line blocking is consistent with the guidelines detailed in NYNEX's Phonsmart docket (DR 91-105). Line blocking will be available free of charge to Non Published and Non Directory Listed customers and to Domestic Violence Agencies, their Staff, volunteers and safe houses. Also, line blocking will be free of charge to other customers that submit a written request to the Company asserting a specific need for line blocking for reasons of health or safety. There will be no charge to initiate line blocking to any customer for a period of 30 days prior to and 60 days following the introduction of Calling Number Delivery service. Staff recommended that the proposed tariff pages be approved.

We have reviewed the Petition and the recommendation by Staff and find that the proposed tariff revisions are in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Dunbarton Telephone Company are approved, effective as filed:

- NHPUC No. 5
- Index - Ninth Revised Sheet 1
- Section 3
- Sheet M-1
- Sheet M-1A
- Sheet M-2
- Sheet N-1
- Sheet N-2
- Sheet N-3
- Sheet N-4

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 DTC file a compliance tariff with the Commission on or before June 5, 1995, in accordance with N.H.

Page 284

Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1995.

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NH.PUC\*05/22/95\*[80945]\*80 NH PUC 285\*Keystone Telecommunications, Inc., dba KTI Long Distance

[Go to End of 80945]

80 NH PUC 285

**Re Keystone Telecommunications, Inc., dba KTI Long Distance**

DE 95-041

Order No. 21,665

New Hampshire Public Utilities Commission

May 22, 1995

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

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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 services. p. 285.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 285.

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BY THE COMMISSION:

ORDER

[1, 2] On February 13, 1995, Keystone Telecommunications, Inc. d/b/a KTI Long Distance (KTI), a Pennsylvania 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.

KTI 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 KTI 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. KTI 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, KTI shall notify the Commission of the change.
5. KTI 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. KTI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

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7. KTI 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. KTI 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. KTI 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. KTI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by KTI 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 KTI 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 KTI to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that KTI shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than June 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before June 16, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. KTI 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 KTI shall file a compliance tariff with the Commission on or before June 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 21, 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 twenty-second day of May, 1995.

Notice of Conditional Approval of  
Keystone Telecommunications, Inc.  
d/b/a KTI Long Distance

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On February 13, 1995, Keystone Telecommunications, Inc. d/b/a KTI Long Distance (KTI), a Pennsylvania 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. 21,665, issued in Docket No. DE 95-041, the Commission granted KTI conditional approval to operate as of June 21, 1995, subject to the right of the public and interested parties to comment on KTI 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 KTI's petition to do business in the State should submit written comments no later than June 16, 1995, 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\*05/23/95\*[80946]\*80 NH PUC 287\*Public Service Company of New Hampshire

[Go to End of 80946]

80 NH PUC 287

## Re Public Service Company of New Hampshire

DE 94-080

Order No. 21,666

New Hampshire Public Utilities Commission

May 23, 1995

ORDER denying rehearing of Order No. 21,589 (80 NH PUC 160, *supra*), in which the commission had approved a partial settlement in a proceeding addressing an electric utility's 1994 integrated least-cost resource plan filing. Commission affirms that long-term resource planning must be conducted on an intrastate, company-specific basis rather than on a combined system basis with its parent company. Commission also clarifies the parameters for wholesale marketing transactions vis-a-vis the resource planning process.

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### 1. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — New or novel arguments *not* previously addressed — Commission discretion. p. 289.

### 2. EVIDENCE, § 23

[N.H.] Oral witness testimony — Sole company witness — Interpretation of

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contractual agreement — Stated intent versus actual contract language — Actual language as governing interpretation. p. 289.

### 3. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Effect of merger and multistate operations — Long-term planning on company-specific rather than combined systemwide basis — Affirmation of rejection of combined system basis. p. 290.

### 4. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — As to integrated least-cost resource planning — Effect of merger and multistate operations — Continued commission authority over intrastate planning. p. 290.

### 5. ELECTRICITY, § 4

[N.H.] Operating practices — Integrated least-cost resource planning — Impact on wholesale marketing activities — Approval of economic, long-term sales of surplus capacity. p. 290.

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APPEARANCES: As previously noted.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On March 27, 1995, we issued Order No. 21,589 (the Order) which approved a Partial Settlement Agreement entered into by Public Service Company of New Hampshire (PSNH), the Office of Consumer Advocate (OCA) and the Commission Staff (Staff). The Order also addressed three contested issues, one of which related to Staff's contention that PSNH's future least cost planning should endeavor to minimize the costs of the PSNH System rather than the costs of the Combined System as argued by PSNH<sup>1(27)</sup> .

At the final hearing Staff and PSNH presented opposing testimony relative to this issue and both filed post-hearing briefs that summarized their respective positions and supporting arguments. We deliberated this matter at our February 13, 1995 public meeting and we thereafter issued the Order which adopted Staff's recommendation. Prior to issuing the written Order, PSNH filed a "Motion for Special Post-Deliberations Consideration" in which it requested that our order address certain implications of our oral decision to order PSNH System planning. PSNH filed a motion and supporting memorandum for rehearing pursuant to RSA 541:3 and also for clarification of our Order (Motion and Memorandum). Staff filed a timely response to PSNH's Motion which opposed the request for rehearing but offered no position relative the request for clarification.

### II. PSNH'S REQUEST FOR REHEARING AND STAFF'S RESPONSE

PSNH's Motion asks for rehearing based on the following four arguments:

- (a) the Order lacks adequate support in the record;
  - (b) the Order is based on a "flawed analysis" of PSNH's contracts and obligations;
  - (c) the Order violates the principle of *res judicata* because it "overrules" Order 19,889 in DR 89-244; and
  - (d) the Order is unlawful because it fails to address the jurisdictional consequences.
- Motion, para. 1-2.

Additionally, PSNH's Memorandum advances several other arguments which are not referenced in its Motion: (a) the Order "reflects a fundamental misunderstanding of [PSNH's] interpretation of the Sharing Agreement ... " Memorandum at 2; (b) the Commission erred because it ruled against an interpretation of the Sharing Agreement advanced by PSNH's witness, Frank P. Sabatino, who PSNH characterizes as "the architect of the Sharing Agreement" and the only witness in this proceeding with

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"hands on experience" in utility resource planning, *Id.* at 2, 8; and (c) the Sharing Agreement and related contractual agreements have been consistently interpreted by this Commission and "other governmental authorities" to "impose comprehensive Combined System planning obligations on PSNH" *Id.* at 5.

Staff responded to PSNH's request for rehearing, arguing that PSNH was merely attempting to re-litigate issues which the Commission had already considered and decided. Staff argues that the Order is adequately supported by the record and is consistent with the Commission's previous Order in DR 89-244. Staff also countered PSNH's assertion that the Commission erred in its comparison of the relative merits of Combined versus PSNH System planning. Staff maintains that PSNH cannot benefit from least cost resource options that may become available to the Combined System because the Sharing Agreement limits PSNH to existing resources from the Initial System at defined prices. Staff Response at 3.

### III. PSNH'S REQUEST FOR CLARIFICATION

PSNH requests clarification of the part of the Order addressing wholesale marketing transactions. Specifically, PSNH states that it is in agreement with the position set forth in Staff's Response to PSNH's Motion for Special Post-Deliberations Consideration. As noted above, Staff offered no objection to PSNH's request for clarification.

### IV. COMMISSION ANALYSIS

#### A. *Request for Rehearing*

[1] Pursuant to RSA 541:3 we have the discretion to grant rehearing if a movant provides "good reason" for such relief. Based on our consideration of PSNH's Motion and for the reasons set forth below, we deny PSNH's request. PSNH presents no new or persuasive arguments that would cause us to re-examine our decision relative to PSNH's least cost resource planning methodology. Because many of PSNH's assertions are overlapping and repetitive, we will address only the broader arguments advanced in its Motion and supporting Memorandum.

At the outset, we disagree with the implication that Order 21,589 is deficient because it does not adequately address each argument and explain why we found each particular piece of evidence unpersuasive. There is no such requirement in general administrative law, the Administrative Procedures Act, RSA 541-A or the statute specific to our orders, RSA 363:17-b.

#### 1. Alleged Insufficiency of the Record

[2] PSNH argues that the Order lacks support in the record because its primary witness, Frank P. Sabatino, is "the person most responsible for developing the Sharing Agreement and the person with the most experience in implementing the Sharing Agreement". PSNH suggests that because Staff produced no witness with similar qualifications or experience, Mr. Sabatino's testimony on this issue must prevail. We disagree. Our interpretation of the Sharing Agreement is based on an examination of the entire record, including the document itself and our previous orders. We found that Mr. Sabatino's testimony relative to his (and other parties') intentions was unsupported by the record. Much of Mr. Sabatino's testimony was simply statements of personal opinion which lacked supporting references<sup>2(28)</sup>. We will not defer to PSNH's interpretation of the Sharing Agreement simply because Mr. Sabatino was the only witness who participated in the negotiations which led to that agreement. It is the language of the Agreement which governs its interpretation, not one of the negotiator's recollections.

#### 2. Alleged *Res Judicata* Limitations

PSNH next contends that the Order "fails to even acknowledge that it is overruling the DR 89-244 determination regarding Combined System planning ... " Motion at 5. As we pointed out in the Order, before we issued our decision in DR 89-244, PSNH/NU agreed "to implement least cost planning as specified by [this] Commission". Order at 25 referring to

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Joint Recommendation in DR 89-244. PSNH points to an excerpt from Report and Order No. 19,889 in which we agreed that the Sharing and Capacity Transfer Agreements "provide a reasonable contractual basis for the joint planning and operation of the combined NU/PSNH System..." Order No. 19,889 at 170. We agree with Staff that this excerpt from that order must be read in conjunction with the rest of that order as well as with the Joint Recommendation. In Order No. 19,889 we concluded that the Twenty Year Load and Resource Plan<sup>3(29)</sup> "does not provide a sufficient basis for a finding that the rates which result will be just and reasonable" and we stated that NU/PSNH would be required "to comply with all existing and any future least cost integrated planning or any other resource planning requirements of the commission." Order No. 19,889 at 85-86. We clearly reserved the right to determine the most appropriate least cost planning methodology for PSNH.

The excerpt from page 170 of Order No. 19,889 simply approves Combined System planning in the limited circumstances set forth in the Sharing Agreement. Our intention was to permit Combined System planning only in the event that the Combined System requires capacity during the term of the Sharing Agreement.

### 3. Analysis of PSNH's Contractual Obligations

[3] PSNH contends that our rejection of the Combined System planning approach was based solely on an analysis of Section 4 of the Sharing Agreement. As stated above, our interpretation of the Sharing Agreement was based on an examination of the entire record of this proceeding as well as that of DR 89-244. We share Staff's view that the prefatory "Whereas" clause on page 3 of the Sharing Agreement should be given less weight than the specific wording of Section 4. We reject PSNH's argument that the alleged "continuous theme" of Combined System planning throughout the Sharing Agreement controls the outcome of this case. Other than the opinions of PSNH's witness, we have located no support in the record for this conclusion. On the contrary, when we approved the Sharing Agreement in DR 89-244, there was clearly a "continuous theme" that PSNH/NU would be required to conduct its future least cost planning as required by this Commission for the benefit of New Hampshire ratepayers. See, Order 19,889 at 85-86. Our Order is consistent with that theme because PSNH failed to show how New Hampshire ratepayers will share in the benefits of resource planning for the Combined System.

### 4. Alleged Jurisdictional Constraints

[4] PSNH argues that the Order "fails to recognize the jurisdictional problems that would result from PSNH's compliance with the Order." Memorandum at 8. Without pointing to any record authority or other citations, PSNH reiterates Mr. Sabatino's testimony "that the FERC, Connecticut DPUC, the Massachusetts DPU and the U.S. Bankruptcy Court had each accepted



that the Sharing Agreement and related arrangements impose comprehensive Combined System planning obligations on PSNH." *Id.* We are not persuaded by the assertion that the unsupported opinion testimony of PSNH's witness regarding the intent of other commissions and courts should govern our conclusions. We also disagree with the argument that, because FERC has jurisdiction over the Sharing Agreement, this Commission is preempted from regulating PSNH's least cost planning activities. None of the authorities cited by PSNH support this assertion. Resource planning is the prerogative of state regulatory authorities. The FERC's approval of the Sharing Agreement in no way diminished our authority to regulate PSNH's least cost planning activities.

*B. Request for Clarification*

[5] In Staff's Response to PSNH's "Motion for Special Post-Deliberations Consideration" Staff states that PSNH's wholesale marketing transactions are affected by the Order only to the extent that PSNH "seeks to sell surplus capacity beyond PSNH's projected year of need." Staff recommends that such long-term sales should be approved if they are economic

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for PSNH. PSNH's Memorandum states as follows:

PSNH informed Staff that it was in agreement with Staff's modification with its proposal [sic] with respect to wholesale sales. PSNH interprets the Order to be consistent with the Staff's modification to PSNH's position [sic] as to wholesale marketing, so that such wholesale marketing would be planned and carried out in exactly the same manner as prior to the Order except that any proposed sale of PSNH-owned capacity beyond PSNH's year of need would be evaluated as economic on a PSNH stand-alone basis.

We accept what appears to be an agreement between Staff and PSNH regarding the impact of the Order on PSNH's wholesale marketing activities, and the Order is clarified accordingly. Although it is unclear what PSNH means by its reference to Staff's "modification" we herein clarify the Order and adopt the agreement reached by Staff and PSNH with regard to wholesale activities.

With regard to PSNH's obligation to make purchases under the so-called "Power Up Agreement" in the unlikely event that PSNH needs capacity during the term of the Sharing Agreement, our intent is to permit such purchases provided that the capacity offered by the Initial System is least cost for PSNH.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's request for rehearing is DENIED; and it is

FURTHER ORDERED, that PSNH's request for clarification is GRANTED as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of May, 1995.

FOOTNOTES



<sup>1</sup>Order No.21,589 describes in more detail the structure of the Combined System and PSNH's relationship to it.

<sup>2</sup>We have reviewed the dockets referred to in Mr. Sabatino's testimony and are unpersuaded that they support his overall conclusion.

<sup>3</sup>The Twenty Year Load and Resource Plan was the basis for the Capacity Transfer Agreements which are components of the Sharing Agreement.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DE 94-080, Order No. 21,589, 80 NH PUC 160, Mar. 27, 1995.

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NH.PUC\*05/31/95\*[80947]\*80 NH PUC 291\*Tilton-Northfield Aqueduct Company, Inc.

[Go to End of 80947]

80 NH PUC 291

### **Re Tilton-Northfield Aqueduct Company, Inc.**

DF 95-135

Order No. 21,667

New Hampshire Public Utilities Commission

May 31, 1995

ORDER authorizing a water utility to issue up to \$85,000 in long-term notes to finance a water line replacement program associated with a highway reconstruction project.

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#### 1. SECURITY ISSUES, § 85

[N.H.] Issuance of long-term notes — Purposes — Financing of replacement of water line facilities — In conjunction with highway reconstruction project — Water utility. p. 292.

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BY THE COMMISSION:

ORDER

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[1] Tilton-Northfield Aqueduct Company, Inc. (Tilton-Northfield or the Company), is requesting authorization to issue \$85,000 in securities in the form of a Note (the Note). On May 10, 1995 Tilton-Northfield requested approval to issue an additional \$130,000 of Notes, with appropriate security in the form of a mortgage of its real estate and security agreement on its personal property from the Bank of New Hampshire in accordance with the term, conditions and purposes described in the petition. The Bank of New Hampshire has agreed to long term financing of the Company's project to insure compliance with the Safe Drinking Water Act. The total purpose of the loan is to construct wells, pumping station and water lines.

On May 30, 1995 Tilton-Northfield revised its request for additional funding to \$85,000. The funds will be used to place/replace Company lines in conjunction with highway reconstruction along Route 3 as part of the Walmart development in the same area as in the compliance project. The area affected is approximately 1600 feet along Route 3 (East Main Street), west of the I-93 overpass. The Company believes that substantial savings may be achieved if the lines are installed while DOT reconstruction is ongoing.

Tilton-Northfield will be able to install the lines at savings because of the nature of the ongoing work, availability of contractors, elimination of traffic control problems and the avoidance of the expense of repaving. 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 is granted authorization to issue notes in the amount of \$85,000; and it is

FURTHER ORDERED, that Tilton-Northfield shall file with this Commission on January 1 and July 1 of each year, a detailed statement duly sworn by its Treasurer, showing the disposition of 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 thirty-first day of May, 1995.

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NH.PUC\*05/31/95\*[80948]\*80 NH PUC 292\*Public Service Company of New Hampshire

[Go to End of 80948]

80 NH PUC 292

## Re Public Service Company of New Hampshire

DR 94-300

Order No. 21,668

New Hampshire Public Utilities Commission

May 31, 1995

ORDER granting temporary protective treatment of purchased power agreement drafts negotiated by an electric utility and two wood-fired small power producers.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase transactions — Newly negotiated drafts — Protective treatment — Electric utility and wood-fired small power producers. p. 292.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — On temporary basis — Of recently negotiated power purchase agreement drafts — Electric utility and wood-fired small power producers. p. 292.

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BY THE COMMISSION:

ORDER

[1, 2] On April 7, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), term sheets executed with Hemphill Power and Light Company and Whitefield Power and Light Company, two wood fired small power producers located in

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Springfield and Whitefield, New Hampshire. Concurrent with the term sheets, PSNH filed a Motion for Protective Order.

In its motion PSNH states that the information should be afforded protective treatment "for a temporary period until final documents and testimony supporting the restructured arrangements is filed with the Commission." PSNH argues that disclosure of the term sheets will "create a disadvantage to PSNH in the ongoing mediation and the drafting and execution of term sheets with other owners", citing N.H. Admin. Rules, Puc 204.08(b)(4)b.

According to PSNH, the Commission Staff does not object to this motion. The motion also states that "PSNH was unable to obtain the concurrence of the Office of the Consumer Advocate" (OCA). The language is ambiguous, as it could mean that OCA simply could not be reached or that OCA opposes the motion. Over six weeks have elapsed since PSNH filed its motion, and OCA has filed no objection to the motion. *See* N.H. Admin. Rules, Puc 203.04(c). We will assume, therefore, that OCA does not object to the motion.

We recognize that the negotiations between PSNH and the small power producers have been extremely complex given that multiple parties are developing individual terms with PSNH and disclosure of one party's terms could affect the negotiations with another. We find that disclosure of the term sheets at this time will create a risk to the continued negotiations with the remaining small power producers. We will grant, therefore, PSNH's Motion for Protective Treatment.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order regarding the term sheets executed

with Hemphill Power and Light Company and Whitefield Power and Light Company is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of May, 1995.

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NH.PUC\*05/31/95\*[80949]\*80 NH PUC 293\*Public Service Company of New Hampshire

[Go to End of 80949]

80 NH PUC 293

**Re Public Service Company of New Hampshire**

DR 95-058

Order No. 21,669

New Hampshire Public Utilities Commission

May 31, 1995

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. The rate is found to reasonably reflect the current state of the utility's operations vis-a-vis nuclear plant performance, expected outages, and ongoing negotiations with wood-fired small power producers as to new power purchase agreements, even though the rate will not provide the utility with full recovery of all generation costs.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Continuation of existing fuel clause rate — Factors — Reasonable reflection of nuclear generating costs — Consideration of replacement power costs — Impact of power purchase renegotiations with small power producers — Acknowledgement of underrecovery — Electric utility. p. 296.

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APPEARANCES: Day, Berry and Howard by Gerald A. Garfield, Esq., and Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Office of the Consumer Advocate by Kenneth Traum on behalf of residential ratepayers; Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On March 9, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition to open a proceeding to consider the Fuel and Purchased Power Adjustment Clause (FPPAC) rate to be effective from June 1, 1995, through November 30, 1995. On March 15, 1995, PSNH filed supporting testimony and exhibits for its proposed FPPAC rate of \$0.00335 per kilowatt-hour. The filed rate is unchanged from the current effective rate and would begin on June 1, 1995.

In its March 15, 1995 filing, PSNH included Mr. Dennis R. Brown's direct testimony consisting of Sections I and II, and Mr. John W. Noyes' direct testimony. On March 23, 1995, Mr. Brown's testimony was resubmitted with Section III, pertaining to the Clean Air Act Amendment of 1990 compliance costs, which had not been included in the original FPPAC filing. Mr. Brown's Section III and Mr. Noyes' testimony relate to the Clean Air Act Amendment and have been subsequently moved to a separate ongoing proceeding, Docket No. DR 95-068, 1990 Clean Air Act Amendment Cost Recovery.

On March 28, 1995, the Commission issued an Order of Notice scheduling a prehearing conference for April 19, 1995, to address motions to intervene, and to receive initial positions of the parties and Commission Staff (Staff). The Order of Notice also directed that the issue of the recovery pursuant to the Rate Agreement of costs of compliance with the Clean Air Act Amendments will be addressed separately in Docket DR 95-068.

A motion was filed with the Commission on April 3, 1995, by the Office of the Consumer Advocate (OCA) expressing concern over unilateral deferral of issues without prior approval of the Commission, and requesting formal approval of such deferrals. On April 13, 1995, PSNH filed an Answer and Motion to Amend Scope agreeing with the basic thrust of the OCA filing, and requesting consideration of deferral of certain outage events. OCA filed a response to PSNH's Motion on April 18, 1995, providing background and support for a proposed procedure to be used by the Commission for approving requests for deferral of FPPAC issues.

On April 24, 1995, the Commission issued Order No. 21,624 adopting a procedural schedule, granting the NHEC full intervention, granting CRR full intervention subject to objections raised at a later date, and requiring requests for deferral of issues be submitted by motion.

On April 27, 1995, PSNH filed revised exhibits supporting its semiannual adjustment to the FPPAC rate. Staff filed testimony on May 2, 1995. The OCA, NHEC and the CRR did not file testimony in this proceeding.

After subsequent investigation, which included data requests and technical sessions, a hearing on the merits of the proposed FPPAC rate was held on May 9, 1995.

### II. POSITIONS OF THE PARTIES AND STAFF

At the hearing, the Commission heard evidence relative to PSNH's proposed FPPAC rate, the recently signed Northeast Utilities (NU) purchase and interconnection agreement with Hydro-Quebec (HQ), the performance of Seabrook Station and its operations and maintenance

(O&M) budget, and the performance of PSNH's generating units and entitlements. None of the issues presented at the hearing was contested.

A. *PSNH*

PSNH presented testimony on the FPPAC rate of \$0.00335 per kilowatt-hour that it has requested for the next 6 month period, that is, from June 1, 1995, through November 30, 1995. PSNH witness, Robert A. Baumann, supported the request by stating that the proposal is a continuation of the levelized rates that have been billed to ratepayers since the December 1993 billing rate went into effect. PSNH believes that the requested rate will not allow full recovery of its current costs or projected

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current costs for the upcoming billing period; however, PSNH believes that the requested rate is consistent with the concern for rate stability. Ex. 16 at 4, Tr. at 45-46. PSNH argues that it can maintain the current FPPAC rate through May 31, 1996, with minimal over or under collection at the end of that period. Tr. at 47.

Mr. Baumann's prefiled testimony, Exhibit 16, on page 4 reiterates the company's position that PSNH will not request interest on any unrecovered balance should the proposed rate be allowed. This position is consistent with Commission Order Nos. 21,049 and 21,168 in DR 93-149. He also detailed the recovery of costs associated with the buyout of two woodfired, small power producers (SPP), TIMCO and Alexandria, as well as the status of the negotiations with the remaining 6 woodburning SPPs. Mr. Baumann explained that PSNH has, consistent with the Joint Settlement in DR 93-179, is refunding \$1.5 million to customers over 3 FPPAC periods. The current FPPAC filing initiates the second \$500,000 refund. Additionally, PSNH reduced the FPPAC SPP deferral balance in November 1994 by \$1.0 million. PSNH has not made any adjustments in costs associated with the 6 remaining SPPs, but has indicated that varying levels of progress have been achieved. Ex. 16 at 5-7.

As delineated in Exhibit 14, PSNH also requested approval of new short term rates for Qualifying Facilities.

James R. Shuckerow, provided testimony to clarify NU's recent purchase and interconnection agreement with HQ. He summarized the 4 primary objectives of the agreement: 1) the opportunity for NU to purchase directly from HQ; 2) sharing of research and development information; 3) potential for joint business ventures in energy related fields; and 4) enhancement of mutual emergency assistance and joint training. Ex. 23, Tr. at 52. The agreement was signed on April 1, 1995, and NU entered into direct purchases from HQ in both the months of April and May. A summary of the estimated benefits of the purchases for these two months was detailed in Exhibit 24 and Exhibit 25, respectively.

PSNH presented two witnesses relative to the operation of Seabrook Station, Ted C. Feigenbaum and Anthony M. Callendrello. Mr. Feigenbaum reconciled the O&M expenses for Seabrook Station assumed in the Rate Agreement with current O&M expenditures, budgets and forecasts. The O&M budget for 1995 is \$139.5 million, which includes an additional \$19.0 million due to changing the start date for the fourth refueling outage from early 1996 to the fall of 1995. Tr. at 11. The current forecast for 1996 is \$114.4 million in 1995 dollars. Tr. at 12.

Mr. Callendrello testified on the performance of Seabrook Station for the period from August 1, 1994, through January 31, 1995. The plant has operated continuously since resuming generation after the third refueling outage, and reaching 100 percent power on August 4, 1994. During the period under review, there have been no outages or power reductions. Tr. at 28. In his prefiled testimony, Exhibit 20 at 11, Mr. Callendrello describes that over one million dollars worth of Unit 2 components have been transferred to the Unit 1 inventory during the period under review. In regard to Unit 2 components, during the FPPAC hearing in Docket DR 94-172, the Commission deferred the issue of a Unit 2 parts mitigation fund, and required additional discovery and a separate hearing to consider the value of these components as a basis for mitigating disallowances resulting from actions found to be imprudent.

In his prefiled testimony, Exhibit 21, Thomas J. Dente describes the performance of PSNH's nuclear entitlements relative to outage events occurring during the review period. Mr. Dente lists all of the outages regardless of duration and provides detailed outage and outage extension reports of the 5 unplanned outages that have taken 4 days or longer. He believes that the outages were reasonable and prudent. Mr. Dente testified that, to the best of his knowledge, there have been no disallowances by either the Maine or Connecticut Commissions for outages at Maine Yankee or Connecticut Yankee and Millstone 3.

The prefiled direct testimony of Mr. Dennis R. Brown (Exhibit 18) relates to the performance of PSNH's fossil and hydro units and also to its fossil entitlement in Wyman Station, Unit No. 4. Exhibit 18 indicates that PSNH has

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achieved an overall high fossil unit availability. While the majority of outages were of short duration, 5 unplanned outages were of such duration as to require the filing of Outage Reports.

#### B. Staff

Staff testified on the prudence of planned and unplanned outages and power reductions for PSNH's generating units and entitlements. Staff's witness, Arthur C. Johnson, recommended that all costs relating to purchased replacement power (associated with PSNH generating and entitlement units) be recovered through FPPAC.

Concerning the performance of Seabrook Station, Staff testified that the overall operating performance for the period under review has been excellent with no outages or reductions. Staff also testified that the operating and maintenance budgetary levels appear reasonable.

### III. COMMISSION ANALYSIS

[1] While we find that there are no contested issues to be resolved, the Commission must determine the reasonableness of a continuation of PSNH's proposed levelized FPPAC rate of \$0.00335 per kWh for the billing period from June 1, 1995, through November 30, 1995. We note that PSNH acknowledges that its proposed rate will not allow recovery of all of its costs for the upcoming period, and that any underrecovery would be rolled into the following billing period and its focus is rate stability. We have reviewed the record in this proceeding and find that the continuation of the current FPPAC rate is just and reasonable. We also find it reasonable and consistent with our decision in DR 93-149 to continue the current practice of not accruing on

unrecovered balances.

Although not prefiled, based upon the evidence presented relative to the HQ agreement, we believe that PSNH ratepayers will benefit from this new initiative. However, to ensure that the benefits are realized, we will closely monitor the results of these transactions as the estimates are replaced with actual figures.

We further find the allowance for purchased replacement power costs for PSNH's generating units and entitlements to be undisputed, and based on the record, just and reasonable.

Finally, we concur with the Parties and Staff that the performance of Seabrook Station during the period under review has been excellent, and that the operating and maintenance budgetary levels appear reasonable for continued safe and efficient operation.

Based upon the foregoing, it is hereby

ORDERED, that effective June 1, 1995, and effective through November 30, 1995, the Fuel and Purchased Power Adjustment Clause rate will be \$0.00335 per kWh, which is 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 during the FPPAC period; and it is

FURTHER ORDERED, that PSNH shall pay Qualifying Facilities for the period June 1, 1995, through November 30, 1995, based on the short-term rates in Exhibit 14.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of May, 1995.

#### 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. [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 95-058, Order No. 21,624, 80 NH PUC 222, Apr. 24, 1995.

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NH.PUC\*06/01/95\*[80950]\*80 NH PUC 297\*Iron Dragon Corporation

[Go to End of 80950]

80 NH PUC 297

### Re Iron Dragon Corporation

DE 95-075

Order No. 21,670

New Hampshire Public Utilities Commission

June 1, 1995



ORDER rescinding Order No. 21,612 (80 NH PUC 201, *supra*) for the applicant's failure to comply with a notice and publication requirement contained therein, but reinstating the authorities that otherwise had been granted therein (with a new publication deadline), whereby a hydro generation facility was allowed to construct aerial electric lines across the Exeter River, to allow for connection of a replaced hydro generator with the intrastate electrical grid.

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### 1. ELECTRICITY, § 6

[N.H.] Wires and cables — Overhead electric circuits — Crossing of public waters — Factors affecting approval — Necessity of connecting replaced hydro generator. p. 297.

### 2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Overhead electric lines — Crossing of public waters — Factors affecting approval — Necessity of connecting replaced hydro generator. p. 297.

### 3. ORDERS, § 9

[N.H.] Abrogation or rescission — Factors — Lack of technical compliance with notice and publication requirements — But subsequent reinstatement of underlying authorities. p. 297.

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BY THE COMMISSION:

### ORDER

Iron Dragon Corporation (Iron Dragon) filed with the New Hampshire Public Utilities Commission (Commission) on March 21, 1995, a petition under RSA 371:17 on behalf of Exeter River Hydro for the initial licensing of aerial electric lines over and across the Exeter River. On March 22, 1995, Iron Dragon filed supplemental documentation to clarify its request.

In order to connect a replacement hydro generator to the electrical grid, Exeter River Hydro must construct electric lines over and across the Exeter River. The Exeter River is a public water for the limited purposes of RSA 371:17: "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe". Exeter River Hydro therefore requires Commission approval to construct the subject crossings.

In order to connect the proposed replacement hydro generator to the existing power house it is necessary to construct aerial electric circuits for the generator output, station service and control, from the proposed replacement generator to the existing power house. The crossings of these circuits are noted on the Plan dated March 22, 1995, crossing the Exeter River from pole ERH #2 on the southern side of the river to pole ERH #1 on the northern side of the river. Section A-A of the Profile, also dated March 22, 1995, shows the proposed clearance of the circuits. Upon review of the documentation, Staff verified that these clearances meet the requirements of the 1993 National Electrical Safety Code.

[1-3] In Order No. 21,612 (April 11, 1995) the Commission found, *Nisi*, that the crossings were necessary for Exeter River Hydro to provide hydropower generated electric energy, and that they were in the public good, effective May 11, 1995 absent further order of the

Commission. In order to provide the public an opportunity to respond in support of or in opposition to the petition, the Commission also ordered Iron Dragon to publish an attested copy of the order and document such publication by affidavit filed with the Commission. Upon inquiry by the Commission Staff on May 23, 1995, Iron

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Dragon informed the Commission that it had failed to publish Order No. 21,612.

Because the public was never provided an opportunity to respond to Iron Dragon's petition, we find it necessary to rescind Order No. 21,612 and require Iron Dragon to publish this order no later than June 5, 1995.

Based upon the foregoing, it is hereby

ORDERED, that Commission Order No. 21,612 is rescinded for failure of Iron Dragon to meet publication requirements; and it is

FURTHER ORDERED *NISI*, that, pursuant to RSA 371:17 *et seq.*, authority is granted to Iron Dragon to construct electric lines over public waters of the State of New Hampshire at Brentwood, New Hampshire; and it is

FURTHER ORDERED, that Exeter River Hydro be authorized, pursuant to RSA 371:17 *et seq.*, to maintain and operate the proposed electric lines over the Exeter River as described in this petition; and it is

FURTHER ORDERED, that all reconstruction hereafter performed shall 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 pursuant to N.H. Admin. Rules, Puc 1601.05, Iron Dragon shall 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 conducted, such publication to be no later than June 5, 1995 and to be documented by affidavit filed with this office on or before June 19, 1995; 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 19, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 22, 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 first day of June, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Iron Dragon Corp., DE 95-075, Order No. 21,612, 80 NH PUC 201, Apr. 11, 1995.

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NH.PUC\*06/01/95\*[80951]\*80 NH PUC 298\*MFS Communications Company, Inc.

[Go to End of 80951]

80 NH PUC 298

**Re MFS Communications Company, Inc.**

Additional applicants: MFS Intelenet of New Hampshire, Inc.; Metropolitan Fiber Systems of New Hampshire, Inc.

DF 95-112

Order No. 21,671

New Hampshire Public Utilities Commission

June 1, 1995

ORDER authorizing affiliated interexchange telecommunications carriers to enter into a series of revolving credit transactions, for which a pledge of stock would serve as collateral, even though of zero or negative value. The proceeds would be used to fund working capital accounts and to finance certain construction and/or acquisition projects.

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1. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Revolving credit agreements — Affiliated interexchange telephone carriers — Pledge of stock as collateral — Stock of zero or negative value — Purposes of transactions — Funding of working capital accounts — Financing of construction and/or acquisition projects. p. 299.

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BY THE COMMISSION:

**Page 298**

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**ORDER**

On April 24, 1995, the New Hampshire Public Utilities Commission (Commission) received the application of MFS Communications Company, Inc. (MFSCC) and its New Hampshire certificated operating subsidiaries MFS Intelenet of New Hampshire, Inc. (MFSI-NH) and Metropolitan Fiber Systems of New Hampshire, Inc. (MFS-NH) (referred to collectively as MFS or the Applicant). On May 15, 1995 MFS filed an amended petition, to submit pages that had been inadvertently omitted. The Applicant seeks Commission approval to enable the participation of MFSI-NH and MFS-NH in two revolving credit facilities.

MFSCC was organized in 1987 as Kiewit Communications Company, Inc. to develop and operate fiber optic networks in major metropolitan centers throughout the United States. MFS

Telecom, Inc., a Delaware corporation, is a direct, wholly-owned subsidiary of MFSCC. MFS Telecom, Inc. is the parent company of MFS-NH, which is authorized to provide non-switched interLATA and intraLATA, interexchange private line services. MFSCC is also the direct parent company of MFS Intelenet, Inc., which is in turn the parent company of MFSI- NH, which is authorized to provide resold interexchange telecommunications services.

Approximately 67% of MFSCC is owned by Kiewit Diversified Group Inc. (KDG), and approximately 33% is publicly owned and traded on the NASDAQ under the symbol MFST. The parent company of KDG is Peter Kiewit Sons, Inc. of Omaha, Nebraska. MFS Telecom, Inc., a Delaware corporation, is a direct, wholly-owned subsidiary of MFSCC. Through its operating subsidiaries, MFS Telecom, Inc. is the largest competitive access provider in the United States.

The Applicant seeks approval for the participation by MFSI-NH and MFS-NH in two revolving credit facilities: (1) the MFS Communications Company, Inc. \$150,000,000 Credit Agreement, dated April 14, 1995 (MFSCC Facility); and (2) the MFS Telecom, Inc. \$100,000,000 Credit Agreement, dated April 14, 1995 (Telecom Facility). In each instance, Chemical Bank will serve as Administrative Agent and Bankers Trust Company will serve as Documentation Agent. MFSI-NH will execute a Subsidiary Stock Pledge Agreement; assets of its pledge stock is valued at \$0. MFS-NH will execute a Telecom Stock Pledge Agreement; assets of its pledge stock is valued at a negative (\$79,178).

In the alternative the Applicant seeks an order waiving the Commission requirements with respect to the incurrence of debt obligations.

The Applicant stated in its petition that the credit facilities may be utilized for working capital and other capital, and that the Telecom Facility may be used for construction and acquisition of telecommunications assets. In addition, the Applicant stated that the proposed transactions serve the public interest in promoting competition among telecommunications carriers by providing MFS with the opportunity to strengthen its competitive position with greater financial resources.

By memo dated May 24, 1995 Staff noted that RSA 369 was designed with "the ultimate purpose of preserving a proper base for the determination of just and reasonable rates." *State v. New Hampshire Gas & Electric Co.* 86 N.H. 16, 163 A. 724 (1932). Staff stated it had no objection to the participation by MFSI-NH and MFS-NH in the credit facilities and noted that these entities operate in a competitive interexchange resale carrier market for whom traditional rate of return regulation does not apply.

[1] Having reviewed the Staff recommendation, we find that the application of MFS does fall within the requirements of RSA Chapter 369. The New Hampshire corporations do seek to pledge their assets, albeit stock of zero or negative value, in order to secure their obligations under the revolving credit facilities. We find that this arrangement falls within the provisions of RSA 369:2 regarding mortgaging of tangible and intangible property.

We find that the participation of MFSI-NH and MFS-NH in the revolving credit facilities, and therefore the required pledge of stock, is in the public good. We do note that, 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 not harm the public interest. Rather such failure will be the burden of the companies' stockholders, here MFSCC as the legal and beneficial owner of the shares of stock which MFS-NH and MFSI-NH will be pledging.

Based upon the foregoing, it is hereby

ORDERED, that the Applicant's petition is subject to the Commission's jurisdiction under the requirements of RSA Chapter 369; and it is

FURTHER ORDERED, that the participation of MFSI-NH in the MFSCC Facility and of MFS-NH in the Telecom Facility, and the execution of their respective pledge agreements is approved.

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

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NH.PUC\*06/01/95\*[80952]\*80 NH PUC 300\*Public Service Company of New Hampshire

[Go to End of 80952]

80 NH PUC 300

## Re Public Service Company of New Hampshire

DR 95-147

Order No. 21,672

New Hampshire Public Utilities Commission

June 1, 1995

ORDER denying an electric utility authority to increase its nuclear decommissioning charge relative to the Seabrook Station, and again continuing in effect the existing nuclear decommissioning charge of 0.012 cents per kilowatt-hour, pending a final report from the Nuclear Decommissioning Finance Committee as to a proper level for the Seabrook funding charge.

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### 1. NUCLEAR PLANT DECOMMISSIONING, § 16

[N.H.] Funding — Decommissioning charge — Continuation of previously approved charge — Pending report from committee as to recommended new charge — Seabrook Station. p. 300.

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BY THE COMMISSION:

ORDER

On May 1, 1995 Public Service Company of New Hampshire (PSNH) filed a request with the

New Hampshire Public Utilities Commission (Commission) to implement a revised nuclear decommissioning charge in the amount of \$0.00017 per kilowatt hour, effective June 1, 1995. This charge reflects the amount of money which PSNH would be authorized to collect if the proposed Report and Order issued by the Nuclear Decommissioning Finance Committee (NDFC) were finalized. The NDFC issued its Report and Order on March 24, 1995 (Order). In accordance with RSA 162-F:21,IV, the NDFC held a public hearing to take comments on the Order on May 11, 1995 in the Town of Seabrook. The NDFC is now scheduling a final deliberations session in June, 1995 to address issues raised in response to the Order, after which it will issue its final order and direct the Commission to authorize PSNH's collection of the decommissioning charge necessary to meet the Committee's determination.

The Commission, on May 12, 1995, informed PSNH that the current decommissioning charge of \$0.00012 per kilowatt hour, in effect since June 1, 1994 pursuant to Commission Order No. 21,240 (May 24, 1994), would remain in effect until issuance of a final order in NDFC 93-1.

PSNH, on May 19, 1995, submitted a further request to implement the higher decommissioning charge on a temporary basis, subject to recoupment, pending final determination of the NDFC. PSNH further stated that its authorization to collect the amount established in Order No. 21,240 will terminate after May 31, 1995 unless otherwise ordered by the Commission.

[1] We do not believe it is appropriate to order any change in the currently approved decommissioning charge until the NDFC has

Page 300

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issued its final order determining the appropriate decommissioning cost and funding mechanism for Seabrook Station. We will extend PSNH's authorization to collect a decommissioning charge in the amount of \$0.00012 per kilowatt hour pending issuance of a final order in NDFC 93-1. Once a final order is issued, PSNH should file its proposed per kilowatt hour decommissioning charge sufficient to meet the NDFC's cost determination. Upon review, we will issue an order revising the decommissioning charge as necessary.

Based upon the foregoing, it is hereby

ORDERED, that PSNH is authorized to collect a decommissioning charge in the amount of \$0.00012 per kilowatt hour, effective June 1, 1995, pending issuance of a final order in NDFC 93-1 at which time the Commission may authorize a different decommissioning charge; and it is

FURTHER ORDERED, that upon issuance of a final order in NDFC 93-1, PSNH shall file with the Commission the amount necessary to charge on a per kilowatt basis to meet the decommissioning funding requirement established by the NDFC; and it is

FURTHER ORDERED, that upon review of PSNH's filing, the Commission shall issue an order revising the decommissioning charge as necessary.

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-096, Order No. 21,240, 79 NH PUC 293, May 24, 1994.

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NH.PUC\*06/01/95\*[80953]\*80 NH PUC 301\*UniDial Inc.

[Go to End of 80953]

80 NH PUC 301

**Re UniDial Inc.**

DR 95-123

Order No. 21,673

New Hampshire Public Utilities Commission

June 1, 1995

ORDER authorizing an interexchange telephone carrier to introduce "Affinity Group" calling privileges, providing special rates for calls placed between two Affinity members. The carrier also is permitted to implement "1-800-UniDial" calling through which subscribers can access the carrier for station-to-station, person-to-person, collect, and third-party calls.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Offering of "Affinity Group" service — Discounts for calls between members — Interexchange telephone carrier. p. 301.

2. RATES, § 589

[N.H.] Telephone rate design — Toll service — Person-to-person and station-to-station calls — Collect and third-party calls — Access to carrier via special 800 number — Interexchange telephone carrier. p. 301.

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BY THE COMMISSION:

ORDER

[1, 2] On May 1, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from UniDial Inc., (UniDial) requesting authority to introduce Affinity Group Schedules and 1-800-UniDial, add a 24 month term option to Ultima Card and revise various rates, for effect May 31, 1995.

Page 301

Affinity Group Schedules provide outbound calling services to members of Affinity Groups. Rates per minute vary depending on the number of members in the Affinity Group.

1-800-UniDial Service allows callers to access UniDial to place station-to-station, person-to-person, collect or billed to third party calls. Calls are billed in full minute increments and a surcharge applies to each call.

Rates are being introduced for a 24 month term option for the Ultima Card and other rates are being revised.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize UniDial to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of UniDial's NHPUC Tariff No. 1 are approved for effect as filed:

1st Revised Page 1  
1st Revised Page 24  
Original Page 24.1  
1st Revised Page 27  
1st Revised Page 28  
1st Revised Page 30  
Original Page 31  
Original Page 32;

and it is

FURTHER ORDERED, that UniDial file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

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NH.PUC\*06/01/95\*[80954]\*80 NH PUC 302\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80954]

80 NH PUC 302

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-122

Order No. 21,674

New Hampshire Public Utilities Commission

June 1, 1995



ORDER suspending a local exchange telephone carrier's proposed introduction of special access services for connecting customers to integrated services digital network (ISDN) features.

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1. RATES, § 553

[N.H.] Telephone rate design — Integrated services digital network (ISDN) — Special access proposal — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 302.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — Special access to integrated services digital network (ISDN) — Local exchange carrier. p. 302.

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BY THE COMMISSION:

ORDER

[1, 2] On April 28, 1995, New England Telephone and Telegraph Company (NYNEX or Company) petitioned to introduce ISDN Basic Service Virtual Serving Arrangement which is a special arrangement to enable a customer to subscribe to ISDN Basic Service when a customer's serving central office is not equipped to provide ISDN Basic Service.

Staff requires time to investigate the filing and material filed in support of the proposed

**Page 302**

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tariff and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are suspended:

NHPUC No. 75

Part C, Section 10

Table of Contents Page 1

Original Page 15.1

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

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NH.PUC\*06/01/95\*[80955]\*80 NH PUC 303\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80955]

80 NH PUC 303

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-127

Order No. 21,675

New Hampshire Public Utilities Commission

June 1, 1995

ORDER authorizing an interexchange telephone carrier to introduce a special "Moonlight Madness" calling plan aimed at college students making toll calls during nighttime billing periods. The carrier also is allowed to amend its tariffs to provide that directory information calls placed to an operator will be subject to both a directory assistance and an operator handling charge.

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1. RATES, § 587

[N.H.] Telephone rate design — Toll service — Special "Moonlight Madness" nighttime calling plan — Targeting of college student customers — Interexchange telephone carrier. p. 303.

2. RATES, § 553

[N.H.] Telephone rate design — Directory information — Accessed via operator services — Double charge for both directory and operator assistance — Interexchange telephone carrier. p. 303.

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BY THE COMMISSION:

**ORDER**

[1, 2] On May 2, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) requesting authority to introduce Moonlight Madness, grandfather existing Option B Calling Plan customers, and include Operator Service Charges for certain Directory Assistance calls for effect June 1, 1995.

Moonlight Madness is an outbound toll calling plan targeted to the college market. This service offers subscribers a rate of \$.09 per minute from 9:00 p.m. to 8:59 a.m. seven days a week.

The Option B Calling Plan is being grandfathered for existing customers as of June 1, 1995. Finally, language is being added to the tariff which indicates that customers who call directory assistance using an operator will be billed both the DA charge and the appropriate operator assistance surcharge.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's NHPUC Tariff No. 4 are approved for effect as filed:

**Page 303**

- 15th Revised Page 1
- 4th Revised Page 46
- 2nd Revised Page 47
- 3rd Revised Page 73
- 1st Revised Page 73-B
- 1st Revised Page 85;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

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NH.PUC\*06/01/95\*[80956]\*80 NH PUC 304\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80956]

80 NH PUC 304

**Re New England Telephone and Telegraph Company dba NYNEX**

DE 95-128

Order No. 21,676

New Hampshire Public Utilities Commission

June 1, 1995

ORDER approving a local exchange telephone carrier's administrative filing relative to specification of the conditions under which an interexchange carrier may purchase its services.

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1. RATES, § 543

[N.H.] Telephone rate design — Classes of users — Interexchange carriers — Purchases of

local exchange services — Administrative filings — Local exchange carrier. p. 304.

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BY THE COMMISSION:

ORDER

[1] On May 5, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to expand the General Regulations section of its tariff to describe the conditions under which an Interexchange Toll Service Provider may purchase service.

In its transmittal letter, NYNEX asserted that this regulation was authorized by NHPUC Order No. 20,916 in DE 90-002, dated August 2, 1993. In a subsequent tariff revision, the approved regulation was omitted. NYNEX now states that this omission was unintended.

Staff has reviewed the petition and recommended that the Commission approve the petition as an administrative filing and put the Company on notice that the approval is conditional upon the outcome of docket DE 95-054 in which the language approved is under scrutiny.

We have reviewed the Petition and the Staff's recommendation and find that, based upon the information available, the proposed filing is in the public good. This finding is conditional, however, upon the outcome of docket DE 95-054.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX's Tariff PUC No. 75 are approved:

Part A - Section 1, Ninth Revision of Page 3  
issued in lieu of Eighth Revision

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 Company is put on notice that such approval is conditional upon the outcome of docket DE 95-054 in which the language approved is under scrutiny; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before June 15, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

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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\*06/01/95\*[80957]\*80 NH PUC 305\*EnergyNorth Natural Gas, Inc.

[Go to End of 80957]

80 NH PUC 305

**Re EnergyNorth Natural Gas, Inc.**

Additional applicant: Northern Utilities, Inc.

DE 95-121

Order No. 21,677

New Hampshire Public Utilities Commission

June 1, 1995

ORDER noting interventions and adopting a procedural schedule relative to consideration of cost-of-service studies expected to be submitted by two natural gas local distribution companies for the purpose of establishing gas transportation service rates.

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1. RATES, § 384

[N.H.] Gas rate design — Transportation service — Submission of supporting cost-of-service studies — Investigatory proceeding — Procedural schedule — Local distribution companies. p. 305.

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BY THE COMMISSION:

ORDER

[1] On May 1, 1995, the New Hampshire Public Utilities Commission (Commission) opened the instant docket in anticipation of the filing of cost of service studies (COSS) for gas transportation by EnergyNorth Natural Gas Company Inc. (ENGI) and Northern Utilities, Inc. (Northern) as ordered by the Commission in Order No. 21,016. The Commission scheduled a prehearing conference to be immediately followed by a first technical session for May 25, 1995, and set deadlines for intervention requests and objections thereto.

Without objection, Anheuser-Busch (AB), Sprague Energy Corp. (Sprague), and Norstar Energy O.P. (Norstar) sought full intervention status and AGF Gas Sales (AGF) requested limited intervention.

At the prehearing conference, ENGI, Northern, AB, Sprague, Norstar, the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, and the Staff of the Commission (Staff) agreed to the following procedural schedule for the remainder of the proceeding:

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

Technical Session #2	June 23, 1995
COSS Filings by ENGI and Northern	September 1, 1995
Data Requests from Staff and Intervenors	October 2, 1995
Data Responses from ENGI and Northern	October 16, 1995
Technical Session #3 at 10 a.m.	October 23, 1995
Testimony by Staff and Intervenors	November 20, 1995
Data Requests by ENGI and Northern	December 4, 1995
Data Responses by Staff and Intervenors	December 18, 1995
Settlement Conference, 10 a.m.	January 5, 1996
File Settlement Agreement, if any	January 19, 1996
Hearings on merits 10 a.m.	January 29 & 30, 1996

We will grant the requests for full intervention by AB, Sprague and Norstar, and AGF's request for limited intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

Based upon the foregoing, it is hereby

ORDERED, that AB, Sprague and Norstar are granted full intervention in this case; and it is FURTHER ORDERED, that AGF is

Page 305

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granted limited intervention; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this first day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into Natural Gas Transportation Service and Rates, DE 91-149, Order No. 20,016, 78 NH PUC 594, Oct. 29, 1993.

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NH.PUC\*06/02/95\*[80958]\*80 NH PUC 306\*Dial and Save of New Hampshire, Inc.

[Go to End of 80958]

80 NH PUC 306

**Re Dial and Save of New Hampshire, Inc.**

DE 95-049  
Order No. 21,678

New Hampshire Public Utilities Commission

June 2, 1995

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

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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 services. p. 306.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 306.

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BY THE COMMISSION:

ORDER

[1, 2] On March 3, 1995, Dial & Save of New Hampshire, Inc. (Dial & Save), 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.

Dial & Save 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 Dial & Save 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. Dial & Save 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

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approved service to the public at a rate different from its rates on file with the Commission, Dial & Save shall notify the Commission of the change.

5. Dial & Save 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. Dial & Save shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. Dial & Save 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. Dial & Save 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. Dial & Save 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. Dial & Save shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Dial & Save 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 Dial & Save 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

**Page 307**

contained in this Order shall be construed to allow Dial & Save to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Dial & Save shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than June 14, 1995, and an affidavit proving publication shall be filed with the Commission on or before June 30, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Dial & Save 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 Dial & Save shall file a compliance tariff with the Commission on or before June 16, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 3, 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 second day of June, 1995.

Notice of Conditional Approval of  
Dial & Save of New Hampshire, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 3, 1995, Dial & Save of New Hampshire, Inc. (Dial & Save), 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. 21,678 , issued in Docket No. DE 95-049, the Commission granted Dial & Save conditional approval to operate as of July 3 , 1995, subject to the right of the public and interested parties to comment on Dial & Save 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 Dial & Save's petition to do business in the State should submit written comments no later than June 29, 1995, 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\*06/02/95\*[80959]\*80 NH PUC 308\*United Wats, Inc.

[Go to End of 80959]

80 NH PUC 308

### **Re United Wats, Inc.**

DE 95-076

Order No. 21,679

New Hampshire Public Utilities Commission

June 2, 1995

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

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## 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 services. p. 309.

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## 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 309.

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BY THE COMMISSION:

## ORDER

[1, 2] On March 22, 1995, United Wats, Inc. (United), a Kansas 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.

United 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 United 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. United 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, United shall notify the Commission of the change.

5. United 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. United shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. United 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. United 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. United 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. United shall compensate the appropriate Local Exchange Company for all originating and terminating access used by United 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 United shall file the following statistics with the Commission, which will be treated as confidential with the exception of item g. (4) below.

**Page 309**

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 United to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that United shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than June 14, 1995, and an affidavit proving publication shall be filed with the Commission on or before June 30, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. United 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 United shall file a compliance tariff with the Commission on or before June 16, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 3, 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 second day of June, 1995.

Notice of Conditional Approval of  
United Wats, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 22, 1995, United Wats, Inc. (United), a Kansas 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. 21,679, issued in Docket No. DE 95-076, the Commission granted United

**Page 310**

conditional approval to operate as of July 3, 1995, subject to the right of the public and interested parties to comment on United 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 United's petition to do business in the State should submit written comments no later than June 29, 1995, 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\*06/06/95\*[80960]\*80 NH PUC 311\*Public Service Company of New Hampshire

[Go to End of 80960]

80 NH PUC 311

**Re Public Service Company of New Hampshire**

DR 95-022  
Order No. 21,680

New Hampshire Public Utilities Commission

June 6, 1995

ORDER granting temporary protective treatment of a draft purchased power agreement negotiated by an electric utility and a wood-fired small power producer.

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1. COGENERATION, § 17

[N.H.] Contracts — Power purchase transactions — Renegotiated draft — Protective treatment — Electric utility and wood-fired small power producer. p. 311.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — On temporary basis — Of draft power purchase agreement — Electric utility and wood-fired small power producer. p. 311.

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BY THE COMMISSION:

ORDER

[1, 2] On May 19, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) contract forms representing draft agreements between PSNH and Bridgewater Power Company, L.P. (Bridgewater). The contract forms were filed pursuant to Section 12 of the agreement entered into between the State of New Hampshire and Northeast Utilities and approved by the Commission pursuant to RSA 362-C:3. Concurrent with the draft contract, PSNH filed a Motion for Protective Order of the draft contract pursuant to RSA 91-A:5,IV (Supp. 1994) and N.H. Admin. R., Puc 204.08.

In its motion, PSNH states that the information should be afforded protective treatment because PSNH is currently negotiating with five other wood-fired facilities and access to the draft contract by these facilities or any other member of the public could "harm these separate negotiation efforts."

The motion requests that access to the draft contract be limited to "the Commissioners, Commission staff, the Attorney General's Office and the Office of the Consumer Advocate and its staff ...", which must keep the information in the draft confidential. All of the parties to this proceeding have concurred or raised no objection to the motion.

We recognize that the negotiations between PSNH and the small power producers have been extremely complex given that multiple parties are developing individual terms with

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PSNH and disclosure of one party's terms could affect the negotiations with another. We find that disclosure of the term sheets at this time will create a risk to the continued negotiations with the remaining small power producers. Therefore, we will grant PSNH's Motion for Protective Treatment.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order regarding the draft contract with Bridgewater Power Company, L.P. is GRANTED; and it is

FURTHER ORDERED, that this order is subject to reconsideration in light of RSA 91-A,

should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1995.

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NH.PUC\*06/06/95\*[80961]\*80 NH PUC 312\*Pennichuck Water Works, Inc.

[Go to End of 80961]

80 NH PUC 312

**Re Pennichuck Water Works, Inc.**

DR 95-046

Order No. 21,681

New Hampshire Public Utilities Commission

June 6, 1995

ORDER approving an additional two-week extension of the term of a special rate contract executed by a water utility and an industrial customer, Anheuser-Busch, Inc., pending the effective date of a newly negotiated rate contract.

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1. RATES, § 612

[N.H.] Water rate design — Large consumers — Industrial customer — Special long-term rate contract — Additional two-week extension of contract term — Pending effective date of entirely new rate contract — Special circumstances of customer as a factor — Reduction from 25 to 10 years for the term of the new contract. p. 313.

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BY THE COMMISSION:

ORDER

On February 27, 1995, Pennichuck Water Works, Inc. (Pennichuck) filed a petition with the New Hampshire Public Utilities Commission (Commission), requesting a 90 day extension to its existing special contract with Anheuser-Busch, Inc. (AB). The existing contract, a 25 year agreement dated March, 1969 and approved by the Commission on April 25, 1969, contained an expiration date of March 15, 1995. Pennichuck represented that the parties would complete negotiations and file a new contract (Second Contract) for Commission approval no later than June 15, 1995. By Order No. 21,564 dated March 7, 1995, the Commission granted an extension of the existing special contract between Pennichuck and Anheuser-Busch for 92 days, that is, until June 15, 1995. The order also required Pennichuck to submit its Second Contract no later than April 14, 1995.

On March 22, 1995, AB petitioned to intervene in the proceeding. On April 14, 1995,



Pennichuck filed testimony in support of the proposed Second Contract.

At the duly noticed prehearing conference held before the Commission on April 27, 1995, a proposed procedural schedule was submitted for Commission approval. In addition, Pennichuck, supported by AB, requested the existing contract be extended until July 1, 1995, because that was the planned effective date of the Second Contract. No other members of the public attended the prehearing conference, submitted written comments or requested to intervene in the proceeding. The Commission granted AB full intervenor status and approved the proposed Procedural Schedule.

At the technical session immediately following the prehearing conference, the Staff of

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the New Hampshire Public Utilities Commission (Staff) and the parties discussed the special circumstances which would continue to warrant a departure from Pennichuck's currently effective tariff. Staff sought assurance that AB is not part of a class of customers who should be served equally. Pennichuck agreed to submit written confirmation that the basis for the allocation to AB of 4.8% of Pennichuck's revenue requirement has not changed significantly since the preparation of its 1993 Cost of Service Study. In addition, Pennichuck and AB noted pre-filed information regarding AB's extraordinary volume of use.

[1] At the technical session Pennichuck reviewed the terms and conditions in the proposed Second Contract as outlined in its prefiled testimony. Major revisions to the contract provisions include reducing the duration from 25 to 10 years, reducing the daily capacity to be provided to AB, and revising the minimum payment provision which limits any decrease in the total amount paid by AB for water in a given year, as compared to the prior year.

Based on our review of the proposed Second Contract, the testimony filed by Pennichuck and Staff's recommendation, we find that AB represents a unique customer of Pennichuck. We note that no intervenor or other member of the public came forward with information to the contrary. Thus, special circumstances exist which justify a departure from Pennichuck's schedules of general application. We find that the departure described by the terms and conditions of the Second Contract is just and consistent with the public good in accordance with RSA 378:18.

Based on the foregoing, it is hereby

ORDERED, that the proposed Second Contract for Water Service between AB and Pennichuck is approved for effect on July 1, 1995; and it is

FURTHER ORDERED, that the existing special contract is extended until July 1, 1995.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Pennichuck Water Works, Inc., DR 95-046, Order No. 21,564, 80 NH PUC 124, Mar. 7, 1995.

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NH.PUC\*06/06/95\*[80962]\*80 NH PUC 313\*Frontier Communications International Inc.

[Go to End of 80962]

80 NH PUC 313

**Re Frontier Communications International Inc.**

DR 95-130

Order No. 21,682

New Hampshire Public Utilities Commission

June 6, 1995

ORDER approving an interexchange telephone carrier's plan to introduce its "Plan X" calling service, an outward-bound toll service providing flat, nondistance-sensitive rates billed in full minute increments.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Plan X" calling service — Flat, nondistance-sensitive rates — Billing in full minute increments — Interexchange carrier. p. 313.

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BY THE COMMISSION:

ORDER

[1] On May 9, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Frontier Communications International Inc. (Frontier) requesting authority to introduce its Plan X service for effect June 9, 1995.

Plan X is a non-distance sensitive, flat-rated outbound toll service. Service is billed

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through the local exchange company. The rates are 25 cents per minute from 7 a.m. to but not including 7 p.m., Monday through Friday and 11 cents per minute for all other times. Usage is billed in full minute increments.

We find that the proposed changes are in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Frontier's Plan X service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No. 1 are approved for

effect as filed:

3rd Revised Page 2  
2nd Revised Page 31  
Original Page 56.C;

and it is

FURTHER ORDERED, that Frontier file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1995.

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NH.PUC\*06/06/95\*[80963]\*80 NH PUC 314\*Freedom Electric Company

[Go to End of 80963]

80 NH PUC 314

**Re Freedom Electric Company**

DE 94-163

Order No. 21,683

161 PUR4th 491

New Hampshire Public Utilities Commission

June 6, 1995

ORDER resolving threshold legal and jurisdictional issues arising from a proposal by an energy corporation to purchase wholesale electric power for resale to retail customers currently served by a franchised electric utility, Public Service Company of New Hampshire (PSNH).

[The energy corporation, Freedom Electric Company, plans to purchase wholesale electric power under the jurisdiction of the Federal Energy Regulatory Commission (FERC) for delivery to the PSNH transmission system and to resell the power at retail to certain end users that are located in proximity to PSNH's transmission system. In order to accomplish such delivery and resale, Freedom intends to obtain an agreement with PSNH — compelled if necessary by an order from the FERC — that would provide for the transmission of the wholesale power by PSNH from the point(s) of entry to the PSNH system to the point of interconnection of PSNH's 34.5-kilovolt transmission system *with certain very limited distribution facilities to be owned or controlled by the end users, or, in the alternative, by Freedom itself.*]

Commission rules that the energy corporation would be a public utility under state law if it were to operate as represented in its proposal. It finds that Freedom intends to own or operate plant or equipment sufficient to bring it within the statutory definition of public utility and hence would be required to obtain certification from the commission before commencing operation.

Commission cautions that its finding should not be read to suggest that an entity seeking to

be a marketer or broker of electricity would qualify as a public utility under state law. On the contrary, the commission finds that the current statutory framework makes no express provision for the regulation of electricity marketers or brokers.

Commission also rules that electric utilities have no legally enforceable right to franchise exclusivity. It acknowledges that, historically, utility franchises have been considered exclusive in nature and that its own orders granting franchises have referred to "exclusive service

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territories." Nevertheless, the commission finds that franchise orders containing grants of exclusivity cannot be viewed as permanent, given its express statutory authority to alter, amend, suspend, annul, set aside, or otherwise modify any of its orders. Moreover, the commission finds no authority which mandates franchise exclusivity or which prohibits authorization of competition in the provision of electric utility service. In fact, the commission finds authority to permit competition in state case law, state statutes, and state constitutional provisions.

Commission concludes that it must grant franchises to companies applying to compete with currently franchised utilities when it finds that to do so would be in the public good.

Commission questions whether Freedom is entitled under the Energy Policy Act of 1992 (EPACT) to compel PSNH to provide the transmission access required to complete the proposed resale transactions, but acknowledges that the question is for the FERC to decide. Freedom is directed to submit a request for a declaratory ruling or other determination from the FERC on the issue.

Freedom expresses an intent to reorganize as a New Hampshire corporation, rendering moot the question of whether Freedom, as an out-of-state corporation, may be authorized to operate in New Hampshire.

A dissenting commissioner argues that the commission lacks authority to declare electric franchises nonexclusive.

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#### 1. PUBLIC UTILITIES, § 33

[N.H.] Regulatory status — Factors — Ownership, control, and operation of utility facilities and equipment — Retail sales to end users — Competing electric service provider. p. 321.

#### 2. PUBLIC UTILITIES, § 52

[N.H.] Regulatory status — Brokers and marketers — Exemptions from regulation — Factors — Lack of ownership and control of utility facilities — No retail sales directly to end users. p. 321.

#### 3. PUBLIC UTILITIES, § 73

[N.H.] Regulatory status — Electric — Competing provider — Retail sales — Ownership of plant or equipment as a factor. p. 321.

#### 4. PUBLIC UTILITIES, § 73

[N.H.] Regulatory status — Electric — Marketers or brokers — Retail sales — Discussion. p. 321.

5. CERTIFICATES, § 26

[N.H.] When required — Electric service — Competing provider — Retail sales. p. 321.

6. CERTIFICATES, § 102

[N.H.] Energy corporation — Electric service — Competing provider — Retail sales. p. 321.

7. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Retail sales — Competing providers — Rates — Service terms and conditions. p. 322.

8. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric service — Retail sales — Competing providers. p. 322.

9. SERVICE, § 320

[N.H.] Electric — Retail sales — By competing providers — Jurisdiction and powers. p. 322.

10. RATES, § 90

[N.H.] Commission jurisdiction — Retail electric sales — Competing providers. p. 322.

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11. RATES, § 339

[N.H.] Electric rate design — Retail sales service — By competing providers — Jurisdiction and powers. p. 322.

12. ELECTRICITY, § 2

[N.H.] Jurisdiction and powers — Federal versus state commission authorities — Restructuring and competition — Retail wheeling — Discussion. p. 322.

13. MONOPOLY AND COMPETITION, § 23

[N.H.] Monopolistic rights — Retail electric service — Denial of absolute franchise exclusivity — Power to grant competing franchises — Public good analysis. p. 323.

14. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — No absolute right to franchise exclusivity — Retail electric service — Power to grant competing franchises — Public good analysis. p. 323.

15. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition — Rejection of concept of absolute franchise exclusivity — Power to grant competing franchises — Public good analysis. p. 323.

16. MONOPOLY AND COMPETITION, § 11

[N.H.] Commission jurisdiction — To grant authority to compete — Retail competition — Denial of absolute franchise exclusivity. p. 323.

17. FRANCHISES, § 43

[N.H.] Construction and operation — Provisions as to exclusivity — Lack of enforcement by commission — Power of commission to grant competing franchises — Retail competition. p. 323.

18. ELECTRICITY, § 2

[N.H.] Jurisdiction and powers — Federal Energy Regulatory Commission — To compel transmission access — Retail electric competition — Energy Policy Act of 1992 — Discussion. p. 326.

19. ELECTRICITY, § 1

[N.H.] Retail competition — Transmission access — Retail service — Energy Policy Act of 1992. p. 326.

20. MONOPOLY AND COMPETITION, § 23

[N.H.] Monopolistic rights — Retail electric service — Preservation of franchise exclusivity — No power to grant competing franchises — Dissenting opinion. p. 328.

21. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Expectation of franchise exclusivity — Retail electric service — No power to grant competing franchises — Dissenting opinion. p. 328.

22. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition — Right to franchise exclusivity — No power to grant competing franchises — Dissenting opinion. p. 328.

23. MONOPOLY AND COMPETITION, § 11

[N.H.] Commission jurisdiction — To deny authority to compete — Retail competition — Preservation of concept of franchise exclusivity — Dissenting opinion. p. 328.

24. FRANCHISES, § 43

[N.H.] Construction and operation — Provisions as to exclusivity — Commission duty to enforce — No power of commission to grant competing franchises — Preservation of concept of franchise exclusivity — Dissenting opinion. p. 328.

APPEARANCES: Full Parties: James T. Rodier, Esq. for Freedom Electric Company; Robert A. Bersak, Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; LeBoeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. for Concord Electric Company, Exeter and Hampton Electric Company and UNITIL Power Corporation; Broderick and Dean by

Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Steven E. Thomas, Esq. for Granite State Electric Company; Kenneth C. Picton, Esq. for Connecticut Valley Electric Company; McLane, Graf, Raulerson and Middleton by Steven E. Camerino, Esq. for EnerDev, Inc.; Joshua L. Gordon, Esq. for Campaign for Ratepayers Rights; Edward L. Dupont for Cabletron Systems, Inc.; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Limited Parties: John, Hengerer & Esposito by Peter G. Esposito, Esq. for Electric Clearinghouse and Eclipse Energy, Inc.; Orr and Reno by Howard M. Moffett, Esq. for Granite State Hydropower Association; R. Craig Williams for Elliott and Williams Roses, Inc.; Staff: Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On August 1, 1994, Freedom Electric Company (Freedom) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Permission and Approval to do Business on a Limited Basis as a Public Utility in New Hampshire. The Commission issued an order of notice on August 30, 1994 requesting further detail from Freedom before setting the matter for a prehearing conference. The order of notice directed Freedom to address a number of issues, including Freedom's managerial, technical and financial structure, greater detail regarding its operations and facilities, Federal Energy Regulatory Commission (FERC) or Commission tariffs Freedom would use, conservation and load management programs and how Freedom would define and pay for "transition costs", if any, as a result of its operations. As ordered, Freedom supplemented its filing on October 7, 1994.

The Commission held a duly noticed prehearing conference on October 26, 1994 at which the Commission addressed requests for intervention and a procedural schedule. The procedural schedule adopted by the Commission called for memoranda of law to be submitted by all intervenors and the Commission Staff (Staff) by November 23, 1994 addressing threshold jurisdictional issues regarding Freedom's organization, the role of the Commission and FERC, and the respective roles of state and federal regulatory authorities. The schedule also provided for a Reply Memorandum from Freedom no later than December 23, 1994 and oral argument on January 10, 1995.

The issues to be addressed in memoranda were as follows:

- 1) Whether Freedom, as an out of state corporation may, in fact, be authorized to operate in New Hampshire, given the restrictions of RSA 374:24.
- 2) The extent of the Commission's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.
- 3) The extent of FERC's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.
- 4) The rights of PSNH, if any, to claims of exclusivity within its franchise territory.
- 5) The extent to which the Energy Policy Act of 1992 (EPACT)<sup>1(30)</sup> allows access to

PSNH's transmission system for Freedom's operations.

Order No. 21,419 (November 8, 1994).

The Commission granted requests for full intervention by the following parties: Public Service Company of New Hampshire (PSNH); Concord Electric Company, Exeter and Hampton Electric Company and UNITIL Power Corporation (collectively the UNITIL Companies); New Hampshire Electric Cooperative, Inc. (NHEC); Granite State Electric Company (GSEC); Connecticut Valley Electric Company (CVEC); EnerDev, Inc. (EnerDev); Campaign

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for Ratepayers Rights (CRR); Cabletron Systems, Inc. (Cabletron); Business and Industry Association of New Hampshire; and Conservation Law Foundation. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor in Commission cases. The Commission granted requests for limited intervention from Eclipse Energy, Inc., Electric Clearinghouse, Granite State Hydropower Association and Elliott and Williams Roses, Inc.

As noticed, the Commission heard oral arguments on the memoranda of law and reply memorandum on January 10, 1995. This order will address the threshold jurisdictional issues raised by Freedom's Petition.

## II. POSITIONS OF THE PARTIES AND STAFF

Due to the number of parties and complexity of the issues raised in this proceeding, we will only summarize the arguments presented relative to the five issues discussed in Section I. For a more detailed description of the positions presented, one should review the memoranda of law and reply memorandum and transcript of the January 10, 1995 oral argument.

Issue one: Whether Freedom, as an out of state corporation may, in fact, be authorized to operate in NH, given the restrictions of RSA 374:24.

Many parties and Staff argued that Freedom, as an out of state corporation, was barred from being certified as a public utility in the State of New Hampshire pursuant to RSA 374:24. Freedom filed an amendment to its petition stating its intent to incorporate under New Hampshire law.

Issue two: The extent of the Commission's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.

No participant (including Freedom) argued that Freedom's retail sales to end users would be exempt from Commission jurisdiction. GSEC noted that one aspect of the Commission's regulation of the retail operations of Freedom would be a determination of PSNH's stranded investments, citing FERC's encouragement to states to consider recovery of stranded investments. *Recovery of Stranded Costs by Public Utility Transmitting Utilities, FERC Statutes and Regulations*, ¶32,507 at 32,787 (1994).

Issue three: The extent of FERC's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.

No participant (including Freedom) argued that FERC would have jurisdiction over the rates, terms and conditions of Freedom's retail sales.



PSNH argued at page 17 of its brief, however, that FERC has exclusive jurisdiction over "transactions involving the transmission of electricity over the interstate grid (including the transmission that [Freedom] would seek from PSNH) that preempts any State authority to regulate in this area." Freedom disagreed with PSNH's position, arguing that EPACT did not alter states' current authority regarding retail wheeling.

OCA and Freedom both contended that any assertion of preemption by FERC must apply only to transmission access and not to other aspects of retail wheeling. In determining transmission access rates, FERC must set rates which cover all costs of transmission, promote economically efficient transmission and generation, be just and reasonable and not unduly discriminatory, and ensure costs in providing wholesale transmission are recovered from the entity seeking access (and not from the transmitting utility's existing wholesale, retail and transmission customers). *See* 16 U.S.C.A. § 824k(a). FERC must also consider the public good and impact on remaining ratepayers, including any impact on reliability. OCA noted that because FERC's wheeling rates should be designed to offset legitimate losses incurred by PSNH, Freedom's energy cost advantage might be lessened, resulting in similar rates for service.

Issue four: The rights of PSNH, if any, to claims of exclusivity within its franchise territory.

PSNH, GSEC and NHEC argued that franchise territories are exclusive as a matter of law. PSNH asserted that by issuance of the electric service territory franchise map, the Commission has implicitly recognized the exclusivity of

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franchise territories. It argued that because a franchise constitutes a property right, it must be fairly compensated for any loss of that property right. PSNH also asserted that pursuant to RSA 374:28, the Commission may only take away a franchise if there has been inadequate service or failure to serve, neither of which are alleged here.

According to PSNH, the Commission's ruling in DE 90-002, the Telecommunications Competition Docket, which authorizes competition in intraLATA toll service when found to be in the public good, is inapplicable. PSNH noted that the petitioner AT&T was seeking an "add on service" to existing services. It argued that because the electric industry has seen less robust development of technological change compared to the telecommunications industry, the instant case is distinguishable from the circumstances which led to the DE 90-002 decision. Finally, PSNH argued that eliminating franchise exclusivity would abrogate the Rate Agreement, because a financial threat during the fixed rate period would undermine the basis for the Rate Agreement.

NHEC posed a number of questions which would have to be addressed if "direct retail competition" were allowed within a utility franchise territory. Could the State collect a franchise tax on electricity sales if franchises are non-exclusive? Could the Commission regulate retail rates or other operations of an existing utility if there is competition in the franchise? Could the Commission continue to impose an obligation to serve on existing utilities if there is competition in the franchise? Must rates be non-discriminatory if there is competition in the franchise? NHEC contends the Freedom petition does not establish an appropriate forum for analysis of these legal and policy issues.

In contrast, EnerDev, Cabletron and CRR argued that franchise territories are not exclusive. EnerDev asserted that the Commission's grant of a franchise does not necessarily mean it is a grant of exclusivity for all time, though practical considerations in the electric industry historically may have led to an assumption that franchises were exclusive. EnerDev argued that we are now at a point at which competition is technologically and economically feasible. Claims of exclusivity should not be used to impede competition at the very point at which it has become possible.

Cabletron stated that PSNH has no claim to franchise exclusivity, in that RSA 374:26 requires an analysis of whether a franchise application is in the public good and does not confer exclusive rights upon a franchise.

CRR also argued that franchises are not exclusive, citing the State Constitutional provision which articulates a policy of encouraging competition, Part II, Article 83. CRR specifically noted that while electric distribution was cited as an example of a natural monopoly in *Appeal of Omni Communications, Inc.*, 122 N.H. 860 (1982), electric generation was not cited. In CRR's view, a franchise belongs to the public, for public use, and the public retains the rights to its disposition. CRR found the Commission's ruling in the Telecommunications Competition Docket favors competition, but competition in the electric industry must be tempered by public policy favoring energy conservation and the interests of "captive ratepayers".

OCA argued that franchises are not necessarily exclusive. In OCA's view, exclusivity of franchise will turn on whether the regulatory compact constitutes a contractual relationship between the state and the utility, whether a change in law impairs that relationship and, if so, whether the impairment is substantial. In OCA's view, the Commission must also evaluate what the utility could reasonably have expected (*i.e.*, could a regulated utility reasonably have expected deregulated prices) and whether there will be an adverse impact on rates for the business community and/or residential customers due to "cream skimming" of particular customers.

According to the Staff, determining exclusivity requires a public good analysis, and utilities have no legally enforceable right to maintain exclusivity. Franchises granted in the past should not be considered an exclusive grant of indefinite duration, if the Commission finds that the public good is now better served by competition.

Issue five: The extent to which EPACT allows access to PSNH's transmission system

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for Freedom's operations.

PSNH and OCA argued that Freedom would be precluded from obtaining transmission access because EPACT does not address retail sales and it prohibits sham wholesale transactions. They asserted that Freedom seeks to sell directly to an ultimate customer but does not qualify for transmission system access because *inter alia*, it was not operating as a utility as of October 24, 1992, the effective date of EPACT. 16 U.S.C.A. § 824k(h). PSNH and OCA believe this is the type of sham transaction Congress sought to prohibit when enacting EPACT and, therefore, it should not be allowed.

Staff expressed similar concerns but conceded some uncertainty on the question. As Staff noted, EPACT clearly authorizes an electric utility to access the transmission system of a transmitting utility, but does not require a transmitting utility to transmit "directly to an ultimate consumer" (16 U.S.C.A. § 824K(h)) or to transmit to or for the benefit of an ultimate consumer unless certain conditions are met. 16 U.S.C.A. § 824K(8). Under the same analysis employed by PSNH and OCA, in Staff's view Freedom appears not to meet those terms and is not entitled to access PSNH's transmission system.

Staff noted, however, that EPACT also states "nothing in this subsection shall affect any authority ... under State law concerning the transmission of electric energy directly to an ultimate consumer" which, in Staff's view, authorizes states to allow retail wheeling if they so choose. Because FERC can only order transmission access under certain circumstances as noted above, however, state commissions may not be free to authorize transmission of electricity to an ultimate consumer if the delineated conditions are not met, as there would be no means of transmitting the power from the generation source to the end-user. In evaluating what may constitute an ambiguity in the statute, Staff cites legislative debate indicating that Congress did not intend through EPACT to authorize an operation such as Freedom. Staff, therefore, recommended that a petition be filed with FERC, the New Hampshire Supreme Court or the appropriate federal court for declaratory ruling on whether the type of service envisioned by Freedom constitutes a sham transaction or is legitimately the type of competitive access EPACT was designed to encourage.

EPACT, according to CRR, clearly stated that an electric utility may apply to FERC for a transmission order which FERC may grant if in its discretion, the public interest is served and the transmitting utility recovers costs incurred in connection with transmission.

### III. COMMISSION ANALYSIS

We appreciate the thoroughness with which the Parties and Staff addressed these threshold issues in a case of first impression before us.

Although the written submissions paid relatively little attention to the nature of Freedom's operations and whether such activities constitute those of a public utility pursuant to RSA 362:2, there was considerable focus on the issue at oral argument. We have considered at length the initial questions raised by Freedom's proposed operations and the representations made by Freedom during the hearing on this matter. Based on those representations and in light of the New Hampshire legislature's definition of a public utility in RSA 362:2, we conclude that what Freedom proposes to undertake constitutes a business which would qualify it as a public utility subject to this Commission's jurisdiction, assuming we find it to be in the public interest to authorize a competitive provider of retail electric service.

RSA 362:2 states as follows:

*The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, owning, operating or managing any plant or equipment, or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the*

*generation, transmission or sale of electricity ultimately sold to the public, or owning or operating any pipeline, including pumping*

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stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products, cooperative marketing associations organized for purposes of rural electrification, or any other business, except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction.

RSA 362:2 (emphasis added) .

**[1-6]** In order to constitute an electric utility under this statute, therefore, one must own, operate or manage plant or equipment for the manufacture, furnishing, generation, transmission or sale of electricity ultimately sold to the public. Merely being a marketer arranging for supply of electricity or broker of electric supply transactions does not constitute a public utility under New Hampshire law. As Freedom correctly noted, "[gas marketers] have never seen any need to be certified by this Commission or get approval to sell gas..." Transcript at 10-11.

Although some of what Freedom intends to do may fall within the role of a marketer or broker, representations made by Mr. Rodier on behalf of Freedom in the petition and at oral argument convince us that other operations anticipated by Freedom would fall within the statutory definition of a public utility. For example:

"[Freedom plans to] purchase wholesale electric power ... for delivery to the PSNH transmission system and to resell it at retail to certain end-users that are located in proximity to PSNH's transmission system. In order to accomplish such delivery and resale, Freedom will obtain an agreement with PSNH, compelled if necessary by an order from the FERC, that would provide for the transmission of the wholesale power by PSNH from the point(s) of entry to the PSNH system to the point of interconnection on PSNH's 34.5 kv transmission system *with certain very limited distribution facilities to be owned or controlled by the end-users or in the alternative by Freedom.*" (emphasis added) October 7, 1994 filing, p. 2.

"... the marketers will tell you that the sale is taking place in Houston or outside of the state ... the marketers would say they don't have any facilities in the state ... the short answer is that Freedom will have facilities in the state." Transcript at 11.

"... everybody agrees that Congress prohibited the FERC from issuing a wheeling order that would compel PSNH to wheel power directly to an ultimate customer and Freedom explains why it is not doing that. The power would be coming into Freedom. Freedom would resell it off of its own limited facilities to the enduser." Transcript at 26.

"Now, Freedom can also ... get a wheeling order because it's going to own the downstream facilities. Freedom is going to take delivery from PSNH and then, over its own facilities, transfer over its own facilities, in a sense it may own it or lease it from the customer or whatever. It would own or control the downstream facilities." Transcript at 28.

"Freedom would have to take service out at the street. There would have to be a metering point there probably on the pole or something like that. Freedom would control that service drop that now goes down the hill formerly owned by PSNH that would deliver the power to the enduser. The enduser has this shed down there with their existing metering equipment and existing switching equipment in it, and there's where the customer would take title and take delivery of the power." Transcript at 30.

Q. "So, would Freedom then install the service drop from the 34 kv line?"

A. "If it had to ... as far as who has to be the one to run that service drop down the hill to the enduser, on the enduser's property I might add ... that would probably be Freedom, and to do that we would get somebody like Seward Electric Construction..." Transcript at 30-31.

"... if we can't use their facilities for some reason ... we would just put another one up." Transcript at 32-33.

"If the customer is going to pay Seward 10 grand to put up a service drop ... that's something Freedom doesn't have to raise

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money for and Freedom just leases it back from the customer and gets the right to use it." Transcript at 34-35.

Based on these representations, we conclude that Freedom intends to own or operate plant or equipment sufficient to bring it within the meaning of RSA 362:2 and hence subject to our jurisdiction.

This finding should not be read to suggest that we believe that one who seeks only to be a marketer or broker of electricity must also qualify as a public utility under existing statutes. On the contrary, we find that the current statutory framework makes no express provision for the regulation of electricity brokers or marketers. We believe that if we enter an environment which allows retail customers to arrange for electric power from competitors of the existing monopoly provider, there will likely be a role for marketers and brokers of electricity. The extent, if any, to which those marketers and brokers will be regulated by this Commission has yet to be addressed by the legislature.

Freedom seeks a more expansive role than that of marketer or broker, a role which places it within the definition of public utility and which requires certification by this Commission before it can commence its operations. *See* RSAs 362:2 and 374:22. Notwithstanding our determination that Freedom must be regulated by this Commission, we are mindful that its plans for operation are different from those electric utilities that we have regulated since 1911. The form and degree of regulation of a competitive utility entering the market in a limited manner as envisioned by Freedom has not yet been addressed. Accordingly, the remainder of this docket must consider several questions including, but not limited to: the competitor's obligation to serve the public, its use of tariffs and/or special contracts, and the pricing of transmission and distribution services needed to serve customers within the State.

Having found that Freedom's operations, if approved, would constitute those of a public utility, we will now address the five threshold questions as they were delineated in Section I above.

Issue one: Whether Freedom, as an out of state corporation may, in fact, be authorized to operate in New Hampshire, given the restrictions of RSA 374:24.

Although Freedom initially argued that it need not incorporate under New Hampshire law pursuant to RSA 374-A:2, Freedom stated on the record its intention to reorganize as a New Hampshire corporation. This renders moot the first question posed in our order of notice if Freedom carries out its intentions.

Issue two: The extent of the Commission's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.

**[7-12]** Any entity that seeks to operate as an electric utility providing retail sales and service will be subject to the jurisdiction of this Commission. *See* RSA 374:3. While FERC may assert authority over some or all of a public utility's wholesale tariffs and terms and conditions of wholesale transactions, the Commission retains full authority over the utility's retail operations. *Id.* Any entity, including Freedom, that becomes a competitive provider of retail electric service authorized pursuant to RSA 362:2, will be subject to all pertinent New Hampshire statutes, administrative rules and Commission orders.

Issue three: The extent of FERC's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.

FERC is now engaged in at least one rulemaking and is considering dockets that will further develop the standards by which a utility engages in wholesale wheeling of power. *See* FERC Notice of Proposed Rulemaking (NOPR) Docket Nos. RM 95-8-000 and 94-7-001. In addition, the courts are likely to be asked to rule on a number of FERC and state commission decisions regarding retail and wholesale wheeling. Yet to be determined is exactly where the lines between state and federal jurisdiction will be drawn, particularly in those transactions which have both wholesale and retail characteristics. Both FERC and state commissions will have to determine recovery of stranded investments, if any, and set rates for the use of the utilities' transmission and distribution systems.

Some utilities have argued that EPACT preempts states from authorizing retail wheeling. We disagree. EPACT's "savings clause"

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states as follows: "Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to any ultimate consumer." 16 U.S.C.A. §824k(h). We find this language to leave to the states the determination of whether to allow retail wheeling and, if so, under what terms and conditions. The Michigan Public Service Commission (Cases No. U-10143 and U-10176, April 11, 1994), the Connecticut Department of Public Utility Control (Docket No. 93-09-29, Sept. 9, 1994) and the California Public Utilities Commission (Dockets R. 94-04-031 and I. 94-04-032, April 20, 1994) have reached similar conclusions.

EPACT does not, however, resolve all jurisdictional issues. Among the issues yet to be determined is the interplay between wholesale and retail wheeling as many transactions may in an increasingly competitive market involve both. For example, it is unclear what tariff or tariffs and what regulatory authority or authorities would govern a transaction which crosses state borders and involves the transmission to a reseller of electricity who in turn ultimately sells that electricity to a consumer. This and other questions presently have no clear cut answers. We expect answers to be forthcoming as FERC proceeds with its NOPR dockets and as individual states attempt to address issues of electric industry restructuring and competition.

Issue four: The rights of PSNH, if any, to claims of exclusivity within its franchise territory.

[13-17] We do not believe that utility franchises are exclusive as a matter of law. We recognize that historically utility franchises have been considered exclusive in nature and that our orders granting franchises have referred to "exclusive service territories". *See, e.g., Re: Public Service Company of New Hampshire*, 66 NHPUC 103, 105 (1981). However, franchise orders containing grants of exclusivity cannot be viewed as permanent given the Commission's express authority to "alter, amend, suspend, annul, set aside or otherwise modify any order made by it." RSA 365:28. Moreover, we find no authority which mandates franchise exclusivity or which prohibits authorization of competition in the provision of electric utility services; in fact, we find authority to permit competition, as noted below.

Although the New Hampshire Supreme Court has not faced this question squarely, it has ruled on aspects of franchise exclusivity in a way which supports our view that while franchises may historically have been considered exclusive as a matter of practice, they were not so as a matter of law. For example, in discussing the taxation of electric and gas franchises, the Court stated:

Argument has been advanced to the effect that such franchises are not taxable because the right granted is not exclusive, because the value thereof attaches to the physical property, because rates and charges are regulated by public authority and because franchises cannot be treated as assets for ratemaking purposes.

While it is true that *the grant is not exclusive* in the sense that the state cannot give a like grant to a competitor, it is also true that the whole policy of modern public utility legislation and control is against any such second grant. In theory, competition may have to be met. As a practical proposition, known to and acted upon by everybody, no competition will be permitted ....

*Opinion of the Justices*, 84 N.H. 559, 567 (1930) (emphasis added).

The Court in 1930 did not find that the Commission lacked authority to grant competing franchises; rather, it found that as a practical matter such second grants were unlikely given that the existing franchises were natural monopolies. The Court recognized that while monopoly franchises have been maintained for "sound economic reasons" they do not belong to the utilities as a matter of "common right", they are acquired only "by the state's grant." *See, Opinion of the Justices*, 84 N.H. at 567-568.

Our authority to grant franchises derives from RSAs 374:22 and 374:26. Under RSA 374:22, I, no company may commence business as a public utility in this state unless it first receives



permission and approval from the Commission. Such permission is granted

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whenever the Commission, after due hearing, finds that such business "would be for the public good, and not otherwise". RSA 374:26. In addition, the Commission "may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest." *Id.*

There is no statute that provides that the authorization of a public utility to serve a particular area automatically confers an exclusive right to serve that area. The statutes that came closest to even implying that electric utility franchises are intended to be exclusive were enacted in 1977 to create an orderly process by which the entire state would be divided into clearly defined service territories. Those statutes were then repealed in 1989. *See* RSA 374:22-a through c (repealed 1989). Even those statutes explicitly contemplated that multiple companies might serve a single area. Further, RSA 374:22-c, IV provided for circumstances under which one electric utility could, with Commission approval, extend its facilities into the service territory of another electric utility.

A plain reading of RSA 374:26 reveals that we must grant franchises to companies applying to compete with currently franchised utilities when we find that the applicant's operation would be in the public good. The Commission arrived at the same conclusion in *Re: AT&T Communications of New Hampshire*, 75 NHPUC 670 (1990). In *AT&T*, the Commission found that "our statutory franchising authority enables us to authorize competition among regulated utilities." *AT&T*, 75 NHPUC at 673. The Commission further found this statutory construction to be consistent with the policy favoring competition clearly expressed in Part II, Article 83 of the New Hampshire Constitution which provides as follows:

Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.

The New Hampshire Supreme Court has recognized that the above-referenced constitutional provision establishes "that free enterprise and the market economy are constitutional rights in this state." *New England Household Moving and Storage, Inc. v. Public Util. Comm'n*, 117 N.H. 1038, 1041 (1977).

Our unique state constitutional directive favoring competition, coupled with the lack of authority mandating franchise exclusivity or prohibiting competition and the broad language of RSA 374:26, lead us to conclude that PSNH possesses no exclusive franchise rights as a matter of law. In addition, to the extent that any Commission order purports to have granted such franchise exclusivity to PSNH, those orders are clearly subject to modification pursuant to RSA 365:28. This is not to say that Freedom automatically gains the right to compete with PSNH or any other currently franchised electric utility. We must evaluate any petition for authorization to compete within a currently franchised service territory on the basis of the merits of the petition and whether its approval would serve the public good. *See* RSA 374:26. Our "public good" analysis will address all relevant factors including the effect the petition's approval would have upon the existing utility and its customers. However, this factual analysis must be made against



the backdrop of the state constitutional provision which favors competition.

The policy favoring competition which is embodied in New Hampshire Constitution, Part II, Article 83 led our Supreme Court in 1977 to hold that "the desirability of additional competition" is among the factors to be considered in deciding whether to grant a competitor's petition to provide household goods carrier service. *See New England Household Moving*, 117 NH at 1041. The Court further noted that a legislative report issued that year found that regulatory boards may be "raising barriers to entrance into business and may be out of step with legislative intent by being `protectionist of their trade and limit[ing] competition.'" *Id.* (citations omitted).

Again, in 1982, the Supreme Court found that in the absence of legislative authority, the Commission's attempt to regulate radio paging devices (commonly known as "beepers") was an "interference and disruption of free market private enterprise." *Appeal of Omni Communications*, 122 N.H. 860, 863 (1982). In

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reaching its decision in *Omni*, the Court discussed the origins of Part II, Article 83 of the New Hampshire Constitution and concluded that it "declares our fundamental preference for free enterprise." *Omni*, 122 N.H. at 862.

Although the *New England Household Moving* and *Omni* decisions are not directly on point, we find the reasoning articulated therein to be relevant as well as instructive. We recognize that utility regulation was designed by the legislature to "oversee and regulate those few necessary monopolies so that the constitutional rights of free trade and private enterprise are disrupted as little as possible." *Omni*, 122 N.H. at 863. However, it is our belief that regulation should not be regarded as an unadaptable structure. Utility regulation should exist in its present form only as long as the need for a natural monopoly exists. *Id.* As the electric industry changes, we should not artificially maintain what was put in place to accomplish far different goals. *See Re New England Telephone and Telegraph Company*, 76 NHPUC 393, 410-414 (1991). Moreover, we find nothing in the law to prevent the form of economic regulation from changing when the underlying reasons for maintaining a monopoly changes. *See, e.g., Opinion of the Justices*, 84 N.H. 559, 567-568 (1930) (monopoly franchises exist for "sound economic reasons" and not as a matter of "common right").

As we noted above, in 1930, the New Hampshire Supreme Court decided that while it was theoretically possible under the law to permit competing electric franchises, as a practical matter "no competition will be permitted." *Opinion of the Justices*, 84 NH at 567. Since 1930 we have witnessed significant changes in the provision of electric services. Theoretical possibilities of the 1930s are now practical realities, and our exercise of legislative authority must reflect changing times.

The Court's 1930 holding was predicated in part on the assumption that competing franchises would not be granted because they would result in investment in duplicative facilities or other economic harm. However, the recent experience in electricity generation suggests that facilities are as likely to be supplemental as duplicative, and negotiations involving regional transmission arrangements indicate that competing companies are as likely to lease existing facilities as to construct independent parallel lines. Moreover, we do not believe that we are encouraging

duplication of investment by this order. In fact, we continue to view the construction of redundant or parallel utility lines with disfavor as we did in *Ashland Electric Department*, DE 94-005, Order No. 21,473 (December 21, 1994) and will prohibit such duplication unless the public interest requires otherwise.

While the electric industry has seen less dramatic technological changes than has the telecommunications industry, its technology has nonetheless changed since the 1930's. The Public Utility Regulatory Policies Act of 1978, initially enacted to encourage investment in renewable resources and promote the efficiencies of cogeneration, has resulted in the development of a thriving market of non-utility sources of generation of all types and increased competition in wholesale utility markets. We have over one hundred renewable resource-based small power producers operating within New Hampshire alone, meeting reliability standards. We see on the horizon further developments in cogeneration, fuel cells, photovoltaics and other experimental technologies. We have operated for years under a regional system of coordinated dispatch and uniform reliability. This operation may allow competitive wholesale transactions throughout the northeast.

There can be no question there is a fundamental change taking place in regulatory thinking regarding the potential for competition in electric services, as demonstrated by state, national and international studies, legislative enactments and experimental programs. *See e.g.*, the FERC Notice of Proposed Rulemaking Docket Nos. RM 95-8-000 and 94-7-001, the Commission's own Roundtable on Competition in the Electric Industry and consideration of related issues in Senate Bill 168-FN. We believe that our determination that electric franchises are not exclusive *per se* is consistent with this change in regulatory thinking and consistent with the provisions of New Hampshire law cited in this order.

PSNH and others argue that because a

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franchise constitutes a property right, a utility must be fairly compensated for any loss of that property right. While a franchise may possess some attributes of a property right, we do not agree that allowing competition in a franchise area results in a taking of that right, as the franchise had not been an exclusive one as a matter of law. As stated previously, we do not believe that the granting of a franchise to serve constitutes an exclusive right to be the only provider of service in that territory for all time. There is no statutory mandate of exclusivity or prohibition against competitive providers within a franchise territory. We believe that to read such a limitation into our statutes would be inconsistent with New Hampshire law and would conflict with the policy directive of the New Hampshire Constitution.

PSNH argued that Freedom's petition to operate as a public utility within PSNH's service area implicitly constitutes a petition to revoke PSNH's franchise. PSNH asserted that pursuant to RSA 374:28, the Commission may only revoke a franchise if there has been inadequate service or failure to serve; because neither of these assertions have been made, the Commission cannot take away its franchise. We disagree. By this order we are neither revoking PSNH's franchise nor prohibiting it from serving within its territory. PSNH continues to have the right to serve within the territory, but, depending on the outcome of our public good analysis, that right to serve may

not be exclusive. The degree to which and the conditions under which competition is allowed are obviously key factors in determining the extent of a utility's operations within the franchise. However, allowing a competitor within a utility's franchise territory is not, in our view, synonymous with the franchise revocation process contemplated by RSA 374:28.

Finally, PSNH asserted that eliminating franchise exclusivity would abrogate the Rate Agreement between Northeast Utilities/PSNH and the State of New Hampshire adopted by the State pursuant to RSA 362-C. In PSNH's view, competition within a franchise "would amount to a breach of the Agreement." PSNH brief, p. 21. In support of this claim, PSNH turns to RSA 362-C:6 which precludes any Commission action which "would alter, amend, suspend, annul, set aside or otherwise modify such approval or result in the fixing of rates other than in the manner prescribed in the agreement ... " We find PSNH's conclusion is the product of an incorrect reading of that language. By entertaining a petition for competitive provision of electric service we are in no way altering or amending the way in which rates are set for PSNH. We also disagree that the intent of the Rate Agreement compels exclusivity of PSNH's franchise. Certainly we do not intend to undermine the basis for the Rate Agreement and believe that the potential authorization of a competitive provider of electric service does not conflict with the purposes of the Rate Agreement. We also do not believe that the Rate Agreement should insulate PSNH from other regulatory changes that are imposed on all New Hampshire electric utilities during the fixed rate period.

NHEC, at pages 6-7 of its brief, posed a number of questions which it believes must be addressed before authorizing retail competition. Many of them involve levels of refinement which must be addressed, but do not require determination at this time. For example, NHEC questions the appropriateness of a franchise tax on the sale of electricity in a non-exclusive franchise. While we agree that this is an issue that needs to be explored, we do not believe that we ought to withhold this decision until this and all other possible questions have been resolved.

Similarly, PSNH, at page 11 of its brief, argues that because Freedom has not yet filed a least cost integrated resource plan, it cannot be considered a public utility. The scope of any least cost plan obligation on Freedom is not critical to this stage of the analysis. No doubt it will be explored as this docket progresses but it is premature to address at this point and should not be used as a basis to delay our resolution of the threshold legal issues.

Issue five: The extent to which EPACT allows access to PSNH's transmission system for Freedom's operations.

**[18, 19]** By finding that Freedom's proposed operations would constitute a public utility under New Hampshire law, we do not conclude, nor do we believe it is our role to

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conclude, that Freedom is thereby entitled to compel access to transmission under EPACT. In fact, we think it is possible that Freedom may not be granted access to PSNH's transmission system, under the terms of 16 U.S.C.A. §824k(h). Section 824k(h) prohibits mandatory transmission "directly to an ultimate consumer" which, we believe, would be an instance such as a New Hampshire industrial user seeking transmission from an out of state generator directly to its plant, over one or more utility's transmission and distribution lines. Though PSNH, in its brief

at page 22, states that this is what Freedom intends to do, we do not read Freedom's proposal to involve this subsection.

Rather, we believe Freedom's operation will be evaluated in the context of § 824k(h)(2). Subsection (2) prohibits mandatory transmission "to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer" which, we believe, would be an instance such as a New Hampshire industrial user seeking an arrangement for power from a provider other than the incumbent utility (an "intermediary"); that intermediary in turn arranges for power from a generator and pays for use of utilities' transmission and distribution systems to deliver the power to the industrial customer. This transaction is only allowed if the intermediary is: 1) a Federal power marketing agency or the Tennessee Valley Authority; 2) a State or municipality; 3) an entity which receives Rural Electrification Administration (REA) loans; 4) "a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public"; or 5) any entity wholly owned, directly or indirectly, by one or more of the foregoing. 16 U.S.C.A. §824k(h)(2)(A).

In addition, this entity must have been providing electric service to this particular consumer as of October 24, 1992 or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to the consumer. 16 U.S.C.A. §824k(h)(2)(B).

Freedom clearly is not a federal power authority, a municipality or an entity receiving REA loans. Its only way of qualifying for mandatory access to the transmission system is if it is considered "to have an obligation arising under State or local law to provide electric service to the public."

Even if Freedom met this standard by virtue of our finding that its proposed operations would constitute a public utility under state law (and we recognize there are arguments against this interpretation), Freedom would still have to satisfy subsection (B). Freedom certainly was not operating as a public utility in October 1992. The only way it could qualify, therefore, is if it is found to "utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer." Freedom's intention to construct, operate or manage extremely limited facilities is sufficient to meet New Hampshire's definition of a public utility but may or may not be sufficient under EPACT. For example, this section could mean one must own or control:

- 1) *all* transmission and distribution facilities involved in delivery;
- 2) *a substantial portion* of all transmission and distribution facilities;
- 3) any portion of *either* transmission *or* distribution; or
- 4) any portion of *both* transmission *and* distribution.

The ultimate question, for FERC to determine, is whether Freedom's intent to build or lease a service drop at a consumer's location meets the requirement that it will "utilize transmission and distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer."

Freedom clearly believes its operations were envisioned by EPACT and would be approved by FERC. As noted at oral argument, "Freedom believes that if this Commission authorizes it to

sell power to the public, confer utility status on it, that it is then eligible to go to FERC and get a wheeling order. That's what makes this different from a sham transaction." Transcript at 27.

Whether Freedom's operations fit within the meaning of EPACT or instead are a "sham

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transaction" EPACT intended to prohibit is for FERC, and not this Commission, to determine. We will therefore direct Freedom to submit a request for declaratory ruling or other determination from FERC on this issue.

Based upon the foregoing, it is hereby

ORDERED, that the Commission finds that if Freedom were to operate as it has represented, it would constitute a public utility pursuant to RSA 362:2; and it is

FURTHER ORDERED, that whether Freedom, as an out of state corporation may be authorized to operate in New Hampshire, given the restrictions of RSA 374:24, has been rendered moot by Freedom's intent to reorganize as a New Hampshire corporation; and it is

FURTHER ORDERED, that any entity, including Freedom, that becomes a competitive provider of retail electric service authorized in New Hampshire, will be subject to the jurisdiction of the Commission; and it is

FURTHER ORDERED, that FERC will assert jurisdiction over the rates, terms and conditions of wholesale wheeling but that the bright line dividing state and FERC jurisdiction has not yet been defined; and it is

FURTHER ORDERED, that PSNH's rights to its franchise territory are not exclusive as a matter of law; and it is

FURTHER ORDERED, that Freedom is directed to submit a petition for declaratory ruling or other determination to FERC regarding the legal status of operations such as Freedom has proposed; and it is

FURTHER ORDERED, that this order constitutes a final order pursuant to RSA 363:17-b regarding the threshold legal issues addressed herein; and it is

FURTHER ORDERED, that the Commission shall conduct a prehearing conference on July 14, 1995 at 10:00 a.m. for the purpose of developing a procedural schedule for the duration of this case.

By order of the Public Utilities Commission of New Hampshire this sixth day of June, 1995.

#### DISSENT REGARDING ISSUE FOUR

I join my colleagues in concluding that what Freedom proposes to do would qualify it as a public utility, assuming we find it to be in the public interest to authorize a competitive provider of retail electric service. Freedom clearly states its intent to own, operate and manage plant or equipment in its distribution of electricity ultimately sold to the public. The law is clear as to its applicability in this instance.

I also agree with my colleagues that this finding would not apply to a marketer or broker of electricity if that marketer or broker did not own, operate, or manage any plant or equipment.

The comparison to gas marketers is apt. Our order in DE 94-149 authorizing the "unbundling" of natural gas service, i.e., the delivery of privately purchased natural gas through the pipelines of the local distribution company, did not require that marketers or brokers of such gas be qualified as a public utility. The evidence presented to date suggests to me that this aspect of both industries should be treated similarly.

The Commission addressed five specific threshold questions as described in Section I of this report and order. I join my colleagues on the following issues:

- That the issue of whether Freedom as an out-of-state corporation may, in fact, be authorized to operate in New Hampshire, given the restrictions of RSA 374:24, need not be addressed in this docket since the issue was rendered moot as a result of Freedom's filing an amendment to its petition stating that it would incorporate under the laws of the State of New Hampshire.
- That the Commission has jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.
- That FERC and the states have yet to determine where the lines between state and federal jurisdiction will be drawn, particularly in those transactions which have both wholesale and retail characteristics.
- That it is beyond our authority to conclude whether Freedom is entitled to compel access to transmission under EPACT.

[20-24] I cannot join my colleagues in concluding that PSNH has no claims to exclusivity within its franchise territory. For the

**Page 328**

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reasons set forth herein, I will explain the exclusive franchise environment under which this Commission has required our regulated utilities to operate, and the statutory and regulatory rationale for that exclusive environment. I conclude that we cannot proceed into a competitive environment without statutory change that provides this Commission with specific authority to allow competing utilities to serve the franchise territories of others. While there is no statutory provision which states that electric franchises *are* exclusive, neither is there a statutory provision which states that they are *not* exclusive. The general statutory framework regarding provision of service within franchises suggests the legislature intended exclusivity, and certainly the Commission's actions have reflected a policy of exclusivity over the years. I recommend that such statutory change is necessary in order that we can proceed, in an orderly way, into the issues which can provide our New Hampshire customers with alternative opportunities for the purchase of electric service.

A public utility is committed, pursuant to RSA 374:1, to "... furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." That mandate has required public utilities to serve any and all customers in its assigned franchise territory. It has required that electric utilities install and maintain whatever plant and property could be reasonably required to serve any and all, known and unknown, present and future, customers in that territory. Permission for a utility to provide service is granted pursuant to



374:26, and the Commission has historically provided specific exclusivity in many of its orders granting such permission.

There are strong public policy considerations supporting a finding of exclusivity. The Commission grants public utilities authority to provide service in a specified geographic area known as a franchise territory. In order to do so, utilities are expected to construct and operate plant and facilities sufficient to meet the needs of any and all customers in that franchise. To deny public utilities the right to serve those customers would be to deny them the right to a return on the investment which they were required to install.

It is inconsistent to impose on the public utility an obligation to serve all customers within its franchise area and then allow competitive providers to solicit those customers within the franchise that it chooses (which is often referred to as "cream skimming"). If we were to allow such cream skimming, competitors would have unlimited opportunities for profit, but without any concomitant obligation to provide service, and their actions could potentially affect the stability of the existing franchised utility and the rates which would be borne by its remaining customers.

There can be no question that franchises have traditionally been considered exclusive. Our franchise authorization orders often refer to exclusive franchises and exclusive rights to serve. In establishing the franchise boundaries for the New Hampshire Electric Cooperative, Inc., the Commission held:

"... that all customers of the New Hampshire Electric Cooperative, Inc., and other utilities within the franchise area of the New Hampshire Electric Cooperative, Inc., *shall be considered as permanent customers of the utility now serving them, no transfer of such customers from one utility to another to be permitted except as provided for by statutes applicable to changes in franchise areas.*"

*Re New Hampshire Electric Cooperative, Inc.*, 35 NHPUC 83, 84 (1953) (emphasis added).

I cannot agree with my colleagues that there is no statutory mandate that franchises are exclusive. In fact, RSA 374:22-b<sup>2(31)</sup> provided:

... After consideration of factors set forth in RSA 374:22-a, the Commission shall establish *the* service territory of *each* company. *The* service territory thus established shall be defined on a map or maps approved by the Commission. In the event application under this section is filed by more than one electric company for one area, the Commission shall, after notice and hearing, determine what part of *the* area as to which competing claims

**Page 329**

were filed, should be awarded to *the* respective applicants. In the event the distribution facilities of the competing applicants are so intertwined or co-mingled so as to make establishment of *exclusive* service territories and impractical, the Commission may authorize two or more companies which file competing applications to serve the area in conflict subject to the conditions of RSA 374:22-c (emphasis added).

Further, RSA 374:22-c IV provided:

*A company shall not construct or extend its facilities, or furnish or offer to furnish its services to premises within the service territory of another company, without being requested to do so by the company in whose territory the premises are located, or unless the Commission, upon petition of the person served or to be served, after notice and hearing, finds and determines that the service rendered by such electric utility in whose territory the premises are located is inadequate and will not be likely to be made adequate (emphasis added).*

When the Commission was directed, pursuant to RSA 374:22-a through RSA 374:22-c, to establish service territories for each electric utility, it stated:

"... the commission determines that the limited areas set forth in the numbered service territory town maps filed with the applications are established as *exclusive* service territories of the petitioner as of the date of this report."

*Re Public Service Company of New Hampshire*, 64 NHPUC. 147, 149-50 (1979) (emphasis added). We used similar language in our order approving exclusive service territories for NHEC. *Re New Hampshire Electric Cooperative, Inc.*, 64 NHPUC 149, 151 (1979). The Commission issued orders in nine dockets (DE 78-105, DE 78-106, DE 78-111, DE 78-112, DE 79-58, DE 79-70, DE 79-114, DE 79-215, DE 79-216) involving 390 community franchises as a result of those proceedings, and in each and every case it ordered:

"... that the entire areas within the respective boundaries of the cities, towns or unincorporated places, as shown on the correspondingly numbered service territory maps filed with the application are established as *the exclusive service territories of ...*"

See *e.g. Re Public Service Company of New Hampshire*, 63 NHPUC 360, 361 (1978) (emphasis added).

RSA 374:22-b and 374:22-c were repealed in 1989, as the Commission had met its mandate to resolve disputed electric service territory boundaries. The 1979 orders cited previously granting PSNH and NHEC exclusive franchises were the product of this effort. One should read the repeal of those statutes, therefore, as a sign that the need for the legislation was no longer present, rather than an indication of legislative intent to make franchise territories non-exclusive. This interpretation is bolstered by the legislature's action in 1990 when it enacted RSA 374:22-e and 374:22-f which authorized similar arrangements for joint provision of service between telephone utilities within a franchise territory not on a competitive basis but rather as a means to designate which utility should serve a particular customer or group of customers in an area in which the franchise boundaries are in dispute. These cases are often referred to as "high hats" wherein, for geographic or other reasons, it is more efficient for a neighboring telephone utility to cross into the franchise territory of another to serve a customer or group of customers.

Each utility is required to file, as part of its tariff, detailed franchise maps specifically identifying the geographic bounds of each utility's area in which it is authorized to serve.

By statute, the Commission can only take franchise rights from an authorized public utility upon a showing of inadequate or unsafe service, pursuant to RSA 374:28. No one has alleged that PSNH fails to meet the standards of safe and reliable utility service. Allowing a competitor into a franchise constitutes "taking away of franchise", even if it is only a taking of



the right to serve without competition. Absent a statutory mandate to grant competition within an electric franchise or a showing of inadequacy, I do not find a basis to "take" any portion of PSNH's franchise rights.

The current session of the legislature amended RSA 374:22-f, making clear that for local exchange telephone companies with less than 25,000 access lines, no additional telephone utility may "construct or extend its facilities in order to furnish, or otherwise furnish or offer to furnish, its service to premises within the service territory of another telephone utility that provides local exchange service" unless the existing franchised utility consents to the new utility's entrance and the Commission finds the provision of service to be in the public good. This new version of RSA 374:22-f becomes effective July 23, 1995. *See* Chapter 147, Laws of 1995.

I recognize that the Commission reached a different conclusion regarding telecommunications utilities in our Telecommunications Competition Docket, DE 90-002. *Re AT&T Communications of New Hampshire*, 75 NHPUC 670 (1990). The two industries, however are radically different, as were the circumstances of the petition for competitive provision of service. In *AT&T*, we did not authorize the petitioner to solicit customers from New England Telephone's (now NYNEX's) "local loop" or basic exchange territory. As we clarified in our order denying rehearing, "no company has requested authority to compete at the local exchange company level and, hence, the issue of whether it is in the public good for the commission to permit such competition is outside the scope of this proceeding." *Re AT&T Communications of New Hampshire*, 76 NHPUC 3, 4 (1991). Our authorization, therefore, provided customers with a chance to obtain services they were not presently receiving without calling into question the exclusivity of local exchange service within a franchise.

In addition, there was not the potential for stranded investment in *AT&T* as there is in this case. NYNEX continued to provide uninterrupted service to the basic exchange customer which is the portion of NYNEX's operations in which the bulk of its investment has been made. By contrast, Freedom does not offer new services but only a choice of provider and the potential for lower rates.

I also do not find the Court's ruling in *Omni* to be relevant to this inquiry. *Omni* did not involve the rights of an existing utility and a competitor utility. Instead, *Omni* raised the question of the Commission's jurisdiction to regulate a service that had never previously been offered, by a non-utility provider. The Court found that radio pagers should not be regulated by the Commission. *See Appeal of Omni Communications*, 122 N.H. 860 (1982). Existing utilities' rights, therefore, were not implicated.

The majority and I agree that duplication of investment in the provision of electricity should be prohibited unless the public interest requires otherwise. The New Hampshire Supreme Court, in 1930, recognized this inefficiency and the sheer impracticality of a competitor electric provider within a franchise, stating "... the whole policy of modern public utility legislation and control is against any such second grant. In theory, competition may have to be met. As a practical proposition, known to and acted upon by everybody, no competition will be permitted ...". *Opinion of the Justices*, 84 N.H. 559, 567 (1930).

By referring to the "exclusive character" of franchises and the practical impossibility of competition in utility service, 84 N.H. at 568, the Court reinforced our long-standing policy to treat electric franchises as exclusive. I do not believe it is sound regulatory policy to change the rights, obligations and protections afforded utility providers for over fifty years without clear legislative authority.

We are now at the early stages of a transition into some degree of electric competition. The parameters of such competition can best be developed by the Commission, the legislature and all affected parties in a collegial forum such as our Roundtable on Competition in the Electric Industry In New Hampshire, or by the Task Force that will be established if Senate Bill 168 becomes law, and which, we may collectively agree, should ultimately result in new legislation specifically authorizing competition in the provision of electric service. Absent such

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legislative mandate, however, I do not believe we have the authority to declare electric franchises non-exclusive. For the foregoing reasons, I respectfully dissent from the majority decision as it relates to exclusivity of electric utility franchises.

Bruce B. Ellsworth  
Commissioner

June 6, 1995

#### FOOTNOTES

<sup>1</sup> In 1992 Congress passed the Energy Policy Act (EPACT), which, in part, amended the Federal Power Act found at 16 U.S.C.A. §824k. Because EPACT amended section 212 of the Federal Power Act, some have used section 212 citations, while others use the United States Code citations. We will refer to EPACT provisions by citation to 16 U.S.C.A. §824k.

<sup>2</sup>RSAs 374:22-a through 22-c were enacted in 1977 in recognition of a need to specifically designate certain electric utility franchise areas whose boundaries were either uncertain or undefined. This uncertainty had developed as a result of arrangements which had existed between electric utilities and the New Hampshire Electric Cooperative, Inc., who, pursuant to RSA 374:23 (1947) and NHPUC Order 6205 had been authorized to provide service to customers within a 1000' radius of its electric lines. *Re New Hampshire Electric Cooperative, Inc.*, 35 NHPUC 83-84 (1953).

RSAs 374:22-a through 22-c were repealed in 1989 upon completion of all franchise arrangements.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] *Re Ashland Electric Dept.*, DE 94-005, Order No. 21,473, 79 NH PUC 706, Dec. 21, 1994.

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[Go to End of 80964]

80 NH PUC 332

**Re Gilford Village Water System**

DE 93-244

Order No. 21,684

New Hampshire Public Utilities Commission

June 7, 1995

ORDER authorizing a water utility to take over the operations of a water system that had been formed and managed as a water district.

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## 1. CERTIFICATES, § 67

[N.H.] Factors affecting grant — Local consents — Sale of water district by town council — Dissolution of district format — Financial abilities and experience of acquiring utility. p. 332.

## 2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Dissolution of water district by town council — Council support for sale of district system to public utility — Financial abilities and experience of acquiring utility — Final transfer contingent on system improvements. p. 332.

## 3. RATES, § 595

[N.H.] Water rate design — Acquisition of water district by public utility — Retention of existing rate structure — Fixed quarterly charge plus volumetric rates — Flat fees for turn on/turn off service and for meter testing. p. 332.

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BY THE COMMISSION:

ORDER

[1-3] Gilford Village Water System (Company or Petitioner), a division of Tioga River Water Company, Inc. (Tioga), filed with the

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New Hampshire Public Utilities Commission (Commission) on November 22, 1993 a petition to operate as a public utility in the area previously served by the Gilford Village District in the Town of Gilford (Town). The Village District was dissolved by unanimous vote of its membership, effective June 1, 1991, at which time ownership of the water system reverted to the

Town. The Town subsequently offered the system for sale, with the Petitioner submitting the high bid. A letter dated September 3, 1992 from the Town Administrator stated that the Board of Selectmen had authorized sale of the system to the Petitioner conditioned upon approval by this Commission.

A Warrant Article was passed at the 1992 Town Meeting authorizing the above sale for \$15,000, and authorizing a subsequent expenditure of "\$10,000 from the proceeds of said sale to purchase capital improvements for the system prior to transfer." A letter from David R. Caron, Town Administrator, to Staff, dated February 3, 1995, stated the following:

The Board of Selectmen, at the time it decided to sell the Gilford Village Water District, acknowledged that the sale of the utility may result in District customers absorbing the purchase price within their water rates. Recognizing that the Town's main goal was to remove itself from the operation, management and ownership of a water utility and not realize any profits, the Board decided to reinvest the sale proceeds back into the system, thus possibly avoiding future rate increases caused by the new owners paying for these improvements.

The improvements planned for implementation include curing the deficiencies as noted in the 1992 sanitary survey, some repiping and the addition of one booster pump at the wellhouse and installation of backflow preventers for utility customers.

The water system serves 36 customers comprised of 63 units. The original system, dating from the 1940s, was reportedly given to the Town by a resident prior to creation of the village district. Significant upgrades were made in 1975, and a new well was installed in 1986. RSA 374:22 III, requiring Department of Environmental Services approval of "the suitability and availability of water for the applicant's proposed water utility," has been satisfied by letters from that agency. The Town states that it has no outstanding debt on the system.

Tioga currently operates as a regulated water utility under this Commission in the Town of Belmont. Norman Harris, Jr., the owner of Tioga, is also the owner of Gilford Well Company, Inc., which operates several other water systems in the Lakes Region, and which has been operating the Gilford Village system for approximately twenty years. Service personnel are on call on a 24 hour standby basis seven days a week.

The Petitioner proposes to charge the same rates that the Town currently charges, i.e., a \$14.25 fixed charge per quarter and a volumetric rate of \$ 1.35/100 cubic feet after the first 500 cubic feet each quarter. Based on a typical statewide usage of 180 gallons per day per customer, this would result in an annual per customer billing of \$ 148.80.

Also included in the petition were certain proposed fees which are not currently being charged by the Town. The Company agreed, following consultation with Staff, to certain reductions, resulting in the following fees:

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

Meter testing:	\$40
Turn-on during regular hours:	\$40
Turn-on after hours:	\$80
No charge for turn-off even when customer-requested.	

Both the Company and Town have provided information to Commission Staff through various submittals over the period of time since the original petition. A review of that data indicates that the above rates and fees are just and reasonable "interim" rates, pending a more detailed review associated with filing of any future rate case. Mr. Harris' history in the water business, his long experience with this particular system and the circumstances surrounding the proposed transfer lead us to conclude that that the transfer of the system to the Petitioner

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is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that authority is granted to Gilford Village Water System to operate as a public water utility in an area of the Town of Gilford as shown on a map on file with the Commission; and it is

FURTHER ORDERED, that the actual transfer of ownership shall not take place until the anticipated system improvements have been completed by the Town, and written certification of same has been received; and it is

FURTHER ORDERED, that the above fees are approved; and it is

FURTHER ORDERED, that the Company will otherwise charge the same rates currently charged by the Town; and it is

FURTHER ORDERED, that the Petitioner shall maintain records in accordance with the Commission's chart of accounts, separate from those kept for Tioga River Water Company's system in Belmont; and it is

FURTHER ORDERED, that within 30 days of actual transfer of ownership of the system from the Town to the Petitioner, the Petitioner submit proposed entries to be used to establish the accounting values for the assets, liabilities and capitalization of the purchase the system; and it is

FURTHER ORDERED, that any future rate case involving either the Gilford or Belmont water system shall address rates in both; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall mail a copy of this Order *Nisi* by first class mail to each customer and to the Gilford Town Clerk by June 22, 1995, to be documented by affidavit filed with this office on or before July 6, 1995; 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 July 6, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before July 31, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 10, 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 seventh day of June,

1995.

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NH.PUC\*06/07/95\*[80965]\*80 NH PUC 334\*Carleton Water Company Trust

[Go to End of 80965]

80 NH PUC 334

**Re Carleton Water Company Trust**

DF 95-152

Order No. 21,685

New Hampshire Public Utilities Commission

June 7, 1995

ORDER granting a water utility emergency authority to borrow \$50,000 from an individual, so as to develop alternative sources of supply for meeting summer peak demand and eliminate reliance on the practice of trucking in purchased water.

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1. SECURITY ISSUES, § 58

[N.H.] Borrowings from individual — Purposes — Additions and betterments — Development of alternative sources of supply — Water utility. p. 335.

2. EXPENSES, § 145

[N.H.] Water utility — Costs of wells and new supply — As alternative to trucking in of purchased water — Loan arrangements with individual as method of financing — Emergency financing authority — No precedent for rate-making purposes. p. 335.

Page 334

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BY THE COMMISSION:

ORDER

On May 31, 1995, Carleton Water Company Trust, (the Trust), a public utility providing water service in a portion of the towns of Conway, Middleton, Thornton and Tuftonboro, New Hampshire, filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking authority, pursuant to RSA 369, to obtain financing in the amount of \$50,000 from Robert Carleton (Carleton). Carleton is the father of the two beneficiaries of the Carleton Water Company Trust, and provides management services to the Trust through Water Industries, Inc.

The Trust has indicated in its petition that the purpose of the financing is to install a new source of supply at its Sunrise Estates franchise in the town of Middleton. The Trust serves 62

customers in this franchise area; the existing source of water is inadequate and must be enhanced pursuant to a deadline established with the New Hampshire Department of Environmental Services (DES). The Trust has found it necessary to purchase water from outside sources and truck it to the franchise area in order to meet peak summer demands in both 1993 and 1994. The Trust anticipates that additional purchases will be necessary in the early summer of 1995 until the proposed new source of supply is on line.

The project is to include the purchase of eight acres of land, the drilling of a new well, the purchase and installation of a new pump and pumping equipment, pump testing and quality analysis, and the connection of the new well to the existing system.

The financing offered to the Trust by Carleton consists of \$50,000 principal at 12% annual interest, with 120 equal monthly payments of \$717.98. The Trust will agree to a first lien on the land, structures, equipment, piping, and other tangible assets associated with the new source of supply.

[1, 2] Our Staff's review of this financing petition reveals that Water Industries, Inc. has submitted the only bids to perform the work at Sunrise Estates. It is our understanding from Staff that the proposed work is of an emergency nature and, therefore, we will approve the financing request subject to the changes described below and allow the Trust to go forward with its chosen solution to the extreme supply deficiency. However, we will scrutinize the expenditures for this project very carefully, and we will require full documentation before considering their inclusion in customer rates in the future. In addition, we note that, despite supply deficiencies that have existed at Sunrise Estates at least since 1993, the Trust has only now, at the beginning of the peak summer season, taken action to resolve the situation. We question why this matter has not been addressed earlier, and we will seek answers in this regard in the context of the Trust's current rate case before us (DR 95-028).

Economics Staff has recommended that the interest rate on this loan be lowered from 12% to 10.12%, the cost of equity found in DR 94-139 (White Rock Water Company), the most recent small water company docket which has addressed the cost of equity issue. The Economics Staff believes that an interest rate of 12% is excessive in this instance because, in addition to the proceeds being used to employ Carleton's Water Industries, Inc., Carleton has the benefit of reduced uncertainty due to his own connections to Carleton Water Company Trust and the security interest in the land and equipment. According to the Economics Staff, the cost of equity found in DR 94-139 should be considered an upper bound given that, in general, equity is considered more risky than debt. Economics Staff wishes to reserve judgement as to whether this particular transaction should be treated as equity or debt in a rate proceeding.

We find the Economics Staff's recommendation to be just and reasonable. Therefore, we will approve this financing subject to the condition that the interest rate is changed from 12% to 10.12%. Our approval of this financing is not a judgement as to whether this transaction should be treated as equity or debt in a rate proceeding.

It is our further understanding through communication from Staff and the Office of Consumer Advocate (OCA) with respect to the



Trust's current rate case that they have experienced considerable difficulty in obtaining responses to discovery requests, and that the rate filing itself, while meeting the minimum filing requirements, contains scant information with respect to the request made by the Trust. We are troubled by this apparent lack of cooperation by the Trust, and by Staff's comments with respect to the preliminary findings of the Staff's audit of the Trust regarding serious deficiencies in the Trust's record-keeping. At this time the Trust is put on notice that the approval of this financing request is our response to an emergency situation, and should in no way be considered as approval for recovery of any costs or as endorsement of any positions taken by the Trust with respect to its current proceedings before us.

Based upon the foregoing, it is hereby

ORDERED, that Carleton Water Company Trust is authorized to issue securities in the amount of \$50,000 at an interest rate of 10.12%, otherwise in accordance with the terms, conditions, and purposes described in its application; and it is

FURTHER ORDERED, that on or before July 14, 1995 Carleton Water Company Trust shall file with this Commission a detailed statement duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, including all invoices comprising the work performed, and with hourly rates paid to all individuals or companies providing any services to the Trust.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1995.

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NH.PUC\*06/07/95\*[80966]\*80 NH PUC 336\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 80966]

80 NH PUC 336

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-133

Order No. 21,686

New Hampshire Public Utilities Commission

June 7, 1995

ORDER authorizing an interexchange telephone carrier to increase its surcharge rates relative to its various "FONCARD" calling card service offerings.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — "FONCARD" services — Increases in applicable surcharges — Interexchange carrier. p. 336.

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BY THE COMMISSION:

ORDER

On May 10, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc. (Sprint) requesting authority to increase the surcharges for FONCARD, to move text, and to make minor changes in tariff language for effect June 15, 1995.

[1] The proposal includes an increase to the surcharges for Dial 1 WATS Advantage FONCARD, Sprint Clarity FONCARD, Sprint Clarity Voice FONCARD, Sprint Clarity the Most for Business FONCARD, Sprint Clarity the Most for Business Voice FONCARD, Real Solutions FONCARD and Real Solutions Voice FONCARD. The moves and minor changes in the text consolidate surcharge prices in the tariff.

We find that the proposed changes are in

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the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's tariff, NHPUC No. 4 are approved for effect as filed:

- 16th Revised Page 1
- 2nd Revised Page 76
- 1st Revised Page 91
- 2nd Revised Page 93
- 1st Revised Page 97
- 3rd Revised Page 103-D;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1995.

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NH.PUC\*06/07/95\*[80967]\*80 NH PUC 337\*Merrimack County Telephone Company

[Go to End of 80967]

80 NH PUC 337

**Re Merrimack County Telephone Company**

DR 95-142  
Order No. 21,687

New Hampshire Public Utilities Commission

June 7, 1995

ORDER authorizing a local exchange telephone carrier to extend its special contract with the local fire department in the Town of Sutton for emergency call conferencing service.

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1. RATES, § 553

[N.H.] Telephone rate design — Types of service — Emergency call conferencing service — For local fire department — Extension of special contract rates — Local exchange carrier. p. 337.

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BY THE COMMISSION:

**ORDER**

[1] On May 15, 1995, Merrimack County Telephone Company (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.

The conferencing service contract is an extension of Special Contract MCT-004 which was initially approved by Commission Order No. 18,671, dated May 13, 1987. The contract has been extended annually since 1992. The terms, conditions and rates in the proposed extension are the same as those previously approved.

The service provided will be used for the provision of communications for the protection of life and property. We therefore find that the proposed extension is in the public good.

Based upon the foregoing, it is hereby

ORDERED, that the Extension of Special Contract No. MCT-004, between Merrimack County Telephone Company and the Town of Sutton for effect from April 21, 1995 until April 20, 1996 is approved.

By order of the Public Utilities Commission of New Hampshire this seventh day of June, 1995.

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.

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NH.PUC\*06/08/95\*[80968]\*80 NH PUC 338\*LDDS Communications, Inc.

[Go to End of 80968]

80 NH PUC 338

**Re LDDS Communications, Inc.**

DR 95-136

Order No. 21,688

New Hampshire Public Utilities Commission

June 8, 1995

ORDER approving an interexchange telephone carrier's plan to introduce its "WorldOne" calling service, an outward-bound, inward-800, and calling card toll service. The carrier also is allowed to cease offering "Performance 4000" to new customers and to restrict its offering of "EasyAnswer" service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Introduction of "WorldOne" calling service — Combination of outward-bound, inward-800, and calling card toll service — Elimination and restructuring of other services — Interexchange carrier. p. 338.

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BY THE COMMISSION:

ORDER

[1] On May 11, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc., (LDDS) requesting authority to introduce WorldOne, limit availability of EasyAnswer and grandfather existing Performance 4000 Customers, for effect June 11, 1995.

WorldOne is a service for single or multi-location customers using switched or dedicated access for origination and or termination of outbound, inbound (800) and calling card services. The product offers a discount on outbound and 800 service for customers who commit to a term of service.

EasyAnswer services will only be offered to Association Saver Customers, and Performance

4000 service will no longer be offered to new customers.

We find that the proposed changes are in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as filed:

- 1st Revised Page 1
- Original Page 1.1
- Original Page 1.2
- 1st Revised Page 4
- 1st Revised Page 66
- 1st Revised Page 71
- 1st Revised Page 74
- Original Page 74.1
- Original Page 74.2
- Original Page 74.3
- 1st Revised Page 105
- Original Page 105.1
- Original Page 105.2
- Original Page 105.3
- Original Page 105.4
- Original Page 105.5
- Original Page 105.6
- Original Page 105.7;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 1995.

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NH.PUC\*06/09/95\*[80969]\*80 NH PUC 339\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80969]

80 NH PUC 339

**Re New England Telephone and Telegraph Company dba NYNEX**

DE 95-137  
Order No. 21,690

New Hampshire Public Utilities Commission

June 9, 1995

ORDER granting a local exchange telephone carrier's request for confidential treatment of various agreements reached with independent telephone carriers for the provision of billing and collection services.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Third-party billing and collection arrangements — Local exchange telephone carriers. p. 339.

2. PAYMENT, § 17

[N.H.] Billings and collections — Third-party service agreements — Protective treatment — Local exchange telephone carriers. p. 339.

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BY THE COMMISSION:

ORDER

On May 17, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Proprietary Treatment of discovery information requested in Staff data request 38 dated April 18, 1995 (Motion). NYNEX filed the Motion pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.07 and 204.08.

In its Motion, NYNEX states that the response to this data request should be afforded protective treatment in that the information constitutes "confidential, commercial and financial information" within the scope of the exceptions to disclosure contained within RSA 91-A:5,IV. Specifically, Staff data request 38 requests copies of NYNEX's billing and collection agreements with the independent telephone companies (Agreements).

NYNEX asserts that the Agreements pertain to the provision of "competitive services" provided by the independent telephone companies and that these services are not subject to regulation by the Commission. Further, NYNEX states that the Agreements include pricing and other information not reflected in tariffs of general application.

NYNEX further asserts that the independent telephone companies have specifically requested that the relevant Agreements not be disclosed except pursuant to protective order from the Commission.

The Commission Staff, by memo dated June 9, 1995, objects to NYNEX's assertion that the services covered by the Agreements are not subject to regulation by the Commission. Staff asserts that billing and collection agreements, although not generally tariffed by this

Commission, have not been deregulated. The Commission practice has been to include associated revenues and expenses in the determination of intrastate revenue requirement and thus the Agreements are subject to regulation by the Commission. This practice is consistent with the Federal Communications Commission's treatment of billing and collections agreements in FCC Docket No. 85-88, *Detariffing of Billing and Collection Service*.

Further, whether billing and collection is competitive is not dispositive of the form of regulation to be applied. This Commission has not established a regulatory scheme which deregulates those services which are considered competitive, though the Collaborative Docket on telecommunications regulation, now in abeyance by mutual agreement of the participants, considered such a proposal among many.

[1, 2] While Commission Staff does not agree with NYNEX's characterization of the Agreements as relating to deregulated services, it does concur in NYNEX's request that the

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Agreements be kept confidential.

The Commission, by Order No 20,916 in DE 90-002, approved the July 29, 1993 Modified Stipulation and Agreement, which authorized charges for billing and collection services provided to NYNEX at rates agreed to between NYNEX and the independent telephone company under a billing and collection contract.

The Commission recognizes that in discovery, the Parties and Staff need to review and evaluate documents which may be financially or commercially sensitive. We agree that the information called for by Staff data request 38 appears to fall within the exceptions to public disclosure in RSA 91-A:5,IV and that, in this context, the benefits of non-disclosure outweigh the benefits of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Proprietary Treatment of responses to Staff data requests 38, 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 Public Utilities Commission of New Hampshire this ninth day of June, 1995.

#### 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\*06/20/95\*[80970]\*80 NH PUC 340\*Nuclear Emergency Planning

[Go to End of 80970]

80 NH PUC 340

**Re Nuclear Emergency Planning**

DE 95-166

Order No. 21,692

New Hampshire Public Utilities Commission

June 20, 1995

ORDER authorizing the New Hampshire Office of Emergency Planning to assess North Atlantic Energy Service Corporation \$1,144,644 to cover the cost of personnel and equipment necessary for monitoring and maintaining the emergency response plan applicable to the Seabrook nuclear power plant.

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## 1. ELECTRICITY, § 3

[N.H.] Generating plant — Nuclear power plants — Emergency response plans — Assessments to cover maintenance and administration. p. 341.

## 2. ATOMIC ENERGY

[N.H.] Nuclear power plants — Emergency response plans — Maintenance and administration of — Funding of — Assessments by state office of emergency planning — Seabrook station. p. 341.

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BY THE COMMISSION:

## ORDER

The New Hampshire Office of Emergency Management (NHOEM) submitted a letter on May 26, 1995 requesting that the Chairman of the New Hampshire Public Utilities Commission (Commission) assess North Atlantic Energy Service Corporation (North Atlantic) for the estimated costs to maintain the New Hampshire Radiological Emergency Response Plan (NHRERP) for Seabrook Station Nuclear

**Page 340**

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 RERP.

The estimated financial support requested is \$1,144,644 for the State Fiscal Year 1996. The total requested assessment consists of two parts: (1) \$1,144,644 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	\$ 379,933
20 Current Expense	\$ 45,700
28 Rent	\$ 29,891
30 Equipment	\$ 12,500
40 Indirect Cost	\$ 15,790
46 Consultants	\$ 31,000
49 DPHS	\$ 230,000
50 Personnel-Temporary/Overtime	\$ 99,594
60 Fringe Benefits	\$ 144,743
70 In State Travel	\$ 15,000
80 Out of State Travel	\$ 4,000
91 Rockingham County	\$ 38,807
94 Local Support	\$ 66,868
96 State Agencies	\$ 17,818
97 Other Support Agencies	\$ 13,000
TOTAL ASSESSMENT	\$1,144,644

The NHOEM requests that payments of the above assessment be made in monthly installments. The NHOEM also requests that it 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.

[1, 2] 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

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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 \$1,144,644 for Fiscal Year 1996 and the direct provision of equipment and/or services as specified above.

The NHOEM proposed billing mechanism is reasonable. Accordingly, NHOEM is authorized to require that North Atlantic 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) \$1,144,644 for Fiscal Year 1996 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 pursuant to RSA 107-B; and it is

FURTHER ORDERED, that the NHOEM be authorized to require North Atlantic to make payments against the total financial assessment of \$1,144,644 on a monthly basis; and it is

FURTHER ORDERED, that the payments of this assessment by North Atlantic be drawn on anticipated monthly expenditures; and it is

FURTHER ORDERED, that the NHOEM is authorized to adjust monthly cash draws based on previous monthly expenditures; and it is

FURTHER ORDERED, that NHOEM 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 Commission) so that the Treasurer may then bill North Atlantic in accordance with the NHOEM statement; and it is

FURTHER ORDERED, that North Atlantic 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 twentieth day of June, 1995.

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NH.PUC\*06/20/95\*[80971]\*80 NH PUC 343\*New Hampshire Electric Cooperative, Inc.

[Go to End of 80971]

80 NH PUC 343

**Re New Hampshire Electric Cooperative, Inc.**

DR 93-124

Order No. 21,693

New Hampshire Public Utilities Commission

June 20, 1995

APPLICATION by electric cooperative for authority to increase rates by 1.9%; granted as modified, pursuant to stipulation, in the amount of a 1.51% increase (\$1.1 million). The cooperative also is authorized a times interest earned ratio (TIER) of 1.39.

Under the terms of the stipulation, the cooperative will institute seasonal rates for all customer classes and apply time-of-day rates to its primary general service customers. Its proposal for a realignment of lifeline rates targeted at low-income customers is denied, but its use of a zero-intercept method of allocating costs of service is approved, given the largely rural, residential nature of its service.

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1. RETURN, § 85.3

[N.H.] Electric cooperative — Times interest earned ratio (TIER) in lieu of return — For coverage of debt service — TIER of 1.39 — Stipulation. p. 350.

2. RATES, § 360

[N.H.] Electric rate design — Implementation of seasonal rates — For all customer classes — Cooperative association — Stipulation. p. 351.

3. RATES, § 326

[N.H.] Electric rate design — Implementation of time-of-day rates — For the "primary general" class — Cooperative association — Stipulation. p. 351.

4. RATES, § 342

[N.H.] Electric rate design — Development of standby and/or antibypass rates — Deferral of consideration of — Cooperative association. p. 351.

5. RATES, § 125

[N.H.] Factors affecting reasonableness — Ability to pay — Low-income residential ratepayers — Lifeline rates — Proposed restructuring to target certified low-income customers — Rejection — Initiation of generic investigation into lifeline service — Assessment of impact of new seasonally differentiated rates — Electric cooperative. p. 352.

6. RATES, § 143

[N.H.] Factors affecting reasonableness — Costs of service — Particular cost-of-service studies — Use of zero-intercept method — Affirmation — Electric cooperative — Factors — Rural, largely residential service. p. 352.

7. APPORTIONMENT, § 10

[N.H.] Expenses — Capacity, demand, and customer costs — Allocations based on zero-intercept method — Validation — Factors — Allocation as following cost causation — Rural, largely residential makeup of customers — Electric cooperative. p. 352.

8. APPORTIONMENT, § 11

[N.H.] Expenses — Transmission and distribution plant — Coincident versus noncoincident peak loads — Seasonal load characteristics as a factor — Rural, largely residential service as a factor — Electric cooperative. p. 353.

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APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; Office of the Consumer Advocate by James R. Anderson, Esq. on behalf of Residential Ratepayers; Reduced Energy Specialists, Inc. by Bruce N. J. Hotz on behalf of Loon Mountain, Mt. Attitash Lift Corporation, Mount Cranmore and Waterville Valley; and Eugene F. Sullivan III, Esq. on behalf of the Staff of the New Hampshire Public Utilities

Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On July 30, 1993, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting a base rate increase of 1.44% pursuant to RSA chapter 378. On that same date, NHEC also filed a petition for temporary rates pursuant to RSA 378:27 seeking a temporary base rate increase in the same amount as its permanent rate request.

On September 27, 1993, the Commission issued Report and Order No. 20,981 setting a procedural schedule to govern its investigation into the proposed rate increase and setting temporary rates at the requested level.

On February 28, 1994, after reviewing a Commission audit of its rate filing, NHEC filed an amended rate petition increasing its requested rate increase from 1.44% to 1.9%.

Given the filing of an amended petition the Commission issued another order of notice scheduling a prehearing conference to establish an amended procedural schedule and to entertain any motions to intervene.

On May 12, 1994, Reduced Energy Specialists, Inc. (RES) filed motions to intervene on behalf of Loon Mountain, Mt. Attitash Lift Corporation, Mount Cranmore and Waterville Valley, all ski areas in NHEC service area.

On May 18, 1994, the Commission held the duly scheduled hearing. Subsequently, the Commission issued Report and Order No. 21,263 setting a new schedule to investigate the new filing, including revised hearing dates, and granted the motions to intervene.

### II. POSITIONS OF THE PARTIES AND STAFF

The Parties and Staff entered into a Stipulation Regarding Revenue Requirements and Certain Rate Design Issues (Stipulation). Disagreement among the Parties and Staff centered primarily on the inter-class allocation of costs and related rate design proposals. NHEC's proposal to change its existing "Lifeline" rate was also contested at the hearing.

#### A. *Stipulation*

The Parties and Staff agreed to a total revenue increase of \$1,100,000.00 above NHEC's existing permanent rates. The increase reflected adoption by the Parties of Staff's proposed adjustment to the pro forma income statement, primarily to recognize year-end customers. This revenue increase constitutes a 1.51% increase over base rates in effect on July 30, 1993, when NHEC filed its initial petition, and a 0.07% increase over the temporary rates approved in Commission Report and Order No. 20,981.

The Parties and Staff agreed that on or before June 1, 1995, NHEC would file a petition requesting approval to implement, effective October 1, 1995, seasonal rates for all customer classes, time-of-day rates for the PG class, and revised rates which recognize the "ratchet" costs imposed upon NHEC by the Amended Partial Requirements Agreement between NHEC and

PSNH. NHEC would also file, on or before June 1, 1995, proposed tariff changes and/or other proposals or analysis addressing issues associated with customers disconnecting from the system on a short term, long term or permanent basis.

The Parties and Staff acknowledged that NHEC retained its statutory rights with regard to recoupment of revenues reflecting the difference between the temporary rates and the total approved revenue increase. They agreed that any calculation of revenues to be recovered through a recoupment surcharge would be

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based upon the period beginning on February 8, 1994 (when NHEC filed its amended rate petition) and ending upon the effective date of the permanent rates approved by the Commission. The surcharge would be allocated evenly among NHEC's various rate classes.

B. *NHEC*

1. *Rate Design.*

NHEC proposed revisions to its residential, commercial, industrial and lighting rates to more accurately reflect the cost of serving those classes. The residential rate changes include increasing the customer charge from \$7.00 to \$8.00 per month and simplifying the block structure by combining the first and second blocks over the next two or three rate cases. Exhibit 5 at 32. As a result, the first block of energy would increase in price and the second block would be reduced slightly. The phased-in change would eliminate the current "Lifeline" rate structure. As a response, and driven by the unique membership profile and usage patterns of NHEC's customers, NHEC believes it is necessary to revise its residential rates to include a targeted program to assist eligible, low-income customers.<sup>1(32)</sup> Exhibit 6 at 6. In support of its proposal, NHEC testified that the Lifeline rate, which was adopted as a result of proceedings mandated by the Public Utility Regulatory Policies Act of 1978 (PURPA), does not effectively assist the lower income or needy ratepayers in its service territory. In order to target these ratepayers more effectively, NHEC proposed a slow transition away from the current "camel-back rate design", which reduces energy charges for the first 250 kWh of usage and recovers those reductions in the subsequent energy block, to a direct reduction in the customer charge to certain discrete customers that can or have established their qualification for assistance. NHEC proposes to recover all decreased revenues from implementation of its targeted Lifeline proposal from the residential class of customers. NHEC estimates that the revenue effect of lowering the customer charge for lifeline customers to \$4.00 per month from the proposed standard customer charge of \$8.00 would result in increasing the first block energy rate by 1 mil for all residential customers to recover the \$139,000 in reduced revenues. NHEC has not factored in any charges from the Community Action Program (CAP) agencies involved in certifying eligible low-income households.

The Demand Metered General Service Rate G rate structure is also proposed to more closely reflect the costs of service. The customer charge is proposed to increase from \$7.00 to \$8.00 per month, excluding franchise tax. The Demand Charge will no longer have a 5 kW waiver that is recovered in the first block of the energy block. The new rate design will have a \$5.75 per kW charge for the first 25 kW of usage with the second block priced at \$5.00 per kW for all demand

above 25 kW. Exhibit 5 at 38.

As directed by the Commission in DR 92-009, the proposed rate design of Rate PG moves the demand charge substantially higher to reflect the cost of providing service. The energy charge is proposed to decrease slightly. Exhibit 5 at 41.

## 2. Cost of Service Study

NHEC's consultant, Dennis R. Eicher of Power Systems Engineering, pre-filed testimony on Revenue Requirements, Cost of Service Allocation and Rate Design. Mr. Eicher also pre-filed rebuttal testimony that addressed certain issues raised by the OCA.

The purpose of Mr. Eicher's embedded cost of service study (COSS) was to identify the costs NHEC incurs in providing service to each rate class. The embedded COSS was used as the framework for allocating revenue responsibility to NHEC's various service classes as well as providing a breakdown of the costs by function (*i.e.*, customer, capacity and energy). The revenue responsibility by function was used in conjunction with the marginal COSS in designing the proposed rate schedules.

Mr. Eicher stated that the embedded COSS was the same as he had used in Docket No. DR 92-009, except for the following changes:

### Page 345

1. The inclusion of the *1991 Load Survey*, which was utilized to develop the allocation of demand.

2. The allocation of purchased power capacity costs using the average monthly coincidental peak demands of each class to the system peak demand instead of the average monthly class non-coincidental peak demands as NHEC supported in DR 92-009. Mr. Eicher stated that the use of the *1991 Load Survey* made the change possible.

3. The storage Heating Class is no longer treated separately in the COSS as it was in DR 92-009.

Mr. Eicher used the following allocation factors to break out the proposed revenue requirement into costs by general rate classes.

*Direct Cost Allocations* were based on costs that could be directly attributable to a rate class (*i.e.*, costs of load management were assigned to the load control classes).

*Consumer Cost Allocations* were allocated based on the weighted number of customers in each class. Mr. Eicher views consumer costs as a function of the number of customers and/or the location of the customers. Mr. Eicher believes that consumer related costs are basically invariant as to the usage of the customer or the demand level imposed by the customer on NHEC's distribution plant. Mr. Eicher's opinion is that the costs of providing an electrical network at its minimum level, including poles, wires and transformers, is necessary because it is driven by the provision of service to customers. Any additional investment is, in Mr. Eicher's opinion, used to meet the capacity needs of the facilities during peak demand, whether the peak is a system, circuit or an individual peak. Thus, he classifies those costs as capacity related.

*Capacity Cost Allocations* were developed using three different allocation factors. Power

supply capacity costs for NHEC are a function of the monthly billing demand at each of the delivery points served by PSNH, NHEC's primary wholesale supplier. Each class' monthly contribution to the system coincidental demand (CP) was used as a proxy in the allocation of purchased power capacity costs. Line transformer capacity related costs were allocated using the sum of the estimated annual non-coincidental peak demand (NCP) of each customer in each class because Mr. Eicher believes this method best approximates line transformer costs for a rural electric cooperative. Primary Service Class PG customers own their own transformers and, therefore, were assigned a demand value of zero. Primary line capacity related costs were based on the Average and Excess Demand method using the average monthly NCP of the class. The Average and Excess Demand method, in Mr. Eicher's opinion, prevents any class from receiving a "free ride" of capacity related costs.

*Energy Cost Allocations* were based on the loss adjusted total energy sales in each class.

The following tables, from pages 22 and 23 of Mr. Eicher's pre-filed testimony, reflect the results of Mr. Eicher's embedded COSS.

**Page 346**

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

TABLE 1  
COMPARISON OF REVENUE REQUIREMENTS  
WITH REVENUE FROM PRESENT RATES

Description Total	Resid. Service	Contr'l		Primary		
		General Service	Water Heating	Storage Heating	General Service	Outdoor Lighting
Rev. Requirements	50,542,792	19,203,019	721,610	270,305	4,333,533	623,782
75,695,040						
Present Rates						
2 Rev.-Present Rates	46,800,094	19,830,234	725,439	270,844	4,025,567	832,983
72,485,161						
3 Revenue Credits	1,401,962	594,042	21,732	8,114	120,591	24,953
2,171,394						
4 Total Revenue	48,202,056	20,424,276	747,171	278,958	4,146,158	857,926
74,656,555						
5 Req'd Incr. (Decr.)	2,340,736	(1,221,258)	(25,561)	(8,653)	187,374	(234,154)
1,038,485						
6 Percent	5.00	(6.16)	(3.52)	(3.19)	4.65	(28.11)
1.43						

TABLE 2  
COST ALLOCATION SUMMARY

Description Total	Resid. Service	Contr'l		Primary		
		General Service	Water Heating	Storage Heating	General Service	Outdoor Lighting
Direct			82,153	6,638	30,677	179,505
298,974						
Consumer	11,675,260	3,203,979	6,618	6,060	37,770	
14,929,687						

					PURbase	
Capacity - Pwr. Sup.	14,572,376	5,055,417	93,323		1,493,173	172,911
21,387,201						
Capacity - Dist. Sys.	3,357,052	1,335,942	76,902	41,701	255,056	35,791
5,102,443						
Energy	20,938,103	9,607,681	462,613	215,906	2,516,856	235,575
33,976,735						
TOTAL	50,542,792	19,203,019	721,610	270,305	4,333,533	623,782
75,695,040						

TABLE 3  
RATE DESIGN FACTORS

Category	Resid. Units	Contr'l		Primary		Outdoor Service
		General Service	Water Service	Storage Heating	General Heating	
Lighting						
Direct	(\$/Mo.co.)			1.75	1.75	134.55
2.64						
Consumer	(\$/Mo.co.)	17.73	36.60	0.14	1.60	165.66
Capacity - Pwr. Sup.	(¢/kWh)	3.94	2.98	1.14		3.23
4.16						
Capacity - Dist. Sys.	(¢/kWh)	0.91	0.79	0.94	1.09	0.55
0.86						
Energy	(¢/kWh)	5.66	5.66	5.66	5.67	5.44
5.66						
Capacity - Energy Subt.	(¢/kWh)	10.52	9.43	7.75	6.76	9.22
10.68						
TOTAL	(¢/kWh)	13.67	11.32	8.84	7.09	9.37
15.00						

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Table 1 indicates the class revenue requirement NHEC believes is attributable to each class under current tariff rates and what change in revenue requirements is needed, shown in line 5, to completely reflect the revenue requirement of each class under the proposed rate increase of 1.43%. Table 2 takes the embedded COSS and class revenue requirements in Table 1, line 1, and allocates them according to their functional category.

Table 3 breaks down the cost responsibility in Table 2 into monthly factors for the direct and customer specific costs by the number of customers and the demand and energy costs on a per kWh basis for each class.

Mr. Eicher also provided a marginal COSS as the Commission directed in its Report and Order in DR 92-009. Mr. Eicher opined that the marginal COSS should be used only for aiding the design of the rate components within each rate class and not as a way in which to assign class revenue requirements. The actual rate design proposals were based on Mr. Eicher's judgement to reconcile the total required revenue requirements with other rate design objectives such as gradualism and membership acceptance. Based on Mr. Eicher's belief that it is important to avoid abrupt changes in rates, NHEC proposed that no customer class receive a rate increase less than one-half of the overall rate increase of 1.43%. Table 7 of Mr. Eicher's pre-filed testimony, shown below, reflects the differences in cost allocation among the classes based on what the COSS supports and what NHEC proposed in its pre-filed case.



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

COMPARISON OF REQUIRED INCREASE (DECREASE)  
PER COST OF SERVICE ANALYSIS WITH  
TARGET INCREASE (DECREASE)

Class	Increase (Decrease) Per Cost of Service		Increase (Decrease) as Targeted by NHEC	
	Amount	%	Amount	%
Residential	\$2,340,736	5.00	815,505	1.74
General Service	(1,121,258)	(6.16)	140,795	0.71
Controlled WH	(25,561)	(3.52)	5,151	0.71
Storage Heating	(8,653)	(3.19)	1,923	0.71
Primary General	187,374	4.65	65,276	1.62
Outdoor Lighting	(234,154)	(28.11)	5,914	0.71
Total	\$1,038,485	1.43	\$1,034,564	1.43

NHEC believes its cost allocations, reflecting NHEC's interest in gradualism and other rate design principles, are just, reasonable and non-discriminatory. Brief at 5. NHEC cites as support for its COSS methodology the fact that the only noteworthy changes to the COSS have been directed by the Commission and the methodology is essentially identical to the COSS filed and approved in DR 92-009.<sup>2(33)</sup> NHEC acknowledges that the crux of the inter-class cost allocation dispute revolves around the proper method for classifying overhead line and transformers.

Mr. Eicher supported using the zero intercept method for classifying distribution line and service transformer investment in the embedded COSS. Mr. Eicher stated that the first step in determining the customer-related distribution costs using the zero intercept method was to classify plant in service according to what causes the utility to incur costs. Mr. Eicher's view is that costs incurred by NHEC in Account 368, transformers, and Accounts 364-367, overhead/underground line and devices, are a

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function of the system's need to meet peak demand and the location and number of customers serviced by NHEC. Mr. Eicher used NHEC's actual customer base, citing the distribution system's use of 85% single and V-phase line and 15% three-phase line, as support for employing the zero-intercept method.

The zero intercept method results in 75% of the costs of overhead line being classified as customer-related rather than as capacity-related. Exhibit 12. Transcripts, Eicher, Day II, pp. 56-57.

*C. Office of the Consumer Advocate.*

*1. Rate Design.*

Mr. Richard LaCapra of LaCapra Associates presented testimony on behalf of OCA. Mr. LaCapra's testimony focused on the embedded COSS performed by Mr. Eicher, although Mr. LaCapra's pre-filed testimony included an embedded COSS, a marginal COSS and specific rate

design proposals.

The OCA agreed with NHEC that the Lifeline rate did not effectively assist the lower income or needy ratepayers in NHEC's service territory and the current Lifeline rate design should be phased out. The OCA did not, however, agree with the methodology chosen by NHEC to achieve that goal as the suggested methodology would not appreciably assist lower income ratepayers. Without providing any specific plan, other than suggesting the examination of reduced energy charges along with reduced customer charges, the OCA suggested "the Cooperative investigate several modifications in future rate designs" to the Lifeline rate. Exhibit 10, at 27.

The OCA further recommended that any cost incurred in providing Lifeline rates to residential customers be spread over all customer classes. In support of this position the OCA explained that Lifeline rates for the needy provide a societal benefit that should be borne by all of society not just residential ratepayers.

## *2. Cost of Service Study*

Mr. LaCapra cited a number of problems with Mr. Eicher's embedded COSS. Exhibit 10 at 3. The principal problem was Mr. Eicher's use of the "zero intercept" method to classify distribution plant. Mr. LaCapra also disagreed on the allocation of capacity-related plant used for transmission and distribution. Other differences included the poor reflection of cost causation in NHEC's purchased power costs, the incorrect use of distribution capacity allocators and the disregard of voltage level for distribution line plant. Exhibit 10 at 3.

Mr. LaCapra believes that a serious misallocation of costs results from the errors in Mr. Eicher's embedded COSS. In particular, the costs of serving the residential class is overstated by using Mr. Eicher's methodology. Exhibit 10 at 3. Use of the zero intercept method understates the cost of serving the general service class and use of the wrong allocators for distribution and transmission plant causes the primary general service class to be allocated less than their full cost of service.

Mr. LaCapra agrees with Mr. Eicher that some distribution plant, such as services and meters, is needed for each customer and should be classified as customer-related. The major dispute arises over how Mr. Eicher treats plant that is used to bring electricity from the transmission lines to the customer. Mr. LaCapra believes that distribution plant is built to serve load; therefore, it is more appropriate to treat distribution plant as energy-related rather than as capacity-related, which is how it is normally classified. In either case, it is not customer-related as Mr. Eicher contends. In support, Mr. LaCapra states that distribution planners plan their systems not around the number of customers, but around the load that will need to be met. Exhibit 10 at 6 and 7. Mr. LaCapra classifies all distribution line costs as demand-related and allocates them based on the class NCP.

Regarding the allocation of transmission and distribution plant, Mr. LaCapra uses the annual CP for transmission and the average winter and summer CP for substation costs and primary distribution line. Exhibit 10 at 10 and 11. Transformers are allocated based on the annual NCP of customers. Exhibit 10 at 15. Based on Mr. LaCapra's methodology, as contained in Exhibit RLC-3 of Mr. LaCapra's pre-

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filed testimony, the residential class would receive a 0.5% decrease to bring its revenue responsibility in line with its fully allocated costs. The General Service class would receive an increase of 3.1%, the Storage Heating class a 7.2% increase, and the Primary General class a 25.7% increase. Exhibit 10 at 16. Adjusted for changes in purchased power costs to reflect the PSNH ratchet of 70% effective January 1, 1995, the residential class revenue requirement would decrease by 0.4% from its current levels and the General Service class would increase by 2.9%. Exhibit 10 at 18.

Mr. LaCapra also believes that Mr. Eicher's marginal COSS is seriously flawed. In particular, Mr. LaCapra states it underestimates both the marginal distribution capacity costs and the marginal generation capacity costs. Exhibit 10 at 19.

Based on Mr. LaCapra's embedded and marginal COSS, and in light of what OCA considers were unknown radical changes made in the COSS methodology in DR 90-078, *i.e.*, use of the zero-intercept method, the OCA believes the proper recourse is a return to Mr. LaCapra's methodology for allocating distribution-related plant that was in use in 1985 and 1988. Brief at 5. OCA further states that the Commission should rely on the cost studies performed by Mr. LaCapra and begin phasing in the rate increase to the Primary General class by 10%.

*D. Reduced Energy Specialists.*

*1. Rate Design.*

RES took no position on the merits of a Lifeline rate in any form, but objected to allocating any such costs to the commercial and industrial rate classes.

*2. Cost of Service Study*

RES did not present testimony, but takes the position that the record fully supports the following three conclusions: (1) retail ratchets should not be included in this case as agreed to by the Parties and Staff per the Settlement; (2) all significant changes such as ratchets and seasonal rates should be phased in; and, (3) NHEC's COSS is the appropriate one to use for this utility. Brief at 1.

*E. Staff.*

*1. Rate Design.*

Staff took the position that NHEC's proposed revisions to its Lifeline rate may raise questions of "discrimination" that would violate state law, and that NHEC's proposed revisions would reduce and eventually remove any conservation component from the current Lifeline rate.

*2. Cost of Service Study*

Staff's cost of service testimony focused on deficiencies in the marginal COSS such as the lack of seasonal rates and the omission of the wholesale ratchet component in NHEC's retail rates. Both issues are addressed in the Stipulation. Staff did not support a particular methodology for allocating embedded distribution plant between customer and capacity related costs, but did have reservations about Mr. LaCapra's position that all overhead line costs should be classified as capacity-related. Transcript, Day III, pp. 98-99, 130.

### III. COMMISSION ANALYSIS

The first issue for our consideration is the Stipulation Regarding Revenue Requirements and Certain Rate Design Issues. Exhibit 2.

[1] RSA 378:28 (Supp. 1994) and 378:27 provide, in relevant part, that a utility is entitled to a reasonable return on its prudent investment in property used and useful in its service to the public. In the case at hand, the utility is a non-profit, member owned, electric cooperative which does not seek a return on its investment, but rather a debt level coverage known as the Times Interest Earning Ratio (TIER). That is, NHEC seeks a revenue level that will cover its cost of debt service by some factor above one. Thus, we will examine the stipulated revenue stream not from the perspective of a return on the capital dedicated to the public service by independent investors, as is our usual and

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customary practice required by law, (RSA 378:28 (Supp. 1994) and 378:27), but rather from the perspective of debt or TIER coverage. *Cf.*, RSA 374:3-a (Supp. 1994).

In the Stipulation, the Parties and Staff have agreed to a total revenue requirement increase of 1.51%, or \$1,100,000, above NHEC's current base rate revenue requirement. Exhibit 2 at 3. The stipulated revenue requirement, which represents a 0.7% increase over the temporary rates approved in Report and Order No. 20,981, results in a TIER coverage of 1.39. We find the TIER coverage of 1.39 should provide adequate protection for NHEC to cover its financial and operational obligations and enable it to pursue lower cost financing as it becomes available while protecting NHEC's customers from the higher rates of a greater TIER ratio. This TIER coverage will result in revenues and, therefore, rates that fall within the constitutional "zone of reasonableness". Thus, the stipulated revenue requirement is statutorily "just and reasonable" and is approved.

[2-4] The next issue for our consideration in the Stipulation is the proposal to have NHEC file, on or before June 1, 1995, a petition to implement certain rate design proposals, including seasonal rates for all customer classes, time-of-day rates for the PG class, and rates which reflect a ratchet provision to reflect the wholesale ratchet contained in the Amended Partial Requirements Agreement between PSNH and NHEC. Additionally, the Stipulation provides that NHEC will also address issues related to customers who seek alternatives to NHEC's provision of power, either on a short-term or long-term basis, but remain connected to the system or seek to return to NHEC at a later time. The concerns of both NHEC and RES that these issues, involving important rate design changes, be addressed in a separate filing are well founded. We commend the Parties' and Staff's willingness to thoroughly review these issues and, given the timing of this order, allow NHEC until August 1, 1995 to make its filing.

NHEC filed a separate Lifeline provision for all residential rates based, in part, on its proposal to phase in the consolidation of the first and second energy blocks. NHEC favors a "targeted" approach that focuses on low income households to the current Lifeline rate structure. Exhibit 6. The targeted approach is intended to help those truly in need of assistance while eliminating those customers who are unintentional recipients of the current rate structure, such as

seasonal customers with low monthly usage. Exhibit 5 at 33 and Exhibit 6 at 3 and 4.

In order to provide a comprehensive analysis of NHEC's proposal, we will review the derivation of the Lifeline rate design, which applies to all New Hampshire electric utilities under our jurisdiction.

In 1978, the United States Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA). P.L. 95-617. As part of the extensive revision to the Federal Power Act state regulatory agencies were required under Section 114(b) to determine whether Lifeline rates should be implemented if no lower rate offering under Section 114(a) had been in effect two years subsequent to the enactment of PURPA. The Commission opened a docket, DP 80-260, in response to Section 114. On April 30, 1981, the Commission issued Report and Order No. 14,878 which summarized the Commission's findings and established a non-targeted lifeline rate, based on usage of 250 kWh per month, for all residential customers. The Commission found in Order No. 14,878 that "some form of lifeline rate should be adopted to reflect consideration for basic levels of service". 66 NHPUC 166, 171 (1981). The first 250 kWh usage block, reflecting an additional allowance of 50 kWh for the preponderance of electric cooking in New Hampshire, was determined as the minimal essential usage level. The current policy of utilizing a lower first energy block with a 500 kWh minimum break-even point provides everyone with an incentive to conserve energy on a non-discriminatory basis while balancing the other ratemaking interests of economic efficiency, conservation and equity. The Commission's concerns are no less valid today.

The Commission, in considering a pilot program for PSNH, stated that a targeted Lifeline rate is the only way to provide "[M]eaningful and substantial assistance to the truly needy ... " 69 NHPUC 296. The concern

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for the truly needy at that time was brought about by the anticipated high electric costs when Seabrook became operational. For many customers, especially those of NHEC and PSNH, the concerns about high rates are no longer anticipated. They are here now. It is important that our policies meet the needs of the public as those needs change.

[5] NHEC has made a proposal to assist its low-income customers. The program is targeted to those in need and it is designed to retain the proper price signals for all customers. OCA supports the targeted Lifeline approach, but argued originally that any revenue shortages should be recovered from all customers. OCA Brief at 15. OCA subsequently changed its position and supports NHEC's position that any revenue shortfall be recovered from the residential class. OCA Brief at 15. OCA views this policy as similar to economic or load retention discounts for industrial customers. Staff witness Frantz, however, cautions about embarking on changes to the current Lifeline structure. Mr. Frantz believes many of the problems NHEC experiences in the current structure stem from rate design problems, specifically, the lack of seasonal rates. Exhibit 9 at 11.

We believe rate design changes, such as anticipated in the Stipulation, will provide benefits to NHEC's customers by more accurately reflecting NHEC's load patterns and purchased power costs. Even so, we recognize that the current rate design may not be accomplishing its

conservation and lifeline objectives given NHEC's high proportion of low usage customers who vacation in NHEC's service territory. However, there are generic issues pertaining to lifeline rates that apply to all electric utilities, in particular, concerns about the determination of eligibility and the increased costs associated with administering a targeted program. Therefore, we will deny NHEC's proposal to institute a targeted lifeline program at this time, and will open a generic docket for all electric utilities to address the issues pertaining to lifeline rates.

[6, 7] We will now turn to the inter-class allocation of costs. NHEC believes its embedded COSS is the only one fully supported on the record. Brief at 12. Moreover, NHEC states that the use of the zero-intercept method is particularly appropriate for rural electric cooperatives because it closely tracks the costs and the causation of those costs with customers of NHEC's actual distribution system. Brief at 10. NHEC refutes Mr. LaCapra's assertion that the zero-intercept method is "archaic" and "outdated". Brief at 10.

We do not find the zero-intercept method to be archaic or outdated. As the record makes clear, the zero-intercept method is discussed extensively in the National Association of Regulatory Utility Commissioners' publication, *Electric Utility Cost Allocation Manual*, as well as in the Electric Power Research Institute book, *Rate Design: Traditional and Innovative Approaches*. It is also in use in other states and was used in PSNH's last rate redesign. In addition, it was approved by this Commission in NHEC's last rate case, DR 92-009. More importantly, our acceptance of this methodology was based on the merits as presented on the record.

OCA advocates a return to the same methodologies that were in effect in 1985 and 1988. OCA Brief at 5. OCA believes NHEC's embedded COSS is seriously flawed, primarily because NHEC's expert witness, Mr. Eicher, used the zero-intercept method to classify distribution plant. In OCA's opinion, the zero-intercept method does not reflect cost causation, whereas, Mr. LaCapra's method does reflect how costs are incurred. Brief at 4. The result of using the zero-intercept method is that more costs are allocated as customer related rather than as demand or capacity related. OCA maintains that NHEC switched from Mr. LaCapra's methodology in 1990 for reasons unknown and that NHEC's presentation of its cost studies has been inadequate and misleading. Brief at 11.

In our consideration of this issue, we wish to make clear that our decision, as always, will reflect the record before us and the underlying rationale of the Parties and Staff in this docket. Past decisions and changes may and often do add relevance to our analysis and review, but the merits of any particular position must stand on their own in light of the present conditions and information before us. In this instance the case for the zero-intercept method was persuasive.

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While differences such as the allocation of transmission and distribution plant are important to the cost allocations, the record is clear that OCA and NHEC agree that the only significant difference centers on the appropriate methodology to allocate primary line. NHEC Brief at 7. OCA Brief at 5. Transcript, Day II, Eicher at 93. Both parties agree, generally, that costs should be allocated to reflect what causes them to be incurred. This is a standard ratemaking principle long endorsed by this Commission. Nonetheless, the very nature of ratemaking often involves



choices. Other ratemaking criteria, such as gradualism and equity, when applied, should be addressed after the actual determination of the cost studies. Everyone benefits by understanding the determinants of utility costs and cost changes. This is one of the reasons we continue to strongly support marginal cost studies.

In the instant filing, we believe NHEC's use of the zero-intercept methodology is appropriate for determining the customer and capacity related costs of a rural, primarily residential electric cooperative. The very nature of classifying plant that serves more than one cost factor, *i.e.*, has costs common to both customers and demand functions, necessitates a thorough analysis of the theoretical construct of the methodology tempered by the underlying characteristics of the utility. The zero-intercept method attempts to identify what portion of distribution plant, in this case in Accounts 364 through 368, are demand related versus customer related. Regression analysis is the technique used for separating out the customer portion of the distribution plant based on the cost of poles, conductors and line transformers that are needed when there is no load to serve. Mr. LaCapra has proposed allocating this plant based on classifying all distribution line costs as demand related. Exhibit 10 at 8. Mr. LaCapra's suggestion is not without merit. In fact, it has been used by and approved for Concord Electric Company and Exeter and Hampton Company in their last rate redesign. Nonetheless, we find that NHEC's service territory and customer patterns support the zero-intercept method for NHEC. Particularly, we find that Mr. LaCapra's capacity classification would seriously overstate, and therefore, over-allocate costs to the PG class as reflected in Exhibit 12.

[8] After determination of the appropriateness of the classification methodology for distribution Accounts 364-368, we will address allocation factors. We agree with Mr. LaCapra that transmission plant must be sized to meet the annual system coincident peak and the substation distribution plant must be sized to meet the annual non-coincident peak loads of the circuit. Exhibit 10 at 9. Mr. Eicher, while agreeing conceptually with Mr. LaCapra, uses the 12 month average coincident peak method for allocating transmission and distribution substation costs in order to avoid rate instability. Exhibit 11 at 14 and 16, Transcript, Day II at 65. For distribution primary line, Mr. Eicher advocates using the average and excess demand method based on the average monthly non-coincidental class peaks to promote rate stability. Exhibit 11 at 16. Mr. LaCapra uses the average of the summer and winter class non-coincident peak loads. Exhibit 10 at 11.

While we find Mr. LaCapra's allocation factors to be fundamentally sound, generally, we believe Mr. Eicher's rationale for using the allocation factors he has chosen are more reasonable in light of NHEC's customer load characteristics and seasonal effects. We believe many of the concerns of NHEC for rate stability are laudable, but NHEC should not lose sight of the value of cost reflective pricing. Where customers cause NHEC to incur costs, either in higher purchased power costs by contributing to peak demand charges or increased distribution demand related plant, those costs should be reflected in rates unless there are good reasons not to do so. In the instant filing, the allocation factors used represent a minor effect on the result. Transcript, Day II, at 65 and 66.

Based on Mr. Eicher's testimony and the Stipulation, NHEC proposed the following revenue targets:

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

Determination of Revenue Targets  
(No Class Less than 1/2 Average Increase)

Class	Present Rates Per Settlement	Increase (Decrease) Revenue		Target Revised to Reflect Settlement	
		Increase (Decrease) Per COS Filed Amount	%	Amount	%
Residential	47,079,516	2,588,518	5.53	\$867,948	1.84
General Service	19,883,516	(1,152,883)	(5.81)	149,126	0.75
Controlled WH	767,377	(22,696)	(3.13)	5,755	0.75
Storage Heating	312,842	(7,517)	(2.78)	2,346	0.75
Primary General	4,025,568	204,524	5.08	68,578	1.70
Outdoor Lighting	832,983	(230,358)	(27.65)	6,247	0.75
Total	72,901,802	\$1,379,588	1.90	\$1,100,000	1.51

The Stipulation reflects a revenue requirement increase of 1.51%, as shown above from Exhibit 18 at 2. Exhibit 18 compares the customer class revenue requirements proposed by NHEC in its petition, adjusted for the Stipulation, with what Mr. Eicher believes the class revenue requirements would have been had strict adherence to the embedded COSS been followed. We will, based on the reasons set forth above, approve the Stipulation and the revenue allocation of Exhibit 18, which is shown above.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation is approved; and it is

FURTHER ORDERED, that the inter-class cost allocation based on the cost-of-service studies filed by NHEC are approved as shown in Exhibit 18; and it is

FURTHER ORDERED, that NHEC's proposed Lifeline rate redesign is denied; and it is

FURTHER ORDERED, that NHEC file tariff pages in compliance with this Order by July 5, 1995.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

#### FOOTNOTES

<sup>1</sup>Residential Rate D and Rate DC currently contain a lifeline component.

<sup>2</sup>A few clarifications appear necessary at this point. NHEC's Brief refers to Docket No. DR 93-124, the present docket, when the reading seems to refer to the past rate case filing, Docket No. DR 92-009. In the cost allocation section of NHEC's Brief, "intra-class" is used when "inter-class" allocation is the issue being discussed.

#### EDITOR'S APPENDIX

##### Citations in Text



[N.H.] Re New Hampshire Electric Co-op., Inc., DR 93-124, Order No. 20,981, 78 NH PUC 542, Sept. 27, 1993.

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NH.PUC\*06/20/95\*[80972]\*80 NH PUC 355\*Public Service Company of New Hampshire

[Go to End of 80972]

80 NH PUC 355

## Re Public Service Company of New Hampshire

DR 95-048

Order No. 21,694

New Hampshire Public Utilities Commission

June 20, 1995

ORDER affirming Order No. 21,619 (80 NH PUC 210, *supra*), in which an electric utility's proposed 10-year special rate contract with an industrial customer, Batesville Casket Company, was approved. Commission finds no need for public hearing on the matter.

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### 1. RATES, § 339

[N.H.] Electric rate design — Industrial customer — Long-term special rate contract — Overall reasonableness of — Economic development criteria — Affirmation — No need for public hearing before effectuation. p. 356.

### 2. PROCEDURE, § 21

[N.H.] Hearings — Necessity of — Prior to enactment of tariffed rates — But not before approval of special contract rates — Legislative interpretation. p. 356.

### 3. RATES, § 649

[N.H.] Procedure — Hearings — Rate-making versus special contract proceedings — Required prior to enactment of tariffed rates — No such requirement before approval of special contract rates — Factors — Commission staff investigation and analysis of contract proposals. p. 356.

### 4. MONOPOLY AND COMPETITION, § 4

[N.H.] Rate agreements — Use of special rate contracts — Not viewed as a tool for undercutting competition — Role of commission not to protect competitors — Balancing of needs for regulation and competition. p. 357.

### 5. RATES, § 211

[N.H.] Special rate contracts — Proliferation of — Discussion of associated problems — Not to serve as routine replacement for tariffed rates. p. 357.

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BY THE COMMISSION:

ORDER

On March 3, 1995 Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) special contract No. NHPUC-107 with Batesville Casket Company (Batesville). After review of the recommendation for approval from Commission Staff (Staff), the Commission issued an Order *Nisi* approving the special contract, effective May 18, 1995, unless the Commission were to order otherwise prior to the effective date. *See* Order No. 21,619 (April 18, 1995). As with all the Commission's *nisi* orders, approval was granted subject to the condition that the petitioning utility publish the order to allow the public and other interested parties an opportunity to comment before it became effective.

PSNH published the order as required, on April 24, 1995. On May 12, 1995, the Office of Consumer Advocate (OCA), timely filed a Request for Hearing on the Batesville special contract (Request). In its Request, OCA argued that a hearing was necessary in order to explore Staff's analysis and recommendation for approval, whether the public interest is served by ten year contracts with limited termination provisions, whether the revenues under the contract will exceed the cost to serve the customer, the need for the contract and Batesville's commitment to expansion, and whether residential customers will benefit by keeping Batesville on PSNH's system. OCA further asserted that although the Rate Agreement protects against

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increases beyond those set forth during the fixed rate period without a commitment from PSNH regarding treatment of revenues lost due to discounts after the fixed rate period, residential ratepayers are at risk.

According to OCA, Order No. 21,619 failed to state the reasons for the Commission's determination as required by RSA 363:17-b and failed to determine that the special contract rate was just and reasonable.

OCA argued that the Commission lacks authority to approve special contracts without a hearing, pursuant to RSA 378:7 and that the Commission has in effect created a new tariff classification for certain industrial customers, which may ultimately result in increases to residential ratepayers. Further, OCA stated that special contracts diminish the opportunities for competition.

OCA asserted it had been denied rights of due process by not having an opportunity for a hearing. For that hearing to be meaningful, according to OCA, prehearing discovery would be necessary.

Finally, OCA stated that the Commissioners may be disqualified from presiding over any hearing which the Commission might grant, in that they may have prejudged the special contract by having signed the *nisi* order.

OCA has filed similar requests and advanced nearly identical arguments in at least 12 special contract dockets.

The Commission, by letter dated May 15, 1995, suspended the effective date of the Batesville special contract in order to evaluate OCA's motion and any comments or responses filed thereto. Comments were due May 22, 1995.

Batesville, on May 18, 1995, submitted to the Commission a letter it sent to OCA expressing its dismay at the delay in the contract's approval and offering to make itself available to respond to any questions the OCA might have. PSNH objected to OCA's request on May 22, 1995; also on that date, Staff filed a letter stating it did not object to OCA's request for a hearing but disagreed with many of the statements contained within OCA's Request.

**[1-3]** We have reviewed OCA's Request and PSNH's Objection, as well as the letters of Batesville and Staff. We do not find it necessary to grant OCA a hearing on this matter and will deny the request. In so doing, the *nisi* order approving the special contract will become effective as of the date of this order.

OCA asserts that special contracts require hearings in all cases, pursuant to RSA 378:7. We find no evidence that the legislature intended that the provisions for ratemaking in RSA 378:7 (which explicitly require a hearing) were meant to apply to consideration of a special contract filed pursuant to RSA 378:18. RSA 378:18 authorizes the Commission to approve a special contract if "special circumstances exist which render such departure from the general schedules just and consistent with the public interest." There is no requirement for a hearing.

Special contracts are deviations from the tariffed rates set pursuant to RSA 378:7. While the underlying tariffed rates require a hearing prior to enactment, special contracts which deviate from the duly created tariffed rate do not.

Apparently OCA seeks a hearing in every instance of a contract filed pursuant to the Economic Development Checklist established in Docket DE 91-172. We do not believe that is a sound approach to these filings. In 1991 we undertook extensive discovery and testimony on development of the checklist as well as the policy considerations underlying the need for special contracts in some circumstances in order to reach an expedited yet thorough review of these contracts. The process we created as a result of that docket is intended to avoid the unreasonable delays which would result from a full discovery and hearing schedule on each special contract filing.

As we stated in Order No. 21,586 (March 27, 1995) regarding OCA's similar request in PSNH's contract with Summit Packaging Corporation, DR 95-012, we will commence a docket to "consider, at a minimum, whether a load retention special contracts checklist should be established to identify the standards and considerations the Commission will use in its analysis" and explore further the questions of rate recovery and abuse of the special contracts process if such were alleged. This analysis is consistent with the findings of the Economic Development Checklist docket. *See* 77 NHPUC 650,

revenues lost (or maintained) under the contracts, whether residential ratepayers are at risk as a result of these discounts, either during or after the fixed rate period and whether an untariffed class of customers has been created.

We also note that Senate Bill 168, which is awaiting signature by the Governor now that it has passed both chambers of the legislature, requires the Task Force established by that bill to evaluate special contracts. In addition, the bill will create the opportunity for new tariffed rates for economic development job retention rates which may reduce the use of special contracts in the future.

We believe the terms contained within Order No. 21,619 met the requirements of RSA 363:17-b. The order delineated the tariffed rate being discounted, the five components of the charges to Batesville and how they are to be calculated, including the rates' relation to PSNH's Fuel and Purchased Power Adjustment Clause and nuclear decommissioning charges. The order identified the key terms of the contract, Batesville's need for a discounted rate in order to retain and expand its operations in Nashua, and Staff's conclusion that contract met the terms of the Economic Development Checklist. The Commission also required PSNH to notify it if Batesville failed to meet its annual Base Energy Level during the term of the contract or failed to add the additional load and employment as Batesville had represented.

Staff recommended approval of the contract. The Commission, in Order No. 21,619, explicitly found that the contract met the Economic Development Checklist criteria as well as Order No. 20,882 (June 23, 1993) which supplemented the original Checklist. The Commission also found the contract was in the public good. Finally, the Commission stated that in any subsequent PSNH rate case or rate redesign proceeding, the Commission would "consider whether any changes should be made to the revenue requirements or cost studies as a result of the discounted rate afforded Batesville in Special Contract No. NHPUC-107." Order No. 21,619 did not state that the contract was "just" though it did state that the contract was in the public interest, as required by RSA 378:18. To be clear, we supplement the findings of Order No. 21,619 to be explicit in our conclusion that the contract is just and consistent with the public interest.

Finally, OCA stated that the Commissioners "may well be disqualified" as a result of signing the Batesville *nisi* order. Because OCA is not actually requesting recusal in this case, we see no need to rule on this issue at this point. Should OCA wish to make such an argument, it will be granted an opportunity to make a more detailed showing and will not be limited to the cursory statements in its Request. We should note for the record, however, that on the basis of the filing thus far, we would reject a request for recusal as being unwarranted.

[4] We reject OCA's argument that allowance of special contracts diminishes opportunities for competition. First, we do not construe our mandate to be one of endorsing competition in all instances, but rather, to find the proper balance between regulation and competition in order to further the public good. We do not consider the use of the special contract provision in the law to be a force that undermines competition. In fact, increased negotiation between PSNH and its large industrial customers may have led to greater focus on the possibilities of obtaining alternative sources of power, thereby spurring competition.

[5] It is clear that the Commission and OCA have different views of the purpose and value of

special contracts. We do not wish to see special contracts routinely used in lieu of tariffed rates but we recognize that there are instances in which deviation from tariffed rates is appropriate. The legislature clearly demonstrated that view, as is evidenced by its enactment of RSA 378:18. We believe that OCA does not have specific concerns about the Batesville contract itself but rather is challenging the use and treatment of special contracts in general. We will not allow the benefits of this special contract to be lost by allowing a process that brings its implementation to a halt.

We encourage PSNH, OCA and Staff to meet and determine if there are any mutually agreeable modifications to our process that should be explored in order to maintain

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expedited review of special contracts while still ensuring thorough, thoughtful analysis. We ask that Staff report to the Commission within ten days from the date of this order whether any changes to our current handling of special contracts are recommended by PSNH, OCA and Staff.

Based upon the foregoing, it is hereby

ORDERED, that the OCA's Request for Hearing is denied; and it is

FURTHER ORDERED, that Order No. 21,619 is supplemented by this order; and it is

FURTHER ORDERED, that the special contract between PSNH and Batesville, approved in Order No. 21,619, is made effective this date; and it is

FURTHER ORDERED, that Staff report to the Commission within ten days of this order whether PSNH, OCA and Staff are able to recommend any mutually agreeable modifications to our special contracts process for Commission consideration.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

#### 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. [N.H.] Re Public Service Co. of New Hampshire, DR 95-012, Order No. 21,586, 80 NH PUC 158, Mar. 27, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 95-048, Order No. 21,619, 80 NH PUC 210, Apr. 18, 1995.

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NH.PUC\*06/20/95\*[80973]\*80 NH PUC 358\*JFC Utility Corporation

[Go to End of 80973]

80 NH PUC 358

### Re JFC Utility Corporation

DE 95-110  
Order No. 21,696

New Hampshire Public Utilities Commission

June 20, 1995

ORDER extending by two months the *Nisi* period associated with Order No. 21,661 (80 NH PUC 277, *supra*) in which the commission had exempted a very small water utility from commission regulation, since the utility served only six customers and appeared to be in compliance with all system and environmental standards.

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#### 1. PUBLIC UTILITIES, § 124

[N.H.] Regulatory status — Exemptions from regulation — Small water utility serving limited, nearby consumers — Factors supporting exemption — Service to only a very few customers — Compliance with system and environmental standards — Extension of associated *Nisi* period. p. 358.

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BY THE COMMISSION:

#### ORDER

[1] JFC Utility Corp. (JFC) filed with the New Hampshire Public Utilities Commission (Commission) on April 21, 1995 a petition for exemption from the regulatory requirements of RSA Title XXXIV for a water system it owns and operates in the Village of Silver Lake in the Town of Madison (Madison or Town). The Commission issued *Nisi* Order No. 21,661, dated May 22, 1995, granting the requested exemption, with a period for public comment extending to June 19, 1995. Madison, whose Town Hall is one of the company's customers,

**Page 358**

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notified the Commission, orally on June 16, 1995 and by facsimile on June 19, 1995, of certain concerns it had with the exemption, to be memorialized in a forthcoming letter. It requested a two month extension of the effective date of Order No. 21,661 (until August 21, 1995). Madison is particularly concerned about JFC's ongoing intentions regarding the future operation, maintenance and customer cost of water supply. Its concerns are based on JFC's oral disclosure to the Town that JFC may be required to incur prohibitively expensive system repairs, the Town's belief that the alternatives to JFC's spring water supply are unsatisfactory, and Madison's use of its Town Hall for Kindergarten schooling.

We will grant the extension in order to provide Madison additional time to reach an understanding with JFC on its intentions for the future operation of the water system, and to provide the Commission an opportunity to evaluate the Town's concerns and consider whether its exemption of JFC from regulation should be conditioned.

Based upon the foregoing, it is hereby

ORDERED, that the effective date of Order No. 21,661 is extended until August 21, 1995; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, JFC shall mail a copy of this order by first class mail, or hand-deliver same, to each customer by July 5, 1995, to be documented by affidavit filed with this office on or before July 19, 1995.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re JFC Utility Corp., DE 95-110, Order No. 21,661, 80 NH PUC 277, May 22, 1995.

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NH.PUC\*06/20/95\*[80974]\*80 NH PUC 359\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80974]

80 NH PUC 359

**Re New England Telephone and Telegraph Company dba NYNEX**

Additional applicant: Bretton Woods Telephone Company

DE 95-143

Order No. 21,697

New Hampshire Public Utilities Commission

June 20, 1995

ORDER suspending a joint proposal by two local exchange telephone carriers as to an exchange and transfer of assets and subsequent modification to their respective service territory boundaries.

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1. MONOPOLY AND COMPETITION, § 29

[N.H.] Territorial agreements — Modification of boundaries by mutual agreement — Pursuant to transfer of assets — Suspension of transfer plan — Local exchange telephone carriers. p. 359.

2. PROCEDURE, § 42

[N.H.] Suspension — Of asset transfer and territorial modification proposal — Factors — Necessity of adequate investigatory period — Local exchange telephone carriers. p. 359.

-----

BY THE COMMISSION:

ORDER

[1, 2] On May 25, 1995, New England Telephone and Telegraph Company (NYNEX) and Bretton Woods Telephone Company (BWTC) filed a joint petition to transfer assets and modify service territory boundaries for effect June 24, 1995.

Page 359

Staff requires additional time to investigate the filing and material filed in support of the proposed tariff and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of BWTC are suspended:

NHPUC No. 3

Part II, Section 2

1st Revised Page 1;

and it is

FURTHER ORDERED, that the following tariff page of NYNEX is suspended:

NHPUC No. 75

Part A, Section 5

3rd Revised Page 76

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

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NH.PUC\*06/20/95\*[80975]\*80 NH PUC 360\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 80975]

80 NH PUC 360

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-161

Order No. 21,698

New Hampshire Public Utilities Commission

June 20, 1995

ORDER granting a local exchange telephone carrier protective treatment with respect to its



answers to certain of commission staff's requests for information vis-a-vis an inquiry into the carrier's rate of return. Although the carrier failed to submit evidence documenting the financial harm or competitive disadvantage that could occur upon disclosure of the information, the commission authorizes confidentiality, agreeing that the information relates to sensitive revenue analyses and customer development data.

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#### 1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Of certain revenue analyses and customer development data — In rate-of-return proceeding — Likely financial harm or competitive disadvantage as outweighing benefits of disclosure — Local exchange telephone carrier. p. 360.

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BY THE COMMISSION:

#### ORDER

On June 1, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Protective Order regarding information requested by Commission Staff (Staff) in its investigation into NYNEX's rate of return (Motion). NYNEX filed its Motion pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.07 and 204.08.

In its Motion, NYNEX states that information on usage and revenue effects responsive to Staff's inquiry should be afforded protective treatment in that they contain "revenue analyses and competitively-sensitive, customer-development information for various toll services" which fall within the scope of the exceptions to disclosure contained within RSA 91-A:5,IV.

Staff has no objection to the motion but reserves its rights pending detailed review of the material. The Office of Consumer Advocate takes no position.

[1] It should be noted that NYNEX failed to meet all the terms of the Commission's newly enacted rules on confidentiality. It did not provide "[f]acts describing the benefits of non-disclosure to the petitioner, including evidence

**Page 360**

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of harm that would result from disclosure", N.H. Admin. Rules, Puc 204.08(b)(3) and *evidence demonstrating* that competitive disadvantage is likely to occur with disclosure, N.H. Admin. Rules, Puc 204.08(b)(4). Because these rules have only recently been enacted, the Commission recognizes there has been a transition period during which utilities had to become familiar with the workings of the rules and the ways in which they differ from our previous treatment of confidentiality requests. We believe this transition period, however, must come to a close. Following the issuance of this order, we will reject any request which does not comply fully with the terms of our rules.

In the future, rote statement of a need for confidentiality or allegation of harm without facts to support the allegation and evidence will not suffice. We will hold utilities to the language of the order in evaluating these requests and will reject any which fail to demonstrate that the required standards have been met.

Notwithstanding these concerns, we recognize that during discovery the Parties and Staff must review and evaluate considerable information which may be sensitive. We agree that the information called for appears to fall within the exceptions to public disclosure in RSA 91-A:5,IV and will grant it protection.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Proprietary Treatment of usage and revenue effect materials 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 Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

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NH.PUC\*06/20/95\*[80976]\*80 NH PUC 361\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80976]

80 NH PUC 361

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-141

Order No. 21,699

New Hampshire Public Utilities Commission

June 20, 1995

ORDER authorizing an interexchange telephone carrier to restructure rates for virtual telecommunications network service and for "CustomNet Option S" service, which allows a customer to select the rate schedule best suited to the customer's usage characteristics.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Virtual telecommunications network service — "CustomNet Option S" service — Customer choice of usage-specific rate schedules — Restructuring — Interexchange carrier. p. 361.

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BY THE COMMISSION:

## ORDER

[1] On May 23, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to revise AT&T CustomNet Option S (Option S) and restructure AT&T Virtual Telecommunications Network Service (VTNS) Schedules D0 and E0, for effect June 22, 1995.

Option S allows CustomNet subscribers to choose a rate schedule compatible with the customer's usage. A new rate schedule option is being introduced, which includes a volume discount for combined interstate and intrastate usage pursuant to the interstate tariff. In addition, credit card usage for this service is being

Page 361

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identified in a separate rate schedule.

VTNS is being restructured to change rates from hourly to 18 second initial increments with 6 second additional increments. The revised rate structure does not reflect rate increases and AT&T asserts it has been modified for billing purposes only.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC No. 1 are approved for effect as filed:

*Table of Contents*

4th Revised Page 16

*Section 14*

2nd Revised Page 10

1st Revised Page 11

Original Page 12

*Section 23*

1st Revised Page 8

1st 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 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

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NH.PUC\*06/20/95\*[80977]\*80 NH PUC 362\*AT&T Communications of New Hampshire, Inc.

[Go to End of 80977]

80 NH PUC 362

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-144

Order No. 21,700

New Hampshire Public Utilities Commission

June 20, 1995

ORDER authorizing an interexchange telephone carrier to amend its tariffs so that interstate subscribers could apply their intrastate toll usage as an offset to the \$5 minimum monthly charge for business customers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Minimum monthly charges for interstate business subscribers — Interstate versus intrastate calling — Intrastate usage as offset to minimum charge — Interexchange telephone carrier. p. 362.

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BY THE COMMISSION:

**ORDER**

[1] On May 26, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to permit intrastate usage to count toward Customer Account Minimum Monthly Charge for Commercial customers (i.e. business customers), for effect June 26, 1995.

AT&T introduced a minimum monthly charge of \$5.00 for commercial customers who are presubscribed to AT&T in its interstate tariff. Commercial customers who are presubscribed to AT&T for interstate service must pay a minimum of \$5.00 per month. The proposed revision would permit AT&T intrastate usage to

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apply toward the \$5.00 monthly minimum.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's NHPUC No. 1 are approved for effect as filed:

*Section 17*  
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 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

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NH.PUC\*06/20/95\*[80978]\*80 NH PUC 363\*Integrated Water Systems, Inc.

[Go to End of 80978]

80 NH PUC 363

**Re Integrated Water Systems, Inc.**

DR 94-094  
Order No. 21,701

New Hampshire Public Utilities Commission

June 20, 1995

ORDER directing a water utility to hire a qualified engineer by which to conduct a formal assessment of the utility's water system and to develop a plan for addressing any deficiencies discovered thereunder. The utility is instructed to complete a customer metering program as soon as possible, to commence a previously ordered pump testing project, and to determine water use priorities and restrictions for enforcement during the peak summer demand season. The system survey is expected to examine the interrelationships of wells, storage facilities, mains, pumps, valves, leak detection methods, and consumption patterns.

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1. SERVICE, § 481

[N.H.] Water — Restrictions on use — Peak summer demand season — Development of plan. p. 364.

2. SERVICE, § 473

[N.H.] Water utility — Equipment and facilities — Need for complete system assessment —

Pump testing — Survey of interrelationships of wells, storage facilities, mains, pumps, leak detection methods, and consumption patterns. p. 364.

### 3. WATER, § 12

[N.H.] Water utility — Construction and equipment — Determination of system status and deficiencies — By qualified engineer — Pump testing — Survey of interrelationships of wells, storage facilities, mains, pumps, leak detection methods, and consumption patterns. p. 364.

### 4. SERVICE, § 310

[N.H.] Metering — Necessity of — Installation of individual customer meters — Expedient completion of project — Water utility. p. 364.

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BY THE COMMISSION:

### ORDER

Integrated Water Systems, Inc. (Integrated) was granted authority by the New Hampshire Public Utilities Commission (Commission) to

**Page 363**

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purchase and operate a 600 customer water system serving the Locke Lake development in the Town of Barnstead in June of 1993 (Order No. 20,865, 78 NH PUC 295). Permanent rates were granted on February 22, 1995 (Order No. 21,547 in DR 94-094). At the time of Integrated's purchase of the system, it was under a 1991 Department of Environmental Services (DES) Administrative Order to address supply, storage and other deficiencies. Integrated has made significant improvements to the system since that time, including leak repairs, evaluation and upgrading of well pumps, and pump station improvements.

While the 1991 DES order is still in effect, it has become evident that a comprehensive plan to address system deficiencies has not been developed. Without a plan based on a professional assessment of the complete system and its operations, customers could continue to experience outages and other significant quality of service problems. An engineering study done by the previous owner in 1992 in response to the DES order was of such general nature as to be of limited value in meeting this need.

[1-4] One aspect of such a review is the need to determine actual well outputs through pump testing. While pump testing was required by the 1991 DES order and has been the topic of planning and discussions among Integrated, DES and Commission Staff (Staff) for many months, it has not to date been done.

Integrated, DES and Staff also concur that in order to have an adequate knowledge of system operating characteristics, it is necessary to review the interrelationship of well yields, well and booster pump capacities, relative elevations, sizing and location of mains, system sectionalization, storage, production/consumption history, seasonal factors, system valving, blowoff locations, remaining life of system components, leak detection efforts, water quality problems and recommendations of earlier studies. We note that it is Integrated's expressed intent

to now hire an engineer to address these issues. We fully support and commend that intent.

The need to implement water use restrictions during the approaching peak summer months must also be considered as a means of minimizing water shortage impacts prior to completion of the engineering study.

Customer metering could significantly affect the system's operational characteristics by causing reduced consumption once a metered rate is in place. Integrated initially proposed to begin metering in 1993, but the project has seen repeated delays. Some 235 of the 600 customers are currently metered. Order No. 21,547 required completion of metering by December 31, 1995. We are concerned that Integrated not fall behind in their ability to meet this commitment, and in fact urge the company to hasten completion of customer metering prior to the December 31st deadline to the extent possible.

We understand that Staff met with the homeowners association and Integrated regarding these issues, and Staff reported by memo dated June 15, 1995 that the parties and Staff concur with the terms of this order.

Based upon the foregoing, it is hereby

ORDERED, that Integrated develop for implementation water use restrictions by July 1, 1995; and it is

FURTHER ORDERED, that Integrated complete pump testing of wells in compliance with DES requirements, including submission of required reports, by August 15, 1995; and it is

FURTHER ORDERED, that Integrated hire an engineer by July 10, 1995 to complete an evaluation of overall system status and deficiencies; and it is

FURTHER ORDERED, that the engineer meet at least once jointly with Staff and a representative of the Association as part of his or her investigation; and it is

FURTHER ORDERED, that Integrated submit the engineer's final report, to include recommendations, cost estimates and suggested phasing, to the Commission by September 30, 1995; and it is

FURTHER ORDERED, that Integrated provide the Commission with monthly status reports on metering progress until metering is complete.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

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#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DR 94-094, Order No. 21,547, 80 NH PUC 95, Feb. 22, 1995.

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NH.PUC\*06/20/95\*[80979]\*80 NH PUC 365\*Lakeview Water Company, Inc., fka Bachelor Mountain Estates, Inc.

[Go to End of 80979]

80 NH PUC 365

**Re Lakeview Water Company, Inc., fka Bachelor Mountain Estates, Inc.**

DE 91-194  
Order No. 21,702

New Hampshire Public Utilities Commission

June 20, 1995

ORDER approving a settlement agreement under which a water utility may increase its rates to cover expenditures for capital improvements and increased costs of maintenance. The utility also is authorized to impose a quarterly surcharge on each customer, by which to recover its associated rate case expenses.

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1. RATES, § 597

[N.H.] Water rate design — Special factors justifying increase — Significant capital improvements — Increased costs of maintenance — Service to small residential development association — Provisions of warranty deeds notwithstanding. p. 367.

2. EXPENSES, § 89

[N.H.] Rate case expense — Costs of utility's first-ever rate proceeding — Mitigation efforts — Choice by utility to accept less than full recovery— Recovery via quarterly surcharge — Water utility. p. 367.

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APPEARANCES: Charles Mobilia, *pro se*, for Lakeview Water Company, Inc.; Carol Lionetta and Kenneth McKinnon representing Bachelor Mountain Lot Owners Association; and Eugene F. Sullivan, III for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 1, 1994 Lakeview Water Co., Inc. (Lakeview), filed with the New Hampshire Public Utilities Commission (Commission) proposed permanent rate schedules which would result in a 203.1% increase in its present annual revenues and which would affect those customers which it serves in its Alton/Gilford service area. The Commission issued Order No. 21,456 on December 12, 1994 suspending the proposed tariff. A duly noticed prehearing



conference was held on January 9, 1995 before a Hearing Examiner at which the Commission Staff and Lakeview presented a proposed procedural schedule. Robert and Mary Ann Roy and the Bachelor Mountain Lot Owners Association (Association) sought intervention, without objection.

On February 7, 1995 the Commission issued Order No. 21,519 approving the proposed procedural schedule, and approving the intervention requests of the Association and Mr. and Mrs. Roy.

On February 9, 1995 the parties and Staff met in a technical session and developed the basis for the Settlement Agreement. On April 5, 1995 a hearing on the merits was held.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Lakeview Water Company, Inc.*

Lakeview's president, Mr. Charles Mobilia, did not offer any comments at the hearing. He has executed the Settlement Agreement on behalf of Lakeview.

Subsequent to the hearing, and in accordance with the Agreement, Lakeview submitted

**Page 365**

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its request for recovery of rate case expenses in the amount of \$6,500. Lakeview expended in excess of \$10,000 to prosecute the case, its first, but elected to request only \$6,500 of that amount. Its proposal included a recovery period of 20 quarters, with a resulting surcharge of \$14.77 per customer per quarter.

### B. *Bachelor Mountain Lot Owners Association.*

At the hearing, Carol Lionetta indicated that, although the Association had not signed the Settlement Agreement, she felt it was "livable". Mr. Kenneth McKinnon, also of the Association and a participant in the settlement discussions, asked that the Commission give the Association time to hold a meeting so that all the members would have an opportunity to respond. He indicated that, although he and Ms. Lionetta were Directors acting on behalf of the Association, they had not had time to discuss the proposed Agreement with the Association's members. The Commission granted the request, with a deadline of May 19 to report back to the Commission with comments on the Agreement as well as the rate case expenses which would be submitted in the meantime.

On May 17, 1995 the Commission received a letter from Mr. McKinnon indicating that the Association had elected not to endorse the Agreement. He cited the following reasons: 1) the apparent wording of warranty deeds held by the lot owners that the water rate would be \$10 per month, changed only according to maintenance needs, and that the possibility existed that the water system would be turned over to the Association; 2) the Agreement calls for Lakeview to write off to Contributions in Aid of Construction the remaining cost of the original plant, so that the remaining value of the system should be only \$25,575; 3) the Association strongly questions the inclusion of \$1,950 in assets for the construction of water mains to lots 28 and 29, and asserts that the cost of supplying water to lot 29 was included in the price of the land; and 4) the Association would eventually own the water system.

Richard Maxner stated at the hearing that the wording of his Purchase and Sale Agreement indicated that he was to pay \$10 per month plus any annual inflation. He believes that, since the Purchase and Sale Agreement predates the warranty deed, its language should be controlling.

*C. Robert and MaryAnne Roy*

Mr. and Mrs. Roy, although full intervenors, and participants in the settlement discussions, did not wish to be signatories to the Agreement because they are former, and not current, customers of Lakeview.

*D. Staff*

Staff, through its witness Mark A. Naylor, presented the Settlement Agreement. The Agreement provides for an annual revenue requirement of \$9,126 or an annual rate to the 22 customers of \$414.81 per year. This revenue requirement was derived based upon the following: a cost of debt, amounting to 49.54% of the capital structure, stipulated at 6.58%, and equity, at 50.46% of the capital structure, stipulated at 10.12%, resulting in an overall rate of return of 8.37%; a rate base of \$25,575; and operating expenses of \$4,526.

The Company agrees not to recover any remaining balance of the original assets installed at the system in the 1970's, writing it off to Contributions in Aid of Construction, and recovering only those capital improvements installed since 1989. This is in response to the wording contained in at least some of the warranty deeds held by Association members, that the monthly rate of \$10 was for maintenance of the system and could be increased according to future maintenance needs.

The Agreement also calls for the Company to submit its request for rate case expenses, as noted above, along with the necessary documentation, for Staff review and recommendation to the Commission.

Additionally, the Agreement provides that the Company elects to forgo the recovery of the difference between its temporary rate and the permanent rate anticipated therein, due to the length of time that has transpired since the effective date of the temporary rate.

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### III. COMMISSION ANALYSIS

[1] Based on our review of the Agreement, the response from the Association, and the matters discussed at hearing, we will approve the Settlement Agreement as presented by Lakeview and Staff.

We understand the Association's concern with respect to their warranty deeds and/or purchase and sale agreements, and the wording contained therein. We concur, however, with Lakeview's and the Staff's conclusions relative to the wording in the relevant deeds.

The representative deed introduced at the hearing on the merits in this matter states, in pertinent part, that

[b]y the acceptance of this deed the grantees agree for themselves, their heirs, administrators, successors and assigns, to pay the maintenance fee due for the water

system and water maintenance supplied to the grantees by the grantor, its successors and assigns. *The grantees further agree to pay their proportionate share for water maintenance as may be determined from time to time by the grantor ...* . It is further understood and agreed that *the present sum of \$10.00 per month may be changed or modified by the grantor, its successors or assigns ... from time to time as determined by the water maintenance needs* of the grantor, the grantees, and all other persons affected and served by said water system. (Emphasis added.)

See, Exhibit 2.

It is clear from the foregoing deed language that the grantees and their successors in interest are subject to increases in the water fee from time to time as warranted by maintenance needs of the system. Thus, expenses incurred as the result of any water maintenance needs, including capital additions, are recoverable from customers/grantees through modified rates. Contrary to Mr. Maxner's argument, this clear deed language takes precedence over and supersedes the provisions of his Purchase and Sales Agreement due to the Doctrine of Merger. *See Wells v. Company*, 47 N.H. 235, 253 (1866).

We note that the only items of capital investment to be recovered by Lakeview are improvements installed since 1989. The Association, in their correspondence, took issue with an expenditure of \$1,950 for a main extension to lots 28 and 29, asserting that the cost of this extension was included in the price of the land. There is no evidence before us that would support this assertion, and we therefore have no reason to exclude this investment from rate base.

We find that the \$20,367 of total utility plant, as reflected on page 8, Attachment 1-1 to the Agreement, was prudently incurred and is used and useful in the provision of service to Lakeview's customers. Moreover, we recognize and commend the Company for agreeing not to seek the difference between temporary and permanent rates which arguably it may be entitled to and for agreeing not to recover the remaining balance of the original assets installed in the system.

[2] We also will approve the recovery of rate case expenses as proposed by Lakeview. We commend the Company for reducing the amount of expense it sought to recover from its ratepayers as a means of mitigating the impact of the new permanent rate. We will approve a quarterly surcharge of \$14.77 per customer, for 20 quarters.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement dated April 5, 1995 and executed by Staff and Lakeview Water Company, Inc. is hereby accepted; and it is

FURTHER ORDERED, that Lakeview is authorized to recover a revenue requirement of \$9,126 by increasing its annual rate to \$414.81, or \$103.70 payable quarterly in arrears, to its 22 customers, effective with the date of this Order; and it is

FURTHER ORDERED, that Lakeview is authorized to recover its requested rate case expenses in the amount of \$6,500 by a quarterly surcharge of \$14.77 over five years; and it is

FURTHER ORDERED, that Lakeview's plant in service is found to be used and useful in the provision of water service to the 22 customers in its franchise area; and it is

FURTHER ORDERED, that Lakeview

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shall submit its Tariff No. 1, as outlined in paragraph 7.0 of the Agreement, within 30 days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twentieth day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bachelor Mountain Estates, Inc./Lakeview Water Co., Inc., DR 91-194, Order No. 21,456, 79 NH PUC 678, Dec. 12, 1994. [N.H.] Re Lakeview Water Co., Inc., DR 91-194, Order No. 21,519, 80 NH PUC 62, Feb. 7, 1995.

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NH.PUC\*06/21/95\*[80980]\*80 NH PUC 368\*TotalTel USA Communications, Inc.

[Go to End of 80980]

80 NH PUC 368

**Re TotalTel USA Communications, Inc.**

DE 94-307

Order No. 21,704

New Hampshire Public Utilities Commission

June 21, 1995

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

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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 services. p. 368.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 368.

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BY THE COMMISSION:

ORDER

[1, 2] On December 19, 1994, TotalTel USA Communications, Inc. (Totaltel), a New Jersey 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.

TotalTel 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 TotalTel 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. TotalTel 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

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approved service to the public at a rate different from its rates on file with the Commission, TotalTel shall notify the Commission of the change.

5. TotalTel 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. TotalTel shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. TotalTel 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. TotalTel 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. TotalTel 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. TotalTel shall compensate the appropriate Local Exchange Company for all originating and terminating access used by TotalTel 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 TotalTel 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

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TotalTel to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that TotalTel shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 18, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. TotalTel 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 TotalTel shall file a compliance tariff with the Commission on or before July 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 21, 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 twenty-first day of June, 1995.

Notice of Conditional Approval of  
TotalTel USA Communications, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On December 19, 1994, TotalTel USA Communications, Inc. (TotalTel), a New Jersey 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. 21,704, issued in Docket No. DE 94-308, the Commission granted TotalTel conditional approval to operate as of July 21, 1995, subject to the right of the public and interested parties to comment on TotalTel 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 TotalTel's petition to do business in the State should submit written comments no later than July 18, 1995, 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\*06/21/95\*[80981]\*80 NH PUC 370\*Switched Services Communications, L.L.C.

[Go to End of 80981]

80 NH PUC 370

**Re Switched Services Communications, L.L.C.**

DE 95-067  
Order No. 21,705

New Hampshire Public Utilities Commission

June 21, 1995

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

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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 services. p. 371.

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2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 371.

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BY THE COMMISSION:



## ORDER

[1, 2] On March 14, 1995, Switched Services Communications, L.L.C. (Switched Services), 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.

Switched Services 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 Switched Services 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. Switched Services 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, Switched Services shall notify the Commission of the change.
5. Switched Services 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. Switched Services shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Switched Services 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. Switched Services 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. Switched Services 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. Switched Services shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Switched Services 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

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following the end of each calendar quarter Switched Services 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 Switched Services to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Switched Services shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 18, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Switched Services 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 Switched Services shall file a compliance tariff with the Commission on or before July 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 21, 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 twenty-first day of June, 1995.

Notice of Conditional Approval of  
Switched Services Communications. L.L.C.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 14, 1995, Switched Services Communications, L.L.C. (Switched Services), a Texas corporation, filed with the New

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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. 21,705, issued in Docket No. DE 95-067, the Commission granted Switched Services conditional approval to operate as of July 21, 1995, subject to the right of the public and interested parties to comment on Switched Services 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 Switched Services' petition to do business in the State should submit written comments no later than July 18, 1995, 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\*06/21/95\*[80982]\*80 NH PUC 373\*Computer Telephone Corporation

[Go to End of 80982]

80 NH PUC 373

**Re Computer Telephone Corporation**

DE 95-115  
Order No. 21,706

New Hampshire Public Utilities Commission

June 21, 1995

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

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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 services. p. 373.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 373.

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BY THE COMMISSION:

ORDER

[1, 2] On April 28, 1995, Computer Telephone Corp. (CTC), a Massachusetts 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.

CTC 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.

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Based upon the foregoing, it is hereby

ORDERED *Nisi*, that CTC 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. CTC 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, CTC shall notify the Commission of the change.
5. CTC 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. CTC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. CTC 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. CTC 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. CTC 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. CTC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by CTC 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 CTC 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

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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 CTC to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that CTC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 18, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. CTC 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 CTC shall file a compliance tariff with the Commission on or before July 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 21, 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 twenty-first day of June, 1995.

Notice of Conditional Approval of  
COMPUTER TELEPHONE CORP.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On April 28, 1995, Computer Telephone Corp. (CTC), a Massachusetts 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. 21,706, issued in Docket No. DE 95-115, the Commission granted CTC conditional approval to operate as of July 21, 1995, subject to the right of the public and interested parties to comment on CTC 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 CTC's petition to do business in the State should submit written comments no later than July 18, 1995, 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\*06/21/95\*[80983]\*80 NH PUC 376\*Western Union Communications, Inc.

[Go to End of 80983]

80 NH PUC 376

**Re Western Union Communications, Inc.**

DE 95-120  
Order No. 21,707

New Hampshire Public Utilities Commission

June 21, 1995

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

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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 services. p. 376.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 376.

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BY THE COMMISSION:

ORDER

[1, 2] On May 1, 1995, Western Union Communications, Inc. (WUC), 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.



WUC 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 WUC 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. WUC 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, WUC shall notify the Commission of the change.
5. WUC 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. WUC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. WUC 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. WUC 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. WUC 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. WUC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by WUC 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 WUC 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 WUC to operate outside of the conditions set forth in appropriate Local Exchange Company

tariffs; and it is

FURTHER ORDERED, that WUC shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 18, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. WUC 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 WUC shall file a compliance tariff with the Commission on

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or before July 5, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 21, 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 twenty-first day of June, 1995.

Notice of Conditional Approval of  
WESTERN UNION COMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On May 1, 1995, Western Union Communications, Inc. (WUC), 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. 21,707, issued in Docket No. DE 95-120, the Commission granted WUC conditional approval to operate as of July 21, 1995, subject to the right of the public and interested parties to comment on WUC 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 WUC's petition to do business in the State should submit written comments no later than July 18, 1995, 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\*06/21/95\*[80984]\*80 NH PUC 378\*Union Telephone Company

[Go to End of 80984]

80 NH PUC 378

## Re Union Telephone Company

DR 95-177

Order No. 21,708

New Hampshire Public Utilities Commission

June 21, 1995

ORDER requiring a local exchange telephone carrier to show cause why it should not be fined for its failure to comply with prior commission orders. The prior orders related to discounts or credits due intrastate customers as a result of the carrier's excess earnings. Commission notes that the carrier could be liable for reparations, civil penalties, and/or criminal prosecution.

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### 1. RATES, § 158

[N.H.] Factors affecting reasonableness — Past profit or loss — Impact of excess earnings — Customer discounts or credits as a remedy — Local exchange telephone carrier. p. 379.

### 2. REPARATION, § 21

[N.H.] Grounds for allowing — Damage through overcharge — Failure to implement mandated discounts and credits — Local exchange telephone carrier. p. 379.

### 3. FINES AND PENALTIES, § 6

[N.H.] Grounds for assessing — Violation of commission order — Failure to implement mandated discounts and credits — Liability for civil penalties and/or criminal prosecution —

**Page 378**

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Local exchange telephone carrier. p. 379.

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BY THE COMMISSION:

### ORDER

On May 15, 1995, Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission) schedules including a computation of revenue requirement,

in response to the Commission Staff (Staff) inquiry regarding Union's rate of return in excess of its authorized rate of return.

Staff has performed a limited audit of Union and has held discussions with Union regarding its revenue requirement. The discussions raised, *inter alia*, issues related to whether Union is in violation of Commission Order Nos. 20,328 and 20,916.

The Commission, by Order No. 20,328 (December 9, 1991) in Docket DR 90-220, approved a Rate Case Stipulation Agreement which provided that "Union subscribers ... will receive a discount in their intrastate toll charges." This agreement was reached after review of Union's earnings in excess of its revenue requirement in 1991. As agreed, the discount, effective December 1, 1991 and extending until such time as the Commission should order otherwise, was a discount on each customer's bill equal to 12.69 percent of the respective customer's intrastate toll charges.

By Order No. 20,916 (August 3, 1993) in DE 90-002, the Generic Competition Docket, the Commission approved the Modified Stipulation and Agreement in which Union and Wilton Telephone Companies agreed to file "... tariffs that are designed to adjust revenue requirement pursuant to their rate cases in NHPUC Docket Nos. DR 90-220 and DR 90-221."

Union has not sought waiver from nor amendment to either Commission Order.

**[1-3]** Based on information learned in discussions with Union regarding the current inquiry into its rate of return, Staff informs us that Union is not in compliance with the above cited orders. According to Staff, since October 1, 1993, Union has not been providing the 12.69% credit on customer intrastate toll bills, in violation of Commission Order Nos. 20,328 and 20,916. An estimate of the amount of the overcharge to customers, based on preliminary Staff review, is in the range of \$330,000. Staff's memo to the Commission dated June 16, 1995 details these calculations.

We have reviewed the Staff memorandum and find the allegations extremely troublesome. A utility is not at liberty to decide the extent to which it will comply with our orders. *See* RSA 365:40. If it believes an order requires amendment, clarification or waiver, it must petition the Commission. Unless and until we issue an order which relieves a utility of any of the terms of an existing order, the full terms remain in effect.

Failure of a utility to abide by the terms of a Commission order is punishable by civil penalty of up to \$25,000 and/or criminal felony prosecution, pursuant to RSA 365:41. A utility may not charge rates in excess of those found by the Commission to be just and reasonable. RSA 374:2. RSA 374:41 authorizes the Commission to refer matters to the Attorney General for appropriate legal action, including injunction, if in its discretion such action is warranted.

Based upon the foregoing, it is hereby

ORDERED, that Union comply with the terms of Order Nos. 20,328 and 20,916; and it is

FURTHER ORDERED, that Union provide the Commission an analysis which details the total amount that would have been credited to their customers from the date Union discontinued the provision of the credit to the current date, no later than two weeks from the date of this Order; and it is

FURTHER ORDERED, that Union provide the Commission an analysis which provides for the application of interest pursuant to N.H. Admin. Rules, Puc 403.04, to the amount of credit due to each subscriber, no later than two weeks from the date of this Order; and it is

FURTHER ORDERED, that Union appear before the Commission in a hearing at the offices of the Commission, 8 Old Suncook Road, Concord, New Hampshire at 10:00 a.m. on July 20, 1995, for the purpose of investigating whether Union violated the provisions of

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Order Nos. 20,328 and 20,916 and, if so, the amount of any customer refunds due and whether Union should be fined pursuant to, *inter alia*, RSA 365:41, 374:41 and 378:1 *et seq.*, and subjected to the sanctions cited above; and it is

FURTHER ORDERED, that a copy of Staff memo dated June 16, 1995 be forwarded to Union for its review.

By order of the New Hampshire Public Utilities Commission this twenty-first day of June, 1995.

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 Union Teleph. Co., DR 90-220, Order No. 20,328, 76 NH PUC 759, Dec. 9, 1991.

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NH.PUC\*06/26/95\*[80985]\*80 NH PUC 380\*North Country Water Supply, Inc.

[Go to End of 80985]

80 NH PUC 380

**Re North Country Water Supply, Inc.**

DE 93-197  
Order No. 21,709

New Hampshire Public Utilities Commission

June 26, 1995

ORDER exempting a small water utility from commission regulation where it served but a single customer, a residential condominium association.

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1. PUBLIC UTILITIES, § 37

[N.H.] Factors affecting regulatory status — Restricted use — Number of customers — Exemption from regulation for fewer than 10 customers — Water systems — Service only to a residential condominium association — Treatment of association as single consumer. p. 380.

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BY THE COMMISSION:

### ORDER

On October 17, 1994 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,385 which accepted the proposed plan of North Country Water Supply, Inc. (North Country) to incorporate Bow Lake Estates Water Works, Inc. (Bow Lake Estates), to transfer the assets and liabilities of the existing water system at Bow Lake in the Town of Strafford to Bow Lake Estates, and to seek exemption from the regulatory requirements of RSA Title XXXIV for a water system providing service to the Freedom Village Condominium Association (the Association). The Commission further ordered that North Country file a petition for permission to transfer the assets and liabilities to Bow Lake Estates; file a petition for a waiver from regulation for its provision of water to the Association; provide documentation of the establishment of Bow Lake Estates as a corporate entity in the State of New Hampshire; and provide documentation of the separation of the financial books and records of North Country and subsequent transfer of the assets and liabilities of the water system at Bow Lake to Bow Lake Estates.

North Country filed the required documentation on November 29, 1994, and February 14, 1995. After review by Commission Staff (Staff), a revised schedule of the assets and liabilities transferred was submitted on May 15, 1995.

This Commission has general regulatory powers over, *inter alia*, the rates and quality of service of:

every corporation ... owning operating or managing any plant or equipment of any part of the same ... for their manufacture or furnishing of ... water to the public ... .

RSA 362:2 (Supp. 1994).

[1] Thus, any entity providing water to the

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"public" is subject to our jurisdiction. The issue for our consideration, then, is whether North Country's provision of water service to the Association constitutes the provision of water service to the public and, therefore, is subject to our jurisdiction. If an entity serves less than 10 consumers, however, the Commission may, in its discretion, exempt it from regulation, pursuant to RSA 362:4,I. This provision states, in pertinent part, that if an entity providing water service to the public:

shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission may exempt any such

water ... company from any and all provisions of this title whenever the commission may find such exemption consistent with the public good.

RSA 362:4,I (Supp. 1994).

North Country's sole customer is the Association, which consists of 60 members. We have on many occasions construed an association to be a single customer. *See, e.g. Re Cathedral Ledge Water System*, 72 NH PUC 208 (1987); *Re Ropewalk Services Company/Cold Spring Properties Inc.*, Docket No. DE 90-113, Order No. 21,561 (March 7, 1995). North Country, therefore, would qualify for exemption from regulation pursuant to RSA 362:4,I provided we find such an exemption to be in the public good.

Staff has determined that North Country now meets all 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.

We find, in light of the adequacy of service being provided, and the ability of the Association to negotiate directly with its water provider, that the burden of compliance with the ratemaking, tariff filing, reporting, accounting and other requirements associated with regulation by this Commission on a forward looking basis would provide an insufficient correlating benefit to the Association. We therefore conclude that exemption, pursuant to RSA 362:4,I is in the public good given current circumstances.

Based upon the foregoing, it is hereby

ORDERED, *NISI*, that North Country is exempted from the provisions of RSA Title XXXIV in accordance with RSA 362:4,I; and it is

FURTHER ORDERED, that a significant change in quality of service or other circumstances could require a reconsideration of this exemption; and it is

FURTHER ORDERED, that North Country continue to keep records sufficient to provide adequate accounting in the event the exemption is withdrawn; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall mail a copy of this order by first class mail, or hand-deliver same, to each customer by July 10, 1995, to be documented by affidavit filed with this office on or before July 24, 1995; 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 July 21, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 26, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the transfer of the franchise area, as well as the assets and liabilities relating to the water system at Bow Lake in Strafford, to Bow Lake Estates is hereby approved; and it is

FURTHER ORDERED, that Bow Lake Estates is authorized to adopt the tariff on file with this Commission for service at Bow Lake, and to charge the rates and to provide service under the same terms and conditions as contained therein; and it is



FURTHER ORDERED, that Bow Lake Estates re-file, within 10 days of the date of this order, the said tariff reflecting the change of entity providing water service.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1995.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re North Country Water Supply, Inc., DE 93-197, Order No. 21,385, 79 NH PUC 563, Oct. 17, 1994. [N.H.] Re Ropewalk Services Co., DE 90-113, Order No. 21,561, 80 NH PUC 121, Mar. 7, 1995.

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NH.PUC\*06/26/95\*[80986]\*80 NH PUC 382\*EnergyNorth Natural Gas, Inc.

[Go to End of 80986]

80 NH PUC 382

**Re EnergyNorth Natural Gas, Inc.**

DR 94-306  
Order No. 21,710

New Hampshire Public Utilities Commission

June 26, 1995

ORDER authorizing a natural gas local distribution company to recover from ratepayers, over a 10-year period, \$3.5 million in costs incurred in cleaning up a former gas plant manufacturing site. Although the actual cleanup costs varied from the estimates by more than 230%, the commission notes that the remedial work itself was prudent, that the company was under a state mandate to proceed with the cleanup, and that the costs as incurred were reasonable.

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1. EXPENSES, § 20

[N.H.] Accidents and damages — Environmental remediation — Cleanup of coal tar residues — State mandate as a factor — Reasonableness of work and costs — Variance from estimates notwithstanding — Local gas distribution company. p. 385.

2. EXPENSES, § 22

[N.H.] Accidents and damages — Environmental remediation — Cleanup of coal tar residues — Amortization period — Ten-year recovery period — Creation of regulatory asset —

Incentives for recovery from third parties. p. 385.

### 3. GAS, § 4

[N.H.] Liability for damage — Contaminated gas plant manufacturing sites — Environmental remediation — Cleanup of coal tar residues — Cost recovery mechanism. p. 385.

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APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; Office of Consumer Advocate by James R. Anderson, Esq. for residential ratepayers; Amy L. Ignatius for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On September 21, 1993 EnergyNorth Natural Gas, Inc. (ENGI) petitioned the New Hampshire Public Utilities Commission (Commission) for approval of a mechanism for clean up and disposal of hazardous contents at its manufactured gas site in Concord, New Hampshire, which was docketed as DR 93-168. The brick gasholder, which had been used from approximately 1880 until 1950 in the manufacture of gas from coal, was filled with water, sludge and solids containing benzene and other materials classified as hazardous, according to the State Department of Environmental Services. ENGI was under State order to dispose of the contents of the gasholder in accordance with standards for treatment of hazardous wastes.

In addition to the contamination of the gasholder, ENGI is aware of possible contamination of an area down grade from the gasholder, a pond area between the railroad lines and the Merrimack River known as "the frog pond." Clean up of the frog pond is not part of this docket, other than for a small amount of testing

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of the frog pond area, which is included in the total gasholder clean up costs. ENGI has not been held liable for any contamination of the frog pond and is not under any order to institute clean up. Further, the Commission has not been asked to determine whether ENGI or its predecessors were prudent in gas manufacturing operations that may have contributed to frog pond contamination.

Pursuant to an expedited schedule, the Commission considered ENGI's petition on October 22, 1993. The issues in docket DR 93-168 included demonstrating the presence of hazardous materials at the Concord gas manufacturing site, uses of the site which over the years led to presence of these hazardous materials, ownership of the property at pertinent periods, the legal mandate for clean up of the gasholder, investigation of another area potentially contaminated by gas manufacturing, anticipated clean up protocols for the gasholder and a mechanism for recovery of those clean up costs. ENGI, the Office of Consumer Advocate (OCA) and Commission Staff (Staff) submitted an agreement for a recovery mechanism for clean up of the

gasholder. The Parties and Staff litigated all other issues.

The Commission found after hearing that the contamination of the gasholder was the result of standard practice in use in manufacturing of gas and was a legitimate expense of ENGI. The Commission also approved the recovery mechanism agreement. The Report, at page 7, stated that the worst case estimate for clean up of the gasholder was between \$1.2 and \$1.5 million. *See* Report and Order No. 21,042 (November 22, 1993).

The recovery mechanism included creation of a regulatory asset, which would not be included in rate base, for recovery of the clean up costs over an amortization period of seven years. There would be no carrying costs allowed on the unamortized balance of the deferred asset and amortization of the deferred asset would begin simultaneously with the inclusion of the amortization in rates by means of a step increase. The charge (which would not appear as a separate line item on the bill) would be applied equally to all classes taking firm service on a per therm basis. If there were third party recoveries, they would be credited to reduce the deferred asset; prudent costs incurred in seeking recovery from third parties would be borne by ratepayers. Finally, if the property were sold or transferred to a non-utility, ENGI would expect ratepayers to have the benefits associated with utility ownership of the property.

After completion of the clean up of the gasholder ENGI, on December 16, 1994, filed a Petition for Approval of Gasholder Cleanup and Pond Investigation Costs (Petition), which was docketed as DR 94-306. The clean up amount stated in the petition was \$2.6 million. Filed with the petition was a proposed tariff and testimonies of ENGI Vice President and Treasurer Michelle L. Chicoine, Senior Vice President of Operations Albert J. Hanlon and Environmental Services Engineering, Inc. Associate Vice President Roberta F. Haney.

On February 10, 1995 OCA filed testimony of Kenneth E. Traum and Staff filed testimony of Kenneth E. Yasuda, Sr. and Robert Egan. Staff filed testimony of Eugene F. Sullivan on February 13, 1995.

In Order No. 21,577 (March 20, 1995), the Commission suspended ENGI's proposed tariff for recovery of the clean up costs pending completion of the docket. The Commission heard evidence on March 6 and 8 and April 7 and 10, 1995 on ENGI's Petition. As of the time of the hearings, the final cost of clean up was increased to \$3,515,987.

Following the hearings, ENGI filed a Memorandum of Law urging full recovery under the previously approved recovery mechanism. OCA filed a brief urging limited recovery; Staff's brief urged full recovery under a different recovery mechanism.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *EnergyNorth Natural Gas, Inc.*

ENGI and its contractor Environmental Services Engineering, Inc. (ESE) discovered after the clean up was underway that the liquids and solids in the gasholder did not react as they had expected, and the volume of solids that

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would be left after processing the liquids would be considerably higher than had been

estimated. This increase in solids needing costly disposal accounted for the bulk of the increase in clean up costs.

ENGI argued that its efforts in the clean up were prudent in every respect, and when problems emerged in processing the liquids and solids, it sought new bidders and new approaches to the clean up. The project was broken into phases, with OHM Remediation Services Corporation handling phase II and Clean Harbors handling Phase III.

Mr. Yasuda testified to a review of the clean up by Vipul J. Srivastava of the Institute of Gas Technology (IGT). Mr. Srivastava is an expert in manufactured gas site remediation. His review concluded that the steps taken by ENGI and its contractor were sound and that it would have been difficult to anticipate just how the contents of the gasholder would behave in processing. He stated that he knew of no other method of clean up that would have been more cost effective than the methods used by ESE and its subcontractors.

A dispute developed between ESE and one of the subcontractors. ESE obtained a settlement that was less than what the subcontractor had sought; ENGI approved the settlement and the clean up total was adjusted to reflect the final payment amount.

The rate impact of the total clean up, applying the recovery mechanism approved in DR 93-168, would be less than one-half of one cent per therm. For a typical residential heating customer, this would result in an additional charge of approximately \$4.89 per year.

As to recovery of the costs of clean up, ENGI asserted that although the projections for clean up of the gasholder were estimated at \$1.2 to \$1.5 million, the recovery mechanism agreed to between the Parties and Staff in DR 93-168 did not set a cap on clean up costs. The Commission was bound, therefore, in implementing the recovery mechanism ordered in Report and Order No. 21,042, regardless of the change in conditions after the issuance of Order. No. 21,042.

ENGI noted that the increased clean up cost is a significant blow to shareholders because although ENGI would recover the full amount of the clean up it would be done over a seven year period, with no carrying costs. It estimated the carrying costs of \$3.5 million over seven years to be \$775,000. ENGI argued that to extend the recovery to ten years without allowing recovery costs would impose an undue burden on its shareholders.

ENGI testified that it was seeking recovery for the gasholder clean up from prior owners of the site, particularly United Gas Illuminating (UGI), though it could not estimate the likelihood of recovery. Ms. Chicoine testified that while ENGI was vigorously pursuing recovery from UGI, it did not expect that any recovery from UGI would be in the magnitude of the total clean up costs. Insurance coverage for the gasholder had been explored but did not appear to be available, though insurance coverage could conceivably be available for the frog pond area.

Though ENGI was not requesting approval of any recovery for the frog pond (other than the small amount of testing included in the gasholder total), Ms. Haney testified that preliminary frog pond estimates had been developed which ranged from \$4 million to \$850 million, based on certain contamination and disposal assumptions. Ms. Haney cautioned the Commission that her figures were not a sound estimate on which to rely, but were the rough parameters she was looking at if the pond was contaminated with hazardous substances and required disposal of huge quantities of contaminated soil.

In addition, ENGI and Public Service Company of New Hampshire (PSNH) are exploring possible contamination of water and soil near the gas manufacturing site in Laconia. ENGI's predecessor as well as PSNH operated the site for many years. There have been no determinations of the substances present in Laconia and no cost estimates of clean up that might be required.

*B. Office of Consumer Advocate*

OCA argued that because the recovery mechanism agreed to in DR 93-168 was based on a worst case scenario of \$1.5 million, ENGI

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shareholders should be liable for any amount above \$1.5 million. It recommended, therefore, recovery of \$1.5 million through the recovery mechanism approved in Report and Order No. 21,041.

OCA also argued that ENGI was imprudent in taking title to the property from Concord Gas Company when the companies were consolidated, without more thorough analysis of the condition of the gasholder.

*C. Staff*

Staff questioned the steps involved in the clean up and gross miscalculation of the components and behavior of the gasholder contents but concurred with ENGI that the clean up itself was prudent. Staff's agreement regarding prudence of the clean up was based primarily on the review of Mr. Srivastava of IGT.

Staff argued that because the actual cost of clean up exceeded the worst case projections by 233%, and the fact that the range of costs from \$1.2 to \$1.5 million was developed on the basis of what appears to have been misinformation, the Commission should not be held to the previously ordered recovery mechanism.

Staff recommended that the Commission order recovery of the \$3.5 million through a slightly different mechanism which would extend the recovery period from seven to ten years and would initially hold out \$2 million from rates in order to create a stronger incentive for ENGI to pursue third party recoveries. After a number of years, the amount not yet recovered through third party recovery efforts would be included in rates to be recovered over the remaining years of the 10 year recovery period. In addition, Staff recommended that ENGI submit as part of its winter cost of gas adjustment filing a report on actual amount recovered in the preceding year, and recommend adjustment of the rate, if necessary, to take into account weather conditions and gas sales. Staff also recommended that ENGI be required to document any third party recoveries received and to regularly report to Staff, OCA and the Commission the status of its third party recovery efforts, including costs incurred and anticipated costs to continue its third party recovery efforts, to afford Commission adequate information on which to determine when the remaining portion of the unrecovered amount should be put into rates.

III. COMMISSION ANALYSIS

[1-3] Based on review of the record, including four days of testimony, we find the clean up

of the gasholder to have been prudently managed. We are disturbed, however, that the estimates on which the Commission relied when setting the parameters of the cost recovery mechanism in DR 93-168 appear now to have been a mix of different assumptions and methodologies. The limitations and assumptions of ESE's early "worst case scenario" were not clearly identified. We suspect that even ENGI did not fully appreciate the ways in which ESE's original estimate failed to capture the true clean up cost potential. Certainly the Commission did not have a full appreciation of the components which were omitted from ESE's original worst case estimate of \$1.2 to \$1.5 million.

We are left, however, with a state mandate to clean up the gasholder and a record which demonstrates that the clean up itself was handled in a prudent, responsible way, however much the total cost may deviate from the estimates. We find Mr. Srivastava's conclusions persuasive. Mr. Srivastava identified no alternative clean up mechanism and considered the change in subcontractors a wise move when the contents of the gasholder failed to behave as anticipated. We conclude, therefore, that ENGI and its agents acted prudently.

We do take issue with ENGI, however, regarding its position that the Commission is bound by its earlier determination in DR 93-168 regarding a cost recovery mechanism. Unlike litigation between private parties who rightly are bound by principles of *res judicata*, the Commission has an obligation to ensure on an on-going basis that rates charged to ratepayers are just and reasonable and further that a utility is not denied an opportunity to earn a fair return on its investment. If circumstances change which alter either side of that delicate balance, the Commission has the authority and even the

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obligation to modify its prior orders to restore the proper balance. *See* RSA 365:28.

Though we reject ENGI's argument that we are powerless to modify the recovery mechanism, we find that the recovery mechanism should not be modified under these circumstances and will order its use in recovery of the full cost of clean up. We do not believe it is in ratepayers' interest to extend the recovery period to ten years as Staff recommends, given the potential for other costly clean up efforts in the future. We also believe that the increased burden on shareholders by extending the recovery for ten years without carrying costs is unfair, when weighed against the relatively small impact on customer bills over seven years.

We do not find Staff's recommendation to withhold \$2 million of the total \$3.5 million from rates for a time being in order to create an incentive for aggressive third party recovery to be a workable mechanism supported by the record. There has been no testimony to suggest that third party recoveries are likely to be in the magnitude of \$2 million. There has also been no testimony that ENGI has been lax in exploring third party recovery. We will impose a minor modification, however, to the amortization recovery mechanism to provide a greater incentive to ENGI to seek recovery from third parties where possible. Consistent with the recovery mechanism approved in DR 93-168, any recovery, such as settlement with UGI, net of costs, will reduce the total amount to be recovered through rates. But rather than simply lowering the amount to be collected over the remaining amortization period, we will require ENGI to credit the recovery to the end of the amortization period, thereby shortening the time of ratepayer recovery. This should serve as an

additional incentive to ENGI to obtain any potential recovery quickly, as the amount recovered will reduce the carrying costs being absorbed by shareholders.

Because we previously found in DR 93-168 that the presence of benzene and other chemicals in the gasholder were consistent with standard gas manufacturing processing in the past, we reject OCA's argument that ENGI should be denied recovery for the gasholder clean up.

We will require ENGI to report each year, as part of its winter cost of gas adjustment proceeding, the status of the clean up recovery efforts with third parties. If there are adjustments necessary in collection of the clean up charge, ENGI and any other interested party or Staff should make its recommendations as part of that proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the costs of clean up and disposal of the ENGI gasholder were prudently incurred; and it is

FURTHER ORDERED, that ENGI may recover from ratepayers \$3,515,987, the full cost of the clean up; and it is

FURTHER ORDERED, that the recovery mechanism approved in DR 93-168, as modified herein, shall be implemented for recovery of the clean up costs; and it is

FURTHER ORDERED, that ENGI shall submit compliance tariffs within ten days of this order; and it is

FURTHER ORDERED, that ENGI shall report as part of its winter cost of gas adjustment proceeding each year the status of recovery efforts and ENGI, Staff or any interested party should make recommendations regarding any adjustments necessary to the gasholder clean up charge at that time.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-210, Order No. 21,041, 78 NH PUC 689, Nov. 22, 1993. [N.H.] Re EnergyNorth Natural Gas, Inc., DE 93-168, Order No. 21,042, 78 NH PUC 690, Nov. 22, 1993.

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NH.PUC\*06/26/95\*[80987]\*80 NH PUC 387\*New Hampshire Electric Cooperative, Inc.

[Go to End of 80987]

80 NH PUC 387

### Re New Hampshire Electric Cooperative, Inc.

DR 95-021

Order No. 21,711

New Hampshire Public Utilities Commission

June 26, 1995

ORDER accepting an electric cooperative's 1995-96 demand-side management plan, despite the fact that the cooperative failed to achieve its 1994-95 program objectives and was planning to reduce from 50% to 30% the discount given program participants.

The following conservation and load management elements are approved: electric thermal storage heating; storage water heating; compact fluorescent lighting; commercial/industrial audits; and low-income ratepayer assistance. Commission also approves the cooperative's proposed level of surcharges by which to fund the programs.

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### 1. CONSERVATION, § 1

[N.H.] Electric cooperative — Demand-side management plans — Individual conservation and load management programs — Lowering of discounts — Electric thermal storage heating — Shifting of usage to off-peak periods — Storage water heating — Compact fluorescent lighting — Purchases from any retailer — Commercial/industrial audits — Low-income ratepayer assistance. p. 388.

### 2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management planning — Emphasis on load management techniques — Alternative space heating programs — Shifting of usage to off-peak periods — Lighting programs — Audits. p. 388.

### 3. RATES, § 260

[N.H.] Surcharges — Separate charges for residential, general, and primary general customers — For funding conservation and load management programs — Electric cooperative. p. 388.

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APPEARANCES: Mark Dean of the law firm of Broderick & Dean for New Hampshire Electric Cooperative, Inc.; Kenneth Traum of the Office of Consumer Advocate on behalf of New Hampshire residential ratepayers; and Robert J. Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

### I. PROCEDURAL HISTORY

On February 1, 1995, New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its proposed Demand-Side Management Programs for the program year July 1, 1995 through June 30, 1996. NHEC thereafter filed direct testimony and exhibits of NHEC's Director of Energy Services, Stephen E. Kaminski, and Teresa



Muzzey, NHEC's Manager of Rates and Finance. A duly noticed prehearing conference was held on March 20, 1995; there were no requests for intervention.

On April 20, 1995, the Staff of the New Hampshire Public Utilities Commission (Staff) filed the joint testimony of George McCluskey and James Cunningham. On May 15, 1995, NHEC filed two proposed C&LM programs which revised its original filing. On May 25, 1995 NHEC filed a DSM Surcharge Reconciliation for March and April, 1995.

A final hearing was held on May 25, 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. NHEC

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At the hearing NHEC presented the testimony of Mr. Kaminski and Ms. Muzzey. They projected total C&LM spending in the amount of \$1,871,007, of which \$1,529,404 would be recovered through its approved surcharge and submitted updated budgets for individual programs. See, Exhibits 2 and 3.

Ms. Muzzey testified that based on the updated program budgets the following C&LM surcharges will become effective July 1, 1995:

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

Residential:	\$0.00233 per kWh
General:	\$0.00129 per kWh
Primary General:	\$0.00105 per kWh

NHEC acknowledged that it experienced problems in implementing its 1994-95 program. Mr. Kaminski explained that there were staffing problems during the last program year which hindered NHEC's ability to implement approved programs and to maintain proper records.

**[1-3]** As a result of ongoing technical sessions and communications with Staff NHEC made a number of changes to its original C&LM filing. All of the proposed C&LM programs are continuations of those previously approved in NHEC's first formal C&LM filing in DR 93-212, Order No. 21,305 (July 22, 1994). A detailed description of all of NHEC's C&LM programs is found in the aforementioned filing. The following discussion highlights NHEC's proposed modifications to those programs.

#### 1. *Electric Thermal Storage Heating Program (ETS)*

ETS is a residential space heating program that utilizes special thermal storage units in order to shift usage to less costly off- peak periods. According to NHEC this program has undergone significant design change since the original filing. The primary change is that NHEC has lowered the discounts it provides to participants from 50% to 30%. This change was made in order to shift more of the benefits of the program to non-participants<sup>1(34)</sup>. NHEC has also agreed to undertake a detailed monitoring and evaluation plan in order to study the cost-effectiveness of the ETS program.

## *2. Storage Water Heating Program*

This program allows members with water heater(s), meeting a minimum storage capacity requirement, to receive a discounted off- peak rate by allowing NHEC to interrupt service to their water heaters during system peaks. In this filing NHEC proposes to reduce the discount it provides for such equipment from 50% to 30%. During the hearing Mr. Kaminski testified that NHEC has concluded that this is not cost-effective as a stand-alone program. He indicated that NHEC will not market this program extensively in 1995-96, but that it will continue to recommend the program to members who participate in the ETS and Duel Fuel programs.

## *3. Compact Fluorescent Lighting Program*

The fluorescent lighting program has been totally redesigned to reduce administrative costs. Under the program now proposed by NHEC, residential members can purchase compact florescent light bulbs from any retailer in New Hampshire and receive a credit on their energy bill after providing NHEC with appropriate documentation. NHEC believes that the revised program is much more cost-effective than its original proposal.

## *4. Commercial/Industrial Audit-Lighting Program*

This program allows members to receive an energy audit which will be provided free of charge if the member installs any recommended lighting measures. Also, members can apply for third-party financing to install recommended measures, and NHEC proposes to offer an incentive in the form of an interest buy-down on approved loans.

## *5. Low Income Program*

The Low Income Program is intended to provide cost-effective conservation measures for low income residential members. NHEC

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states that it has been unsuccessful in expending its budget for this program because the Tricounty CAP agency has had difficulty locating clients who could take advantage of this program. Mr. Kaminski testified that NHEC has modified the program so that conservation and weatherization measures may be installed in both electrically heated and non-electrically heated low income households. NHEC also proposes to continue its Duel Fuel Program, Standard Water Heater Control Program and Savings Through Energy Management Program.

### *B. Staff*

Staff presented no testimony at the hearing but it represented that as a result of the revisions proposed by NHEC to its original filing, Staff was satisfied with the filing. Staff maintained, however, that it remained concerned over NHEC's performance in complying with commitments made in the previous C&LM docket and recommended that NHEC be required to provide updates regarding NHEC's progress in the Load Research Program. Staff also requested that NHEC provide monthly C&LM reports on a consistent basis.

### *C. Office of the Consumer Advocate (OCA)*

The OCA offered no testimony during the hearing but it did cross- examine NHEC's

witnesses with regard to the filing. Kenneth Traum indicated that the OCA shared Staff's position in that it did not object to the filing and that the OCA should receive copies of all C&LM reports.

### III. COMMISSION ANALYSIS

After reviewing NHEC's proposed C&LM programs and associated budgets, and in light of the changes which it made subsequent to its original filing, we approve NHEC's proposed 1995-96 C&LM programs and associated surcharges. We believe that the proposed C&LM programs are reasonable and will benefit NHEC's members by offering opportunities to reduce energy costs.

Although we accept NHEC's explanation for its failure to achieve the approved 1994-95 programs, we expect that it will fully implement the 1995-96 programs as proposed in its modified filing. In order to enable the Staff and OCA to monitor program activities in the upcoming program year, we direct NHEC to submit monthly C&LM reports as currently required, and in addition, to submit monthly progress reports detailing NHEC's ETS Load Research Program.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's proposed C&LM programs and associated budgets as modified in this matter are APPROVED; and it is

FURTHER ORDERED, that the above-referenced surcharges as proposed by NHEC are approved and shall be effective on July 1, 1995; and it is

FURTHER ORDERED, that NHEC shall comply with all reporting C&LM requirements as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1995.

### FOOTNOTES

<sup>1</sup>In its prefiled testimony Staff expressed concern that non-participants were "subsidizing" the ETS program. Exhibit 11, p. 10-11. By reducing NHEC's contribution toward ETS equipment, it reduces the costs which are borne by non-participants, which in turn shifts the overall allocation of costs and benefits more favorably for non-participants.

### EDITOR'S APPENDIX

#### Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 93-212, Order No. 21,305, 79 NH PUC 416, July 22, 1994.

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NH.PUC\*06/27/95\*[80988]\*80 NH PUC 390\*Utility Property Tax Abatements and Limitation of Expenses

[Go to End of 80988]

80 NH PUC 390

## Re Utility Property Tax Abatements and Limitation of Expenses

Petitioners: Town of Hudson; Town of Pembroke; Town of Bow; City of Franklin

DR 95-029

Order No. 21,712

New Hampshire Public Utilities Commission

June 27, 1995

ORDER denying petitions by a group of municipalities for limits on rate-making expenses that can be claimed by utilities pursuant to utility property tax abatement actions. Commission affirms that suits filed by utilities challenging and seeking reductions in property tax assessments are in keeping with their obligations to reduce costs of service for the benefit of ratepayers.

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### 1. EXPENSES, § 109

[N.H.] Taxes — Property taxes — Abatement actions — Challenges of assessments — Denial of proposed limits on associated expenses — Factors — Challenges as part of obligation to reduce costs of service — Prudence of costs incurred to fight assessments. p. 392.

### 2. TAXES, § 1

[N.H.] Property taxes — Abatement actions — Challenges of assessments — Denial of proposed limits on associated expenses — Factors — Challenges as reasonable response to duty to reduce costs of service. p. 392.

### 3. COSTS

[N.H.] Attorney's fees — Consumer intervention/participation in *commission* proceedings — Recovery of — No authority to award costs for utility-related proceedings in other forums. p. 393.

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APPEARANCES: Upton, Sanders & Smith by Robert Upton II, Esq. for the Towns of Bow, Hudson, Newington, Lancaster, Littleton, Pembroke, Rye, Milford, Gorham and Alexandria and the Cities of Franklin, Nashua and Berlin; Larry S. Eckhaus, Esq. for the Association of New Hampshire Utilities; Devine, Millimet & 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; Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph Company; Leboeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. for Concord Electric Company, Exeter & Hampton Electric Company and Northern Utilities, Inc.; McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; Robert A. Bersak, Esq. for

Public Service Company of New Hampshire; Kenneth Traum of the Office of the Consumer Advocate for residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On February 6, 1995, the New Hampshire Public Utilities Commission (Commission) received a rulemaking petition from the Towns of Hudson, Pembroke, Newington, Lancaster, Littleton, Rye, Milford, Gorham, and Alexandria, and the Cities of Franklin, Nashua, and Berlin (Petitioners). On the same date the Town of Bow filed an identical petition (the Town of

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Bow will hereinafter be included within the term Petitioners). By Order No. 21,546, dated February 22, 1995, the Commission denied the petitions but, because they raised important issues regarding the extent to which ratepayers should bear expenses related to property tax litigation, the Commission invited written comments by March 23, 1995, as to whether such a rulemaking should be undertaken. By the same order the Commission permitted Petitioners to file responsive comments by April 6, 1995, and scheduled oral arguments on the matter for April 13, 1995.

Written comments were received from Lydia W. Angell, past president of the New Hampshire Government Finance Officers Association and Finance Director of the Town of Hudson; Leonard W. Jarvi, Finance Director of the City of Lebanon, and State Representative Paula E. Bradley. Concord Electric Company (CECo), Exeter & Hampton Electric Company (E&H), Northern Utilities, Inc. (NU), EnergyNorth Natural Gas, Inc. (ENGI), Public Service Company of New Hampshire, New England Telephone and Telegraph Company, the Association of New Hampshire Utilities, and Granite State Telephone, Dunbarton Telephone, Merrimack County Telephone, Wilton Telephone, Contoocook Valley Telephone, Hollis Telephone, Bretton Woods Telephone and Dixville Telephone also filed written comments. The Petitioners filed written responsive comments on April 6, 1995.

The Commission heard oral argument on April 13, 1995, from the Petitioners, and from Larry S. Eckhaus, Esq., representing the Association of New Hampshire Utilities, in whose arguments the aforementioned utilities joined; additional comments were made by representatives of the individual utilities and from the City Manager of the City of Berlin and the Town Manager of the Town of Franklin. The Staff of the Commission did not present oral argument.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. *Petitioners*

The Petitioners argue that public utility companies are not required to make the same careful analysis of the risk of appealing a property tax assessment that ordinary corporations make because the costs of such tax abatement proceedings are recovered in the rate making process,

whether or not the utility wins the case. As a result, Petitioners argue, the companies imprudently file tax abatement claims, the costs of which are passed along to ratepayers.

To correct what the Petitioners view as an unfair situation, they propose a rule to exclude from the utilities' recoverable expenses all expenses for abatement petitions that are based upon theories of value consistently rejected by courts and the Board of Tax and Land Appeals. The proposed rule would permit recovery according to a formula which applies the facts of each case. The formula would create a fraction that uses a numerator consisting of the amount by which the court or Board's determination of the utility's property value is less than the municipality's assessed value and a denominator consisting of the amount by which the municipality's assessed value is more than the utility's asserted value. Put in simple terms, in a case where the municipality assessed a value of \$150, the utility asserted a value of \$50, and the court finds a property value of \$100, the fraction would be  $(150 - 100) / (150 - 50)$  or  $50/100$ . The utility, in this case, would be permitted to recover 50% of its expenses.

The Petitioners argue that utilizing the above formula to limit recovery of litigation expenses will force utilities to carefully analyze the risks of tax abatement litigation, encourage more realistic property valuation, and lead to settlement of disputes.

The Petitioners assert that such a formula would not usurp the Commission's authority to determine the prudence of utility actions. The formula would merely set a standard by which prudence is measured. The alternative to the formula, which Petitioners argue is unacceptably burdensome, is for them to intervene in every rate case in which a utility includes abatement litigation expenses.

#### B. *The Utilities*

The utilities, as a group, make the

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following comments. First, they argue that utilities only commence abatement petitions in order to benefit utility ratepayers through reduced expenses of service. Since property taxes are a significant portion of the cost of service, the utilities' obligation to minimize costs must necessarily include attempts to minimize taxes. The utilities point out that the burden on towns of challenging the inclusion of abatement litigation expenses in rate cases is no more burdensome than the utilities' burden of challenging individual towns' tax assessments believed to be unfair.

The utilities contend they are obligated to bear this burden because the Commission requires utilities to "pursue any tax abatement that a reasonably prudent utility would pursue." *Re Southern New Hampshire Water Company, Inc.*, 74 NHPUC 248, 254 (1989). Therefore, the utilities argue, the costs of pursuing tax abatements are a valid business expense which should not be tied to the outcome of the legal actions taken to meet the obligation. The arbitrary rule proposed by the Petitioners would deny utilities an opportunity to recover their reasonable operating costs without regard to the actual prudence of those incurring costs, which in turn would deny the Commission's traditional role and responsibility of determining prudence.

The utilities aver that the formula proposed by the Petitioners will increase utility property

taxes disproportionately, provide an incentive for municipalities to raise utilities assessments, and raise utility rates. Further, the utilities claim that the formula will not achieve the Petitioners' goal because its purported cost-benefit analysis measures different elements before and after litigation. Pre-litigation cost-benefit analysis would measure the cost of the abatement litigation against the present value of the amount of abatement which could possibly be realized, whereas the post-litigation application of the formula results in a measurement of the amount of abatement actually received against the amount requested. Therefore, the utilities argue, utilities will never be able to assess actual risks.

Finally, the utilities claim that the Petitioners' request for recovery of municipal expenses from the utility is not within the Commission's authority. N.H. Admin. Rules, Chapter Puc 205 only affects compensation for intervention in certain Commission proceedings, not tax abatement proceedings before other adjudicative bodies.

Individually, ENGI argued that, under current Commission policy, tax abatement litigation expenses are borne by shareholders, unless incurred during a test year. In contrast, the proposed formula would allow recovery of these expenses at any time, no matter when incurred.

ENGI also challenged the Petitioners' assertion that tax abatement litigation brought by utilities is often frivolous. Citing *EnergyNorth Natural Gas, Inc. v. City of Nashua*, (Hillsborough County Superior Court, Case No. 93-E-348, February 14, 1995), ENGI pointed out that some courts have largely adopted the valuation methodology disputed by the town and advocated by the utility. From the varying court opinions, ENGI drew the conclusion that each property tax abatement case must stand on its own merits and cannot be governed by a generic rulemaking.

Individually, CECo, E&H, and NU argued that property tax methodology is not a settled matter in New Hampshire, noting that our Supreme Court has recognized five different but acceptable approaches to the issue. These companies cited cases demonstrating that use of an acceptable methodology does not guarantee a result acceptable to a court. CECo, E&H, and NU agreed that a rulemaking is not the appropriate method for addressing tax abatement litigation expenses.

### III. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony, exhibits, and pre-filed memoranda provided in this docket and we appreciate the thoughtful arguments made. We find, on the basis of that review, that the petition must be denied. Our decision is predicated on our continued finding that a utility has an obligation to seek abatement of tax assessments it considers unreasonable.

RSA 378:28 requires that we include in permanent rates a return on those items which we find to be prudent; prudence is the standard against which we measure utility actions. In the

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language of the law, prudence is commonly associated with diligence and contrasted with negligence. As we previously stated, "we will require (a utility) to pursue any tax abatement that a reasonably prudent utility would pursue." *Re Southern New Hampshire Water Company, Inc.*, 74 NHPUC 248, 254 (1989). The proposed rulemaking could very well have the effect of



discouraging a reasonably prudent utility from challenging a tax assessment which would contort the prudence standard itself.

We cannot agree with the Petitioners' assertion that tax abatement expenses are automatically passed on to ratepayers. Rate case proceedings are based upon a single test year and are subject to the prudence review. Recoverable expenses are those which were prudently incurred during the test year, and are recurring. These elements preclude any automatic flow-through of litigation expenses.

In addition, our decisions must balance the interests of ratepayers, including the cities and towns, in paying no higher rates than are required, against the shareholders' interest in obtaining a reasonable return on their investment. *Appeal of Eastman Sewer Co.*, 138 N.H. 221 (1994); RSA 363:17-a. It is not appropriate for us to add to that balance the interests of cities, towns, and utilities with regard to tax abatement proceedings. That balance is appropriately left to the courts in which the proceedings are brought.

We will, however, reiterate our commitment to hold utilities to a standard of prudence when considering which expenses will be recoverable in rates, but will not adopt an inflexible formula in which the outcome in a different forum would dictate our determination.

[3] We next address the Petitioners request that we apply N.H. Admin. Rules, Puc Chapter 205 to adopt a rule permitting a municipality to petition the Commission for reimbursement of tax abatement expenses, including attorneys fees and expert witness fees in proportion to the value determined by the proposed formula. We need not address the merits of this request because Puc Chapter 205 does not apply. Puc Chapter 205 provides for compensation by a utility to a consumer whose participation "in a commission proceeding contributes to the adoption by the commission, in whole or in part, of a position advocated by the consumer in that proceeding, and relating to a PURPA standard, or for judicial review of that proceeding." The Petitioners would have us expand Puc Chapter 205 to include expenses for proceedings other than Commission proceedings, which contradicts the plain meaning of the rule.

We recognize and support the Petitioners' concern for meaningful negotiation on disputed property tax assessments, and we will require utilities, before any recovery of tax abatement litigation expenses is approved, to demonstrate that a good faith effort was made to settle the dispute.

Based upon the foregoing, it is hereby

ORDERED, that the petition for rulemaking limiting recovery of utility expenses for property tax abatement actions is DENIED; and it is

FURTHER ORDERED, that utilities wishing to recover any property tax abatement litigation expenses shall henceforth present evidence that good faith efforts were made to settle the dispute prior to commencement of court proceedings.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 1995.

#### EDITOR'S APPENDIX



Citations in Text

[N.H.] Re Utility Property Tax Abatements and Limitation of Expenses, DR 95-029, Order No. 21,546, 80 NH PUC 94, Feb. 22, 1995.

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NH.PUC\*06/28/95\*[80989]\*80 NH PUC 394\*Consumers New Hampshire Water Company fka Southern New Hampshire Water Company

[Go to End of 80989]

80 NH PUC 394

**Re Consumers New Hampshire Water Company fka Southern New Hampshire Water Company**

DE 94-253

Order No. 21,713

Re Pennichuck Water Works, Inc.

DE 94-263

Order No. 21,713

New Hampshire Public Utilities Commission

June 28, 1995

ORDER approving petitions by two water utilities for amendment of their tariff provisions as to main extensions, including proposals that developers be made eligible for refunds of advances as additional customers connect to a new main.

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1. SERVICE, § 210

[N.H.] Extensions — Water utilities — Amendment of tariff provisions — Administrative changes — Construction issues — Responsible parties — Feasibility of off-season work — Situations requiring special contract arrangements — Environmental and highway reconstruction issues — Placement of new mains in public rights-of-way — Avoidance of private property locations. p. 398.

2. DISCRIMINATION, § 203

[N.H.] Service — Extensions — Water utilities — Customers having off-system locations — Rejection of discriminatory proposal — Rejection of alternative financing for ground water supply as opposed to connection with system. p. 398.

3. SERVICE, § 190

[N.H.] Extensions — Water utilities — Burden of cost — Advances with provision for refunds — Eligibility of developers for refund payments — As additional customers connect to new main — Five-year limit — Public interest as a factor — Spreading of cost over greater

numbers — Incentives for development of reliable water systems. p. 398.

#### 4. REPARATION, § 34

[N.H.] Grounds for allowing — Service extension charges — As additional customers connect to new main — Five-year limit — Eligibility of developers for refunds — Water utilities. p. 398.

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APPEARANCES: Gallagher, Callahan and Gartrell by John B. Pendleton, Esq., for Pennichuck Water Works; Larry W. Eckhaus, Esq. for Consumers New Hampshire Water Company; James R. Anderson, Esq., for the Office of Consumer Advocate; and Robert J. Frank, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

Consumers New Hampshire Water Company (Consumers), formerly known as Southern New Hampshire Water Company, and Pennichuck Water Works, Inc. (Pennichuck) filed proposed revisions to their main extension tariffs on October 28, 1994 and October 31, 1994, respectively. Because the proposed revisions raised identical issues, the filings were consolidated into a single proceeding. At a duly noticed prehearing conference a procedural schedule was established final hearing dates were set for April 25 and 26, 1995. Order No. 21,507 (January 23, 1995). At the request of Staff and the Parties, we rescheduled the hearing date to May 1, 1995. There were no requests for intervention.

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Prior to the final hearing Consumers filed written direct testimony of its President, Terry J. Rakocy; Pennichuck filed testimony by its Chief Operating Officer, Stephen J. Densberger; the Office of Consumer Advocate (OCA) filed testimony of Economist, Thomas S. Lyle; and Staff filed direct testimony of James L. Lenihan, Utility Analyst from the Commission's Economics Department, direct testimony of Mary Jean Newell, Assistant Finance Director, and a "Position Paper" prepared by Michael D. Cannata and Douglas W. Brogan of the Commission's Engineering Department.

On April 26, 1995, Consumers filed a Partial Stipulation entered into by Consumers, OCA and Staff. The final hearings were held on May 1, 3, and 5, 1995.

#### II. POSITIONS OF THE PARTIES AND STAFF

##### A. *Consumers*

At the final hearing Consumers presented the testimony of its President, Terry J. Rakocy. Mr. Rakocy explained the terms of the Partial Stipulation which addressed a number of uncontested proposed revisions to Consumers' main extension tariff.

In Section 1 of the proposed tariff, Consumers proposes to provide that the actual

construction of main extensions could be performed by the customer or developer if authorized by Consumers. The current tariff requires Consumers to perform the construction.

In Section 2 of the revised tariff, Consumers proposes to provide the option of putting main extensions through private property if it is able to secure access and it is cost-effective.

Consumers proposes to revise Section 3 in order to specify the size and type of pipe that will normally be used in main extensions. Section 4 contains a proposed revision which indicates that the size of the pipe used in main extensions is determined solely by Consumers. Consumers also proposes to eliminate the requirement that main extensions must be performed between April 15 and November 15 because with different techniques used today construction can occur year-round. Mr. Rakocy testified that the cost impact of such off-season construction would be borne by the customer or developer.

Section 6 states that variations from the proposed main extension tariff will require a special contract. In Mr. Rakocy's pre-filed testimony he indicates that special contracts would be required when "the circumstances indicate that the tariff main extension provisions are not feasible, economical or appropriate". Exhibit 2, p. 10.

Section 7 has been amended to include a reference to the Company's "Guidelines for the Design and Installation of Water Mains, Hydrants and Services", which is intended to ensure uniformity of constructions practices and to aid contractors and developers who place main extensions.

Section 8 has been added to require completion of a standard Main Extension and Water Service Agreement prior to the commencement of construction. This ensures that the rights and responsibilities of all parties are spelled out and the terms of the extension are put into writing.

Section 9 provides that the extensions which are constructed under the terms of the tariff are Consumers' property and that Consumers has the obligation to own and operate the extensions.

Section 10 has been modified to indicate that certain construction which is currently not now required, such as projects which are of a short duration or which are discriminatory, may be undertaken where the applicant for such a project bears all costs associated with the project.

Sections 11 and 12 have been amended to specify certain costs which Consumers currently includes in its estimate of extension project costs, but which were previously unspecified in the tariff. These include the State highway work, inspection fees, traffic control, and brook and wetland crossings.

In the case of individual customers (or a group of customers) who will be served at the regular filed tariff rates, the Company proposes to modify its existing tariff which allows a 50 foot per customer footage allowance and instead provide that the Company shall contribute an amount equal to 150% of the estimated

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annual revenue (based on historical usage of a typical comparable customer). Before construction, customers would be required to make an advance of funds based upon the estimated construction costs less the Company's anticipated contribution. The advance would be

then adjusted to reflect actual construction costs. Consumers' contribution would take the form of a "refund" or credit against the customer advance. The proposed tariff further provides that "in no event shall the [Company's] contribution exceed the actual cost of the main extension".

The tariff also provides that for the period of five years any additional new customers on a main extension will be required to pay a proportional share of the extension expenses and that a prorated refund will be made to previous depositors of a customer advance. After five years the customer advance becomes a non-refundable Contribution in Aid of Construction (CIAC) and no further deposits will be collected or refunds made.

In the case of developers, Consumers proposes to continue its current requirement that developers advance the entire estimated construction cost of the project. This advance would then be adjusted for actual costs. Consumers proposes to change its current policy of not providing contributions to developers. It proposes to refund to the developer an amount equal to 150% of the estimated annual revenue based on historical usage of a comparable customer, for each individual customer who connects to the system and commences to receive service. These contributions cannot exceed the actual cost of the main extension. As with individual customers, such refunds to developers would cease after five years.

#### *B. Pennichuck*

Pennichuck offered the testimony of its Chief Operating Officer, Stephen J. Densberger relative to some changes to the general terms of its main extension tariff. One such change is to permit the Company to locate main extensions within rights-of-way which are not publicly dedicated roads. Another modification to the tariff provides that mains may be installed on private property if access along a public highway or street is "not feasible or cost effective or consistent with further development of the Company's water system... ", and if the prospective customer or developer bears the cost of securing all necessary legal access to the property. Exhibit 17, Sec. 20 A(1)(a). Staff and the OCA stipulated at the final hearing to all proposed changes of Pennichuck except its proposal to modify its policy relative to contributions to developers and Section 20 A(6) of the tariff which gives the Company the option to offer prospective customers a contribution equal to the cost of installing a ground water supply.

As with Consumers, the primary issue discussed at the hearing was Pennichuck's proposal to modify its policy with regard to developers<sup>1(35)</sup>. In this regard, Pennichuck requests a contribution policy similar to Consumers' proposal. Under its proposed tariff, developers would be refunded an amount equal to the estimated annual revenue to be realized from the additional customer or group of customers. These refunds would be made as each customer in a development connects to the system and takes service. Mr. Densberger testified that one of the reasons Pennichuck requested a revised extension tariff is that it would encourage developers to connect to its system as opposed to installing wells. Mr. Densberger argued that developers need an economic incentive to encourage main extensions. He related Pennichuck's recent experience with a developer in Nashua who was intending to put wells into a forty home residential development along a "key loop" in Pennichuck's system. Mr. Densberger indicated that the current main extension tariff barred Pennichuck from offering this developer an incentive to opt for extending the main instead of putting in wells, and thus, Pennichuck was losing an opportunity to increase its customer base. He pointed out that typically "once somebody puts a well in we can run the pipe right in front of their house several years later, and they do not hook

up to our system". Trans. Day I, p.50.

As further justification for the change in policy, Pennichuck contends that attraction of additional customers will in some instances

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help complete key water main loops which will improve pressure and reliability to existing customers.

#### C. OCA

The OCA presented the testimony of Thomas S. Lyle, who said that he did not object to the Companies' choice of methodology using a multiplier, but that the multiplier should be calculated after the Companies perform a long run cost study. Mr. Lyle also suggested that any such multiplier should be reviewed periodically, particularly to track the level of investments in water mains as compared to the total investments for each utility.

Finally, Mr. Lyle testified that the OCA was opposed to the Companies' request to provide refunds to developers. Though acknowledging the positive effect of adding additional customers, the OCA questions the efficacy of the refund program to accomplish that objective. OCA argued that developers should not receive refunds because of the potential for "free riders", which are refunds to developers who would have tied into the system even without the refund program. Mr. Lyle testified that if a developer was unable to afford the investment in water main costs, "there's a bigger problem" and a utility "might not want to do business with that particular developer..." Trans. Day II, Afternoon, p. 9.

#### D. Staff

At the final hearing Staff presented four witnesses who presented three different views with regard to the contested issue of developer contributions. These positions represent the different viewpoints of the Commission's Economics, Finance and Engineering Departments. Each position will be briefly summarized below.

##### 1. Economics

James L. Lenihan from the Commission's Economics Department testified that he was opposed to giving refunds to developers. Mr. Lenihan indicated that ratepayers already bear a risk under the current policy, and the proposed revisions would exacerbate that risk<sup>2(36)</sup>. By contrast, Mr. Lenihan contends that the proposed revisions shift risk from shareholders because the investment is included in the Company's revenue requirement. Transcript, Day III, p.9. He testified that the Commission should not base its main extension policy on the current conditions of the local or regional real estate market, and that sound ratemaking principles require a methodology that will transcend economic fluctuations. *Id.* at 9-10.

In addition, Mr. Lenihan testified that he objected to one additional proposed modification to Pennichuck's tariff. Section 20 A(6) of the Tariff would give Pennichuck the discretion to require a customer advance in the amount of the estimated cost of putting a ground water supply on the customer's (or developer's) land. Mr. Lenihan believes that this provision is highly discriminatory.

## 2. Finance

The Finance Department offered testimony which does not oppose the concept of greater utility contributions in the case of main extensions for developers but it favors using one of two alternative approaches. Mary Jean Newell testified that one such approach would be to provide an additional footage allowance.<sup>3(37)</sup> Ms. Newell suggested that the Companies provide a one-hundred foot extension allowance per customer, and this allowance would apply to individuals and developers. The other methodology suggested by Ms. Newell was the so-called 25% net investment test. Under this approach, the projected net annual revenue from an extension must be greater than or equal to 25% of the cost of the main extension. Any amount which exceeds this figure would be paid by the prospective customer(s). If additional customers are added to the extension within a five year period, the payment requirements will be re-calculated in order to require new customers to bear a proportional share of the costs. In such a case, the customer(s) who made the original payment to the utility would be refunded accordingly.

## 3. Engineering

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The Engineering Department filed a Position Paper which advocated a main extension policy based on good business decisions. Messrs. Cannata and Brogan advocated a discounted cash flow analysis as a means of evaluating proposed main extensions, and used that approach as further support for the Companies' approach based on embedded cost. Mr. Cannata believes that the Companies' proposals are conservative, and that the Companies could justify greater investments in main extensions but that the more conservative approach is reasonable. Transcript, Day II Afternoon Session p. 81.

With regard to Section 20 A(6) of Pennichuck's proposed tariff, Mr. Cannata concurred with the opinion expressed by Mr. Lenihan that the provision should be rejected because it is discriminatory.

### III. COMMISSION ANALYSIS

#### A. *Uncontested Issues*

[1] We have reviewed the uncontested proposed modifications to the main extension tariffs of Consumers and Pennichuck, and based upon that review and the supporting testimony presented by the Companies, and except as set forth below, we approve those modifications.

Consumers' uncontested proposed changes are primarily administrative and do not reflect any significant change in existing policy. Similarly, Pennichuck's uncontested proposed tariff changes are consistent with existing policy. However, one modification common to both filings, relating to the placement of main extensions on private property, warrants further discussion. We believe that for sound practical and policy reasons, water utilities should endeavor to place main extensions in public ways whenever it is feasible. We expect that both companies will utilize this aspect of their main extension tariff only when circumstances truly warrant. Public policy strongly favors the placement of mains in public ways.

*B. Sec. 20 A(6) of Pennichuck's Proposed Tariff*

[2] We agree with Staff that this particular aspect of Pennichuck's proposed tariff has the potential to be applied in a manner which discriminates against customers who are not fortunate enough to be located along Pennichuck's planned transmission and distribution system. We are also concerned with the high level of discretion afforded by the proposal which would provide little or no guidance to prospective customers with regard to their eligibility for the tariff. Accordingly, we reject Section 20 A(6) of Pennichuck's proposed tariff. We remind Pennichuck that there is a special contract process which could be utilized to deal with the type of situations which this proposal attempts to address.

*C. Developer Refunds*

[3, 4] After reviewing the extensive testimony presented in this matter and carefully considering the competing interests which were the subject of that testimony, we find that the Companies' requests to provide refunds to developers are appropriate and in the public good. We believe that the proposed refund mechanism adequately protects the interests of existing customers and that the proposed revisions are consistent with a policy which encourages the addition of new customers to community water systems. A policy that encourages the expansion of existing water systems is in the overall public good. The addition of new customers spreads the cost of system improvements among a larger customer base, and the public is better served by a water source which is continually monitored for quality and safety problems.

We are cognizant of the risks associated with main extension projects relative to the ratepayers' ultimate responsibility for a utility's CIAC tax liability. This risk is inherent in all main extensions irrespective of whether the developer receives a refund for connecting customers. To the extent that the proposed policy revisions increase the number of main extension projects<sup>4(38)</sup>, there will be more occasions when ratepayers are exposed to this risk. In our view, however, the benefits of encouraging customer growth outweighs the risk associated

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with uncompleted developments in which there is a fully dedicated main extension. The same analysis applies to the OCA's concern about "free riders"; the risk of such occurrences is outweighed by the benefit of having a policy which encourages an expansion of customer base.

We approve the proposed tariff revisions by Consumers and Pennichuck, as modified. In addition, we will require both Companies to maintain records of main extensions in the case of developers which are undertaken under the new tariff and to submit annual reports to Staff detailing such activities. The reports should track the utility's investment in main extension projects and the actual revenue which is derived from such extensions. We reserve the right to revisit the issue of developer contributions once such data is available or if economic conditions warrant further review of this main extension policy.

Based upon the foregoing, it is hereby

ORDERED, that the proposed main extension tariff revisions of Consumers are approved as set forth above; and it is



FURTHER ORDERED, that Section 20 A(6) of Pennichuck's proposed main extension tariff is rejected; and it is

FURTHER ORDERED, that the remainder of Pennichuck's proposed main extension revisions are approved; and its

FURTHER ORDERED, that Consumers and Pennichuck shall file annual reports which detail its main extension activities with developers as set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

#### FOOTNOTES

<sup>1</sup>Pennichuck's tariff defines a "developer extension" as one which is requested to provide water service to a "prospective residential, commercial or industrial development or for any substantial nonresidential [sic] purposes as determined by the Company". Exhibit 17, Sec. 20 A(4).

<sup>2</sup>This risk relates to the federal tax liability the Company incurs when a main extension is dedicated, commonly referred to as "Contribution in Aid of Construction" (or CIAC). The risk is that in the event that the development fails or results in less than full build-out, the full CIAC still gets put into ratebase and ratepayers do not get the benefit of the additional revenue which the development might have brought.

<sup>3</sup>Currently, Consumers provides a fifty (50) foot allowance for individuals and none in the case of developers. Pennichuck's current tariff provides a twenty-five (25) foot allowance to individuals and none for developers.

<sup>4</sup>We note that there was no empirical evidence presented at the hearing to support the contention that the proposed policy will, in fact, result in more main extensions.

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NH.PUC\*06/28/95\*[80990]\*80 NH PUC 399\*Concord Electric Company

[Go to End of 80990]

80 NH PUC 399

### **Re Concord Electric Company**

Additional applicant: Exeter and Hampton Electric Company

DR 95-020

Order No. 21,714

New Hampshire Public Utilities Commission

June 28, 1995

ORDER adopting stipulation as to two affiliated electric utilities' 1995-96 demand-side



management plans, but rejecting as incomplete a proposed alternative financing plan for such.

The following conservation and load management elements are retained from previously approved programs: residential electric space heating; residential "wrap-up" options; residential lighting; commercial/industrial audits; and residential social service assistance.

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## 1. CONSERVATION, § 1

[N.H.] Electric utilities — Demand-side management plans — Continuation of existing conservation and load management programs — Residential space heating — Residential "wrap-up" projects — Residential lighting — Commercial and industrial audits — Residential

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social service programs. p. 402.

## 2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management planning — Conservation and load management efforts — Continuation of existing programs — Residential services — Mitigation of impacts on nonparticipants — Targeting of larger consumers — Rejection of alternative financing proposals. p. 402.

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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 Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On February 1, 1995, in compliance with Order No. 21,248, Concord Electric Company (CEC) and Exeter & Hampton Electric (E&H) Company (collectively the Companies) filed with the New Hampshire Public Utilities Commission (Commission) a proposed Conservation and Load Management (C&LM) program for the period beginning July 1, 1995 and ending June 30, 1996.

After a March 27, 1995, pre-hearing conference, the Commission Staff (Staff), the Office of Consumer Advocate (OCA), and representatives of the Companies participated in a technical session at which the proposed C&LM program was discussed at length. The Companies, Staff, and OCA exchanged written testimony, data requests, and data responses. A settlement conference on May 16, 1995 resulted in resolution of all issues except one. A Stipulation detailing resolution of the issues was filed with the Commission on May 19, 1995.

On May 23, 1995, the Commission heard testimony regarding the proposed Stipulation. In

addition, witnesses for the Companies and for Staff testified regarding the unresolved issue of an alternative financing mechanism for C&LM projects.

Following the Commission's announcement of its acceptance of the proposed Stipulation and, the companies, on June 1, 1995, filed revised tariff pages reflecting proposed rates in accordance with the Stipulation.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. The Stipulation

The Companies, Staff, and OCA agree that the C&LM programs as approved by the Commission Order No. 21,248 in DR 93-195 shall continue, with the exception of modifications to the Residential Wrap-Up Plus program. The programs include the Residential Electric Space Heat program, the Residential Lighting Catalog program, the Residential Wrap-Up Plus program, the Residential Social Services program, the Small Commercial and Industrial program, and the Comprehensive Efficiency program.

The Companies will continue to offer the Residential Wrap-Up Plus program but will budget only \$88,746 for it. The proposed Wrap-Up Plus budget assumes 428 installations, which the Companies estimate is 95% of the maximum technical potential for that program. If the projected annual benefit/cost ratio for the Residential Wrap-Up Plus program falls below 1.0, as the Companies expect it will, the Companies will request approval to terminate the program. The Companies, Staff, and OCA agree that all costs incurred, up to the time of a Commission decision on termination, are appropriately recoverable through the Conservation Charge (CC).

The Companies, Staff and OCA agree that Shared Savings Incentives (SSI) will be calculated on a calendar year basis using actual results rather than forecasts. The CC rates filed

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for effect July 1, 1995, include SSI for 1994 programs.

The Companies, Staff, and OCA agree that Lost Base Revenues (LBR) and SSI will be recoverable from ratepayers, after the savings are verified in the Companies' C&LM report to be filed August 15, 1995. The Companies agree to perform the monitoring and evaluation activities as outlined in their February 1, 1995 C&LM filing. Staff and OCA agree that performance of those outlined monitoring and evaluation activities will preclude Staff or OCA from petitioning the Commission to disallow recovery of LBR and SSI on the basis of the chosen monitoring and evaluation methodologies. However, other challenges to recovery of LBR and SSI will not be precluded.

As part of the Stipulation, the Companies filed updated CC rates on June 1, 1995 for effect July 1, 1995. Inclusive of prior over or under collections, program costs, LBR, SSI and interest, the total costs, including Wrap-Up Plus costs, to be recovered from CEC are \$664,297 and for E&H \$761,737. The total for the two companies is \$1,426,034. Applying the updated CC rates to an average monthly bill for 500 kWh, for CEC the update results in a .36% reduction for the Residential Class CC, a .84% reduction for the Large General Service Class CC, and a 1.67% increase for the Regular General Service Class CC. Again applying the audited CC rates to an average monthly bill for 500 kWh, for E&H the update results in a the Large General Service

Class CC, and a .75% increase for the Regular General Service Class CC.

## B. Alternative Financing Mechanism

### 1. *The Companies*

Pursuant to Commission Order No. 21,248 in DR 93-195, the Companies submitted a proposed Alternative Financing Mechanism on December 15, 1994. The purpose of creating an Alternative Financing Mechanism, as stated by the Companies, is to decrease reliance on company funding and thereby decrease the financial impact of the programs on non-participants, as well as possibly increasing participation in C&LM programs and lowering long term system resource costs.

In testimony, the Companies supported their proposal as filed. The proposal included an initial pilot financing offering to four large Commercial and Industrial customers to be identified via marketing activities. Funding for the pilot program would come from internal funds or outside sources such as banks. Each of the four customer financings would be submitted to the Commission for approval as a special contract. Regulatory issues such as cost recovery will be addressed when the Companies seek approval for a special contract.

The Companies argue that their proposed plan appropriately targets larger customers and hence larger C&LM installations representing larger savings. Larger customers present an opportunity for the Companies to gain knowledge and experience regarding a new program while achieving highly efficient savings.

To support the use of special contracts, the Companies argue that very large customers investing significant amounts of capital require individual consideration, hence the use of special contracts.

### 2. *Staff*

Staff raised several objections to the financing proposal, arguing that it lacked detailed information as to the amount of internal funding available from the Companies, the amount, type, or identity of third party financing options, and the proposed accounting treatment of revenues and expenses associated with either option.

Staff pointed out that a year after the Commission's decision in DR 93-195, the Companies have submitted no draft contract outlining a sample alternative financing project, no information as to how they proposed to deal with accounting costs or revenues, no information regarding repayment periods, default terms or interest rates for in-house loans, and no evidence of discussions with third party funding providers. Staff argued that third party funding would alleviate the concern formerly expressed by the Companies that because internal financing would be limited, they would be constrained

in offering the alternative financing mechanism.

Staff also objected to the Companies' proposed use of special contracts for what Staff believes should be a financing opportunity for all classes and customers. Staff stated that other companies have been successful in developing model contracts that establish available financing

terms and conditions. Successful implementation of the contract offering on a trial basis to a particular customer class allows for an easy transition and application to other classes. Staff pointed out that these other utility documents had been offered to the Companies for review.

### III. COMMISSION ANALYSIS

[1, 2] After careful review of the proposed Stipulation and the testimony presented in support of it, we find that the 1995-1996 C&LM programs proposed by the Companies are just and reasonable and in the public good.

We will not approve, however, the Companies' Alternative Financing Mechanism. In our May 1994 order (Order No. 21,248, p. 16) we found an Alternative Financing Mechanism to be a "proposal (which) can and should be developed by the Companies by December 1, 1994." We are disappointed that the Companies failed to move forward on that program.

Necessary components of a fully developed proposal include, but are not limited to, the length of repayment term and interest rate for in-house loans, actions to be implemented in the case of default, planned accounting treatment of the program as an asset or expense, as well as a well-researched and defined external financing option. A fully developed proposal would also include specific decisions by the Companies on the time frame of the marketing of the Alternative Financing Mechanism. As the Companies' proposal lacks these necessary components, we reject that portion of the filing regarding an Alternative Financing Mechanism. We direct the Companies, Staff, and OCA to work together to develop a revised alternative financing proposal within 60 days of the date of issuance of this order. We also direct Staff to submit a report as to the success of the cooperative efforts at the end of 60 days so that we may take appropriate action.

Based upon the foregoing, it is hereby

ORDERED, that the 1995-1996 C&LM programs, as proposed in the filing and revised by the Stipulation, are approved at a budget level of \$1,426,034 and shall be implemented as of July 1, 1995; and it is

FURTHER ORDERED, that the Residential Wrap-Up Plus program, as modified by the Stipulation, be continued for the 1995-1996 program year; and it is

FURTHER ORDERED, that SSI be calculated on a calendar year basis using actual results rather than forecasts; and it is

FURTHER ORDERED, that recovery of LBR and SSI be conditioned upon the verification of savings as detailed by the results of the monitoring and evaluation activities to be included in the Companies' next annual report to be filed August 15, 1995; and it is

FURTHER ORDERED, that the CC charges filed on June 1, 1995 are approved for effect on July 1, 1995 through June 30, 1996; and it is

FURTHER ORDERED, that the Companies proposed pilot financing program is rejected, and that the parties are directed to meet and develop a revised alternative financing proposal within 60 days; and it is

FURTHER ORDERED, that Staff submit a report regarding the revised alternative financing proposal to the Commission at the end of the 60 days so that appropriate action may be taken.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Electric Co., DR 93-195, Order No. 21,248, 79 NH PUC 306, May 31, 1994.

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NH.PUC\*06/28/95\*[80991]\*80 NH PUC 403\*Connecticut Valley Electric Company

[Go to End of 80991]

80 NH PUC 403

**Re Connecticut Valley Electric Company**

DR 93-151

Order No. 21,715

New Hampshire Public Utilities Commission

June 28, 1995

ORDER approving a restructuring of the wholesale rate paid by an electric utility to its parent company, Central Vermont Public Service, for purchases of power. The restructuring, based on marginal cost principles, is deemed reasonable in that it sends more appropriate cost signals and removes disincentives to least-cost resource plans, thus promoting more efficient pricing and consistency between wholesale and retail rates.

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1. RATES, § 367

[N.H.] Electric rate design — Wholesale service — Purchases of power from parent company — Restructuring of rates — Factors — Need for better cost signals — Consistency with least-cost resource plans — Consistency with retail rate-making methods — Pricing efficiency versus cost allocation — Marginal cost-based wholesale rates. p. 405.

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BY THE COMMISSION:

ORDER

I. BACKGROUND AND PROCEDURAL HISTORY

Connecticut Valley Electric Company (CVEC) is a wholly-owned subsidiary of Central Vermont Public Service (CVPS), engaged in the business of purchasing, distributing, and selling

electricity to retail customers in New Hampshire<sup>1(39)</sup>. Except for purchases from five independent power producers, CVEC receives all of its power supplies from CVPS under the FERC approved RS-2 wholesale rate.

The RS-2 wholesale rate is comprised of two major charges: an energy charge and a demand charge. The energy charge recovers the average cost of fuel incurred by CVPS. The demand charge is calculated using a formula that allocates to CVEC a portion of CVPS's production-related capacity costs based on CVEC's average coincident load relative to the total CVPS peak. These capacity costs include purchased capacity and related transmission costs, plus CVPS-owned generation, *i.e.*, CVPS's average production-related capacity costs.

The issue of redesigning the wholesale rate first arose in Docket DE 92-082, CVEC's 1992 Integrated Resource Plan. In that docket, Staff questioned the appropriateness of CVEC's use of CVPS's avoided cost as the basis of CVEC investments in demand-side resources. Staff noted that such investments would minimize the revenue requirements of CVPS, not CVEC, which conflicts with the state's least cost planning requirements. While acknowledging CVEC's contention that an investment strategy based on the avoidance of real resource costs is economically more efficient than one based on average power costs, Staff contended that the financial interest of CVEC ratepayers must be given due consideration. In the absence of a redesign of the RS-2 rate<sup>2(40)</sup>, Staff recommended that CVEC be directed to add demand-side resources that are economic relative to the cost of wholesale power.

Prior to the Commission issuing its decision in DE 92-082, Staff submitted testimony in CVEC's 1993 Demand-Side Management proceeding, Docket DR 93-151, which recommended that the economic evaluation of demand-side resources be based on the avoidance of wholesale power charges as reflected in the RS-2 rate. CVEC maintained that such evaluations should be based on CVPS's resource costs. In partial settlement of that proceeding, CVEC and Staff agreed to enter good faith negotiations to redesign the RS-2 rate to better reflect the real resource costs of incremental production and transmission.

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Staff and CVEC held five technical meetings and numerous conference calls before reaching agreement on the redesigned rate structure. On February 13, 1995, CVEC and Staff submitted to the Commission a report describing the negotiations and the proposed new wholesale rate structure, which CVPS has termed RS-3. Among other things, the report notes that relative to the RS-2 rate the proposed rate could reduce CVEC's power costs by about \$250,000. Subject to the agreement of this Commission, RS-3 demand and energy charges (consistent with the agreements contained in the above mentioned report) will be developed by CVPS and filed for approval with FERC. If approved, the resulting power costs will be recovered in CVEC's retail rates through a combination of base rates and annual fuel and purchased power cost adjustment filings.

## II. SETTLEMENT AGREEMENT

### (a) *Proposed RS-3 Rate Structure*

The redesigned rate is comprised of marginal cost-based demand and energy charges for

power purchased above a base level and embedded cost-based demand and energy charges for the base level purchases. Marginal energy usage is separated into five distinct costing periods and priced at the corresponding marginal energy rate. The base energy usage for each costing period is set at the 1994 weather normalized kWh sales level for that period.

As with the RS-2 rate, the RS-3 embedded demand and energy charges result from the application of a formula designed to recover from CVEC an allocated portion of CVPS's annual revenue requirement<sup>3(41)</sup>. The RS-3 embedded charges differ from the RS-2 embedded charges in that the former recover an allocation of the balance of the revenue requirement, that is, after subtraction of the marginal cost-based revenues for the Consolidated Company.

The RS-3 marginal demand and energy charges are based respectively on long-run marginal and short-run marginal measures of cost. The short-run marginal unit cost of energy for each costing period will reflect CVPS's ability to share in the benefits of economy transactions within NEPOOL, which tends to lower actual costs whenever CVPS's marginal energy costs are higher than NEPOOL's, and increase costs whenever CVPS's marginal energy costs are lower than NEPOOL's.

The long-run marginal unit cost of capacity will be determined by levelizing the 15 year stream of avoided capacity costs contained in CVEC's most recent integrated resource plan filing.

*(b) Energy Charges*

The energy charges under the redesigned rate are calculated as follows: First, sales growth relative to 1994 normalized sales levels for both CVEC and the retail portion of CVPS (i.e., Vermont Retail) are determined and priced at the effective marginal energy charge by costing period by month. The sum of the resulting marginal energy charges by month is subtracted from CVPS' total embedded energy cost by month and the remainder allocated to CVEC and Vermont Retail using base 1994 monthly allocation factors. The sum of the marginal energy charges and the allocated embedded energy cost determines CVEC's total RS-3 energy bill.

*(c) Demand Charges*

The calculation of demand charges under the redesigned rate begins with a determination of the normalized base year monthly peak demands for CVPS total, CVEC and Vermont Retail. This data is inserted into the NEPOOL capacity responsibility formula in order to calculate the base year capacity allocation factor for each company. Next, growth in monthly demand for each company is determined and inserted into the NEPOOL formula to produce marginal capacity requirements. Multiplication of each company's marginal capacity requirement<sup>4(42)</sup> times the marginal unit cost of capacity produces company specific marginal demand charges.

Company specific embedded demand costs are determined by subtracting from the CVPS total embedded demand cost the sum of CVEC's and Vermont Retail's marginal

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demand cost and allocating the remainder between CVEC and Vermont Retail using the base year capacity allocation factors. The sum of the marginal capacity cost and the allocated embedded capacity cost determines CVEC's RS-3 production-related capacity cost.



(d) *Possible Effects of Proposed Rate Structure*

Sensitivity analysis was conducted on the proposed rate structure using a number of different futures, including substantially different marginal costs and rates of demand growth for the CVEC and Vermont Retail service areas. The results of these analyses indicate that as long as marginal cost remains low relative to average cost, the service area which grows fastest will benefit from the rate redesign.

Although the proposed rate redesign will better reflect the cost to CVPS of meeting incremental demands, and may even reduce CVEC's annual power costs, those costs are likely to be more volatile as the portion of total demand priced at marginal cost increases over time.

Finally, CVEC and Staff believe that the reflection of CVPS's low marginal costs in the redesigned rate will provide CVEC the opportunity to design an economic development rate to attract new business to its service territory.

### III. COMMISSION ANALYSIS

[1] Although we have been asked to approve the principles underlying a redesign of a rate for wholesale requirements service, this proceeding is more about efficient pricing than cost allocation and cost recovery. Our analysis therefore focuses on the need for better price signals rather than the proposed cost allocation process, although we believe that allocation to be fair and rational.

We will first consider the need for better wholesale price signals and then address the benefits and risks inherent in the rate redesign. Wholesale prices that fail to signal the marginal cost of production could encourage retail utilities to invest in demand-side or other resources that cost more than the cost to the wholesale supplier to produce the incremental quantities. Similarly, retail rates that incorporate improper wholesale prices may induce retail customers to purchase energy-efficient electric appliances or switch to alternative fuel systems which cost more than the cost of incremental production. As these examples show, flawed pricing is inefficient because it results in a waste of resources.

As noted in the report submitted by CVEC and Staff, CVEV has already implemented marginal cost-based retail rates. The proposed wholesale rate redesign will therefore complete a rate redesign process that began in the late 1980's.

The adoption of efficient marginal cost-based wholesale rates will benefit New Hampshire ratepayers in at least three ways. First, it will remove the financial penalty presently incurred by CVEC and passed on to ratepayers that results from the inconsistency between the wholesale and retail pricing. Presently, incremental consumption is priced at the lower marginal cost at retail, which encourages additional customer usage, but at the higher average cost at wholesale, which results in higher charges paid CVPS by CVEC for that usage.

Second, it will remove or reduce the financial incentive for CVEC to add demand-side resources that conflict with CVPS's least cost plans. Third, it will provide the incentive for CVEC to develop load building programs that benefit all customers, including an economic development rate designed to attract new business to the state.

Finally, although we have historically viewed stability as an important and desirable feature



of any rate design, we do not find the volatility inherent in the proposed structure to be a major weakness, and certainly not sufficient to overcome the gains in fairness and efficiency that result from more cost-reflective prices. Further, we believe a shift in emphasis towards cost reflection and away from stability is appropriate and in line with competitive developments in the industry.

In conclusion, we find that the principles underlying the proposed redesign of the RS-2 wholesale rate are just and reasonable and in the interest of CVEC customers.

Based on the foregoing; it is hereby

**Page 405**

ORDERED, that the proposed RS-3 wholesale rate design is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

FOOTNOTES

<sup>1</sup> CVEC and CVPS are collectively known as the Consolidated Company.

<sup>2</sup> The NHPUC does not have jurisdiction over the RS-2 rate and therefore cannot require wholesale rate redesign.

<sup>3</sup> The embedded charges therefore vary annually and will be reconciled at the end of the calendar year.

<sup>4</sup> Adjusted for reserve margin.

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NH.PUC\*06/28/95\*[80992]\*80 NH PUC 406\*LCI International Telecom Corporation

[Go to End of 80992]

80 NH PUC 406

**Re LCI International Telecom Corporation**

DR 95-154

Order No. 21,716

New Hampshire Public Utilities Commission

June 28, 1995

ORDER approving an interexchange telephone carrier's proposed revisions to its "Enhanced 800" service tariffs.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Enhanced 800" services — Tariff revisions — Modification of billing increments — Offering of additional volume discounts — Interexchange carrier. p. 406.

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BY THE COMMISSION:

### ORDER

[1] On May 31, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corp. (LCI) requesting authority to make various revisions to its tariff.

The proposed revisions include textual changes in the Table of Contents, Integrity and Enhanced 800 Features. Billing increments are being revised for LCI 800 - Select Option and LCI Home 800. Volume discounts are being added to LCI 800 - Select Option.

800 Directory Publication and Dialed Number Identification Service are being introduced as Enhanced 800 Features. LCI is adding two new sections called LCI Discount Group and Customer Satisfaction Guarantee to the Rules and Regulations section. The Day rate for Personal Perks Calling Card is being increased from 23 to 25 cents per minute.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff NHPUC No. 2 are approved for effect as filed:

*Check Sheet*

3rd Revised Page 1

*Table of Contents*

2nd Revised Page 2

2nd Revised Page 3

1st Revised Page 5

*Section 2*

1st Revised Page 4

2nd Revised Page 8

2nd Revised Page 10

1st Revised Page 12

1st Revised Page 17

*Section 3*

2nd Revised Page 5

Original Page 20

Original Page 21

*Section 4*

1st Revised Page 5

1st Revised Page 10

1st Revised Page 15

1st Revised Page 16

1st Revised Page 17

2nd Revised Page 21;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

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NH.PUC\*06/28/95\*[80993]\*80 NH PUC 407\*Granite State Electric Company

[Go to End of 80993]

80 NH PUC 407

## Re Granite State Electric Company

DR 95-157

Order No. 21,717

New Hampshire Public Utilities Commission

June 28, 1995

ORDER approving an electric utility's proposed changes in its purchased power cost adjustment rate, increasing it to a *credit* level of 0.263 cents per kilowatt-hour, based on known and certain changes in its supplier's wholesale rates.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rates — Changes in supplier's wholesale rates as a factor — Elimination of oil conservation adjustment and nuclear plant surcharges as factors — Determination of appropriate credit — Reconciliation of fuel factor and rates paid qualifying facilities — Electric utility. p. 407.

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APPEARANCES: Steven E. Thomas, Esq. on behalf of Granite State Electric Company; Patrick J. Moast, Thomas C. Frantz and James J. Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On June 1, 1995 Granite State Electric Company (GSEC or the Company) filed tariff pages, explanatory statements and schedules supporting changes to its Purchase Power Cost Adjustment (PPCA) based on New England Power Company's (NEP) W-95(S) approved rates. The proposed PPCA is effective for bills rendered for meters read for the period July 1, 1995 through June 30, 1996.

On June 14, 1995, the New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord to review the PPCA filed by Granite State Electric Company.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. GSEC

[1] GSEC proposes a PPCA increase of \$0.00017 per kwh to a credit of \$0.00263 per kwh to be effective on July 1, 1995 to coincide with changes in the Company's fuel factor and rates paid to QFs. This credit includes the proposed W-95(S) PPCA credit of \$0.00106 per kwh and the reconciling adjustment credit of \$0.00157 per kwh for usage for the twelve months ending February 28, 1995. Thus, the proposed total PPCA credit factor that will be in place for the twelve month period ending June 30, 1996 is a credit of \$0.00263 per kwh.

**Page** 407

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The Company noted that its reconciling adjustment credit of \$0.00157 per kwh includes a refund of oil conservation adjustment (OCA) collections by GSEC in the amount of \$139,763.

#### B. Staff

Staff questioned the Company about the NEP W-95(S) rates approved by FERC and the impact of this settlement on GSEC PPCA filing in three areas: service extension discounts (SED), cessation of Seabrook surcharge effective January 1, 1995 and cessation of OCA surcharges effective January 1, 1995.

At the hearing, the Company testified that there are zero SED costs included in the PPCA filing and that effective January 1, 1995, in accordance with the FERC approval of NEP's W-95(S) rates, the Seabrook and OCA surcharges are eliminated. The Company noted that the PPCA reconciliation includes a refund of \$139,763 for the OCA surcharge revenues collected subsequent to January 1, 1995. The Company's treatment of the OCA surcharge is consistent with Commission Orders No. 21,479 and No. 21,533. In Commission Order No. 21,479, the Commission approved an OCA rate of \$0.00129 per kwh effective January 1, 1995, and ordered

that, in the event that FERC approves NEP's W-95(S) filing in Docket Nos. ER95-267-000 and EL95-25-000, GSEC should submit a revised filing to the Commission reflecting the impact of the FERC approval.

On February 8, 1995 the Commission approved the NEP W-95(S) rates and on February 9, 1995, the Company filed its revised filing.

In Order No. 21,533, the Commission ordered that the OCA factor shall cease for bills rendered for meters read beginning March 1, 1995 and that the Company shall refund, with interest applied, January and February 1995 OCA collections and that its PPCA reconciliation to be filed in June, 1995 shall include the OCA refunds.

Staff was satisfied with the Company's responses to the issues raised at the hearing and supported the Company's filing for PPCA rates.

Staff recommended that the Commission approve the proposed PPCA rate of \$0.00263 per kwh effective for bills rendered for meters read on or after July 1, 1995 through June 30, 1996. This change would result in an increase of \$.08 per month for a residential customer using 500 kWhs per month.

### III. COMMISSION ANALYSIS

The Commission understands that the Seabrook Surcharge and that the OCA surcharge have been eliminated effective January 1, 1995 and that SED costs are not included in the NEP wholesale rates and the GSEC retail rates.

The Commission has reviewed the record in this case and approves the rates as proposed by the Company as being just and reasonable.

Based upon the foregoing, it is hereby

ORDERED, that the Purchased Power Cost Adjustment factor for GSEC for bills rendered for meters read for the period July 1, 1995 through June 30, 1996 shall be a credit of \$0.00263 per kwh; and it is

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

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

### EDITOR'S APPENDIX

#### Citations in Text

[N.H.] Re Granite State Electric Co., DR 94-286, Order No. 21,479, 79 NH PUC 725, Dec. 30, 1994. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 95-004, Order No. 21,533, 80 NH PUC 77, Feb. 14, 1995.

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NH.PUC\*06/28/95\*[80994]\*80 NH PUC 409\*Granite State Electric Company

[Go to End of 80994]

80 NH PUC 409

**Re Granite State Electric Company**

DR 95-158  
Order No. 21,718

New Hampshire Public Utilities Commission

June 28, 1995

ORDER approving an electric utility's proposed changes in its fuel and purchased power adjustment clause rates. Accordingly, the utility's fuel adjustment clause rate is increased from 0.712 cents per kilowatt-hour (Kwh) to 0.875 cents per Kwh. Purchased power adjustment clause rates would vary with the time period and the type of distribution (subtransmission, primary, or secondary).

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Fuel clause component — Increase in fuel clause charge — Factors — Forecasted increase in wholesale prices — Electric utility. p. 411.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Purchased power component — For power purchased from qualifying facilities — Determination of appropriate charge — Avoided capacity and energy rates — Time differentiation of energy charges — Differences based on level of distribution — Monthly capacity payment — Electric utility. p. 411.

3. COGENERATION, § 25

[N.H.] Rates — Purchases of power from qualifying facilities — Purchased power adjustment clause rates — Purchasing utility's avoided costs as benchmark — Short-term market values — Assumption of capacity value of \$25 per kilowatt-year — Avoided capacity and energy rates — Time-differentiated energy charges — Monthly capacity charges varying with type of distribution — Electric utility. p. 411.

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APPEARANCES: Steven E. Thomas, Esq. on behalf of Granite State Electric Company; Patrick J. Moast, Thomas C. Frantz and James J. Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 1, 1995 Granite State Electric Company (GSEC or the Company) filed tariff pages, testimony and schedules supporting changes to its fuel adjustment clause (FAC) and power purchase rates for qualifying facilities (QFs). The changes in GSEC's FAC and the rates it pays QFs are effective for bills rendered for meters read for the period July 1, 1995 through December 31, 1995.

On June 14, 1995, the New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord to review the FAC and QF rates filed by GSEC.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. GSEC

The Company proposes an FAC factor of \$0.00875 per kwh, and the following short-term avoided capacity and energy rates for QFs:

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[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	\$0.02919	\$0.02220	\$0.02541
Primary Distribution	\$0.03135	\$0.02329	\$0.02699
Secondary Distribution	\$0.03246	\$0.02384	\$0.02780

  

Capacity Rate	<i>Capacity Payment</i>
Subtransmission	\$2.15 per kw-month
Primary Distribution	\$2.35 per kw-month
Secondary Distribution	\$2.46 per kw-month

The value of capacity used to determine Granite State's QF capacity payments is \$25 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.

At the June 14, 1995 hearing, GSEC presented witnesses in support of its proposed rates. Ms. Colleen M. Gardner, Senior Rate Analyst, supported her testimony on the proposed FAC 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.

Ms. Gardner testified that the FAC factor would increase \$0.00163 per kwh to \$0.00875 per kwh from the current factor of \$0.00712 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 of approximately \$1.70 per MMBTU. He expects residual fuel oil prices to remain at a relatively high level with 2.2% sulfur residual fuel oil averaging \$2.60 per MMBTU. He expects spot gas prices will trend upward as winter approaches, from the current price of approximately \$1.85 per MMBTU to \$2.25 per MMBTU by December.

*B. Staff*

Staff notes that the Company's Oil Conservation Adjustment (OCA) has been eliminated from the Company's filing because this surcharge ceased effective January 1, 1995 based on the FERC's order approving W-95(S) rates. The Company is refunding any OCA amounts collected subsequent to January 1, 1995, in the Company's PPCA filing in Docket No. DR 95-157.

Staff questioned Company witnesses on a number of items pertaining to the FAC and rates paid to Qfs as follows: fuel cost refunds associated with NEP's share of output from Wyman Unit #4, the underlying documentation supporting the Company's QF capacity payments of \$25 per kw year, loss of Maine Yankee power, the cost of alternate fuel options at Brayton Point and Salem, reduced hydro power, recovery of costs pertaining to NOX reduction standards which became effective of June 1, 1995, the benefits of Distrigas supplies, the completion of the Manchester Street re-powering, and the terms of oil storage and leasing agreements.

The Company agreed to provide additional responses via record requests on three items: first, the underlying documentation in support of the QF capacity payments of \$25 per kw-year; second, the amount capital cost incurred by NEP pertaining to NOX reductions which became effective on June 1, 1995 including the timing and method of recovery; and, third, the terms of the oil storage and leasing agreements for oil on site for the Manchester Street re- powering project.

Staff was satisfied with the Company's responses to the issues raised at the hearing and supported the Company's filing for FAC rates and QF rates.

Based on the above, Staff recommended

**Page** 410

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that the Commission approve the proposed FAC of \$0.00875 per kwh, and the rates paid to Qfs, all rates to be effective for bills rendered for meters read on or after July 1, 1995 through December 31, 1995. The change in the FAC factor would result in an increase of \$.82 per month for a residential customer using 500 kwhs per month.

### III. COMMISSION ANALYSIS

**[1-3]** The Commission understands that based on previous Commission Order Nos., 21,479 and 21,553, the GSEC Oil Conservation Adjustment (OCA) has been eliminated from the Company's filing and that the Company is refunding any OCA amounts collected subsequent to January 1, 1995, in the Company's PPCA filing in Docket No. DR 95- 157.

Regarding the FAC and the rates GSEC pays Qfs, the Commission has reviewed the record in this case and approves the rates as proposed by the Company as being just and reasonable.

Based upon the foregoing, it is hereby

**ORDERED**, that the Fuel Adjustment Clause factor for GSEC for bills rendered for meters read for the period July 1, 1995 through December 31, 1995 shall be \$0.00875 per kwh; and it is

**FURTHER ORDERED**, that GSEC pay Qualifying Facilities for the period July 1, 1995



through December 31, 1995 the following rates:

[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	\$0.02919	\$0.02220	\$0.02541
Primary Distribution	\$0.03135	\$0.02329	\$0.02699
Secondary Distribution	\$0.03246	\$0.02384	\$0.02780
Capacity Rate	<i>Capacity Payment</i>		
Subtransmission	\$2.15 per kw-month		
Primary Distribution	\$2.35 per kw-month		
Secondary Distribution	\$2.46 per kw-month;		

and it is

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

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 94-286, Order No. 21,479, 79 NH PUC 725, Dec. 30, 1994. [N.H.] Re Granite State Electric Co., DR 94-286, Order No. 21,553, 80 NH PUC 106, Feb. 28, 1995.

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NH.PUC\*06/28/95\*[80995]\*80 NH PUC 412\*Working Assets Funding Services, Inc., dba Working Assets Long Distance

[Go to End of 80995]

80 NH PUC 412

**Re Working Assets Funding Services, Inc., dba Working Assets Long Distance**

DR 95-155  
Order No. 21,719

New Hampshire Public Utilities Commission

June 28, 1995

ORDER authorizing an interexchange telephone carrier to implement a reconnection fee

applicable to customers whose service was disconnected for nonpayment of bills. The carrier also may provide residential subscribers with two free calls per month to certain political leaders, and may clarify that volume discounts pertain to minutes of use rather than billed amounts.

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1. RATES, § 312

[N.H.] Reconnection fees — Implementation of — When service terminated for nonpayment — Interexchange telephone carrier. p. 412.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special discounts for residential customers — Monthly free calls to selected political leaders — Interexchange carrier. p. 412.

3. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special discounts for commercial customers — Applicability to minutes of use rather than billed amounts — Interexchange carrier. p. 412.

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BY THE COMMISSION:

ORDER

[1-3] On June 1, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Working Assets Funding Services Inc., d/b/a Working Assets Long Distance (Working Assets) for authority to introduce a Reconnection Fee, increase a residential discount and correct the structure of volume discounts for commercial customers for effect July 1, 1995.

The proposed reconnection fee of \$10.00 will apply to Working Assets customers whose toll service has been disconnected due to non-payment, in order to restore service with Working Assets.

The proposed residential discount increase consists of two free calls a month of up to five minutes to political leaders who are the subjects of an action alert noted in the subscriber's previous monthly invoice from Working Assets.

The Commercial Volume Discounts have been corrected to indicate volume discounts apply to minutes of use rather than billing amounts.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Working Assets to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Working Assets' tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Page 1  
2nd Revised Page 2  
1st Revised Page 14  
2nd Revised Page 17;

and it is

FURTHER ORDERED, that Working Assets file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

**Page 412**

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 1995.

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NH.PUC\*06/28/95\*[80996]\*80 NH PUC 413\*NeTel, Inc.

[Go to End of 80996]

80 NH PUC 413

**Re NeTel, Inc.**

DE 95-083

Order No. 21,720

New Hampshire Public Utilities Commission

June 28, 1995

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

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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 services. p. 413.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 413.

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BY THE COMMISSION:

## ORDER

[1, 2] On March 30, 1995, NeTel, Inc. (NeTel), 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.

NeTel 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 NeTel 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. NeTel 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, NeTel shall notify the Commission of the change.
5. NeTel 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. NeTel shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. NeTel 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

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names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. NeTel 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. NeTel 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. NeTel shall compensate the appropriate Local Exchange Company for all originating and terminating access used by NeTel 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 NeTel 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 NeTel to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that NeTel shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 11, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 26, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. NeTel 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;

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and it is

FURTHER ORDERED, that NeTel shall file a compliance tariff with the Commission on or before July 12, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 28, 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 twenty-eighth day of June, 1995.

Notice of Conditional Approval of  
NeTel, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On March 30, 1995, NeTel, Inc. (NeTel), 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. 21,720, issued in Docket No. DE 95-083, the Commission granted NeTel conditional approval to operate as of July 28, 1995, subject to the right of the public and interested parties to comment on NeTel 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 NeTel's petition to do business in the State should submit written comments no later than July 26, 1995, 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\*06/28/95\*[80997]\*80 NH PUC 415\*VarTec Telecom, Inc.

[Go to End of 80997]

80 NH PUC 415

**Re VarTec Telecom, Inc.**

DE 95-105

Order No. 21,721

New Hampshire Public Utilities Commission

June 28, 1995

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

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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 services. p. 415.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 415.

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BY THE COMMISSION:

ORDER

[1, 2] On April 18, 1995, VarTec Telecom, Inc. (VarTec), a Texas corporation, petitioned the New Hampshire Public Utilities

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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.

VarTec 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 VarTec 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. VarTec 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, VarTec shall notify the Commission of the change.
5. VarTec 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. VarTec shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. VarTec 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. VarTec 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. VarTec 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. VarTec shall compensate the appropriate Local Exchange Company for all originating and terminating access used by VarTec 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 VarTec 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.

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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 VarTec to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that VarTec shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 11, 1995, and an affidavit proving publication shall be filed with the Commission on or before July 26, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. VarTec 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 VarTec shall file a compliance tariff with the Commission on or before July 12, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective July 28, 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 twenty-eighth day of June, 1995.

Notice of Conditional Approval of  
VarTec Telecom, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On April 18, 1995, VarTec Telecom, Inc. (VarTec), 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. 21,721, issued in Docket No. DE 95-105, the Commission granted VarTec conditional approval to operate as of July 28, 1995, subject to the right of the public and interested parties to comment on VarTec 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 VarTec's petition to do business in the State should submit written comments no later than July 26, 1995, 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\*06/29/95\*[80998]\*80 NH PUC 418\*Kearsarge Telephone Company

[Go to End of 80998]

80 NH PUC 418

**Re Kearsarge Telephone Company**

DR 95-045

Order No. 21,722

New Hampshire Public Utilities Commission

June 29, 1995

ORDER authorizing a local exchange telephone carrier to introduce private line digital service.

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1. RATES, § 553

[N.H.] Telephone rate design — Private line digital service — Introduction of new service — Cost-based rates — Reasonableness — Local exchange carrier. p. 418.

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BY THE COMMISSION:

ORDER

[1] On February 27, 1995, Kearsarge Telephone Company (KTC or Company) filed tariff pages proposing to introduce Private Line Digital Service for effect March 1, 1995. This filing was submitted in response to a Secretarial letter, dated January 27, 1995, advising the Company that the Commission had granted the Company's request for approval to use the New England Telephone Digital Communications Service (DDSII) tariff as an interim price for private line digital service for a customer seeking a two-point interexchange 56 kbps circuit for use between company locations where both points of the circuit resided in KTC's service territory.

The filing was suspended by Order No. 21,591 on March 28, 1995 to allow Staff to review the filing.

Staff has reviewed the petition and the information filed in support of the petition. The proposed prices appear reasonable and cover the relevant costs. Staff recommended that the Commission approve the petition.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of Kearsarge Telephone Company's Tariff PUC No. 7 are approved:

Section 8 - Second Revised Sheet 1

Second Revised Sheet 2

Second Revised Sheet 3

Second Revised Sheet 4

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 Kearsarge file a compliance tariff with the Commission on or before July 13 , 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of June, 1995.

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NH.PUC\*06/30/95\*[80999]\*80 NH PUC 419\*Public Service Company of New Hampshire

[Go to End of 80999]

80 NH PUC 419

**Re Public Service Company of New Hampshire**

DR 94-057

Order No. 21,723

New Hampshire Public Utilities Commission

June 30, 1995

ORDER accepting an amendment to an electric utility's special rate contract with Excalibur Shelving System, Inc., to allow the provisions of the already approved contract to apply to a new facility being constructed by the customer. The amendment is viewed as being a reasonable economic development and load retention device and as being consistent with the generation deferral rates offered to sawmill operations.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic

development — Incentives for retaining industrial load — Prevention of bypass and self-generation — Means for achieving — Special rate contracts — Electric utility. p. 419.

## 2. RATES, § 339

[N.H.] Electric rate design — Use of special rate contracts — For purposes of load retention and economic development — Prevention of bypass and self-generation — Contribution to cost as a factor affecting approval. p. 419.

## 3. RATES, § 345

[N.H.] Electric rate design — Large power and industrial customers — Use of special rate contracts — As incentive for load retention — Prevention of bypass — Targeting of customers with self-generation capabilities — Equivalency with sawmill generation deferral rates — Applicability of same contract rates to multiple customer locations. p. 419.

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BY THE COMMISSION:

### ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on April 17, 1995 an amendment to Special Contract NHPUC-93, First Amended Contract No. NHPUC-93, between PSNH and Excalibur Shelving System Inc. (Excalibur). Excalibur is a manufacturer of wooden shelving located in Hopkinton, New Hampshire. NHPUC-93 was originally approved by an Order *Nisi*, Order No. 21,343, issued by the New Hampshire Public Utilities Commission (NHPUC or Commission) on September 7, 1994.

On May 8, 1995, the Office of the Consumer Advocate (OCA) filed a Request for Hearing in this docket. On May 15, 1995, the Commission made a letter request of the OCA to make a good faith attempt to obtain the concurrence of PSNH and the Commission Staff regarding its motion of May 8, 1995. On May 30, 1995, the OCA filed a letter certifying that it had made a good faith attempt to obtain the concurrence of the other parties. On June 20, 1995, as the result of the passage of Senate Bill 168, the OCA withdrew its Request for Hearing in this docket.

[1-3] NHPUC-93 allows PSNH to provide service to Excalibur under PSNH's Sawmill Generation Deferral Rate SGD. The amendment to NHPUC-93 allows PSNH to extend similar terms to Excalibur's new facility located on Riverside Drive in Hopkinton, New Hampshire. PSNH states that Excalibur has represented that it would install generation at the Riverside Road facility if the terms of NHPUC-93 are not extended to this new facility. By extending the terms of NHPUC-93 to Excalibur's new facility, PSNH maintains some level of contribution to the recovery of PSNH's fixed costs thereby benefiting PSNH and its other customers.

Upon review of the filing, and the

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recommendation of Staff, the Commission finds that the Amendment to Special Contract No. NHPUC-93 is in the public good. Since NHPUC-93 is essentially a load retention application,

the primary benefits of NHPUC-93 accrue to PSNH shareholders during the Fixed Rate Period. Nonetheless, the Commission finds the benefits of NHPUC-93 between PSNH and Excalibur continue to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Amendment to Special Contract No. NHPUC-93, the First Amended Contract No. NHPUC-93, is approved as filed; 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 Shelving in the First Amended Special Contract No. NHPUC-93; and it is; 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 July 12, 1995 and to be documented by affidavit filed with this office on or before July 28, 1995; 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 July 28, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 31, 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 thirtieth day of June, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-057, Order No. 21,343, 79 NH PUC 478, Sept. 7, 1994.

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NH.PUC\*06/30/95\*[81000]\*80 NH PUC 420\*Public Service Company of New Hampshire

[Go to End of 81000]

80 NH PUC 420

**Re Public Service Company of New Hampshire**

DR 95-129

Order No. 21,724

New Hampshire Public Utilities Commission

June 30, 1995

ORDER approving an electric utility's special rate contract with Rehrig Pacific Company, an economic development and load retention arrangement designed to prevent the customer from relocating outside the state.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development — Incentives for retaining industrial load — Special rate contracts — Prevention of relocation — Electric utility. p. 421.

2. RATES, § 339

[N.H.] Electric rate design — Use of special rate contracts — For purposes of load retention and economic development — Contribution to cost as a factor affecting approval. p. 421.

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BY THE COMMISSION:

ORDER

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The Petitioner, Public Service Company of New Hampshire (PSNH), filed on May 8, 1995 a six year special contract, Special Contract No. NHPUC-113, between PSNH and Rehrig Pacific Company (Rehrig), a California corporation. Rehrig manufactures molded plastic recycling bins, milk cases, bread trays, beverage cases, and residential recycling containers at its facility located in Raymond, New Hampshire.

This filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. NHPUC-113 will be effective upon Commission approval for a period of six years. PSNH's filing included the special contract, testimony, and a technical statement supporting a discounted rate for Rehrig in both redacted and unredacted form.

PSNH requested protective treatment for certain information considered confidential in the special contract and technical statement. On May 15, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,654). On May 19, 1995, the Office of the Consumer Advocate (OCA) filed a Request for Hearing in this docket. On June 20, 1995, as the result of the passage of Senate Bill 168, the OCA withdrew its Request for Hearing in this docket.

[1, 2] PSNH represents that absent this special contract Rehrig would relocate its Raymond, NH operations to Grafton, Vermont. PSNH included a detailed economic analysis in its technical statement which shows that it is economical for Rehrig to relocate to Grafton, VT. NHPUC-113 is designed to make the relocation of existing operations to Grafton, VT less attractive. PSNH also asserts that Rehrig is experiencing strong growth and is amenable to expanding in New Hampshire. Hence, PSNH characterizes NHPUC-113 as having elements of both business retention and business expansion.



NHPUC-113 provides for rates of electric service lower than those otherwise available under applicable tariff Rate GV. The rates include a customer charge, a Base Demand Charge, a Base Energy Charge, an Excess Demand Charge, and an Excess Energy Charge. The Excess Demand Charge will apply to all monthly Billing Demand above the Base Demand level specified in NHPUC-113. The Base Demand Charge is \$10.50 per KW of Billing Demand effective June 1, 1995, and escalates on the first day of June in each year. The Excess Demand Charge is \$2.50 per KW of Billing Demand effective June 1, 1995, and escalates on the first day of June in each year.

The Energy Charge equals the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC) plus the FPPAC rate plus the Nuclear Decommissioning Charge (NDC) plus an Energy Charge Adder. The Base Energy Charge Adder is 1.0 cents per kWh, while the Excess Energy Charge is 0.5 cents per kWh. PSNH states that the revenue received from excess energy sales under NHPUC-113 will exceed the marginal cost of serving Rehrig.

PSNH attests that electric costs represent a significant portion of Rehrig's overall operating expenses at its Raymond facility. PSNH represents that Rehrig has installed various measures to promote energy efficiency, and has commenced a substantial cost reduction effort. PSNH represents that Rehrig met with the Department of Resources and Economic Development in the fall of 1994 and agrees to participate in any programs that are available to and practical for Rehrig. PSNH represents that there are no direct competitors of Rehrig located within New Hampshire. PSNH states that NHPUC-113 will benefit PSNH and PSNH's other customers by the additional revenue contribution toward fixed costs, a portion of which will go to reduce the FPPAC rate.

Upon review of the filing and the Staff recommendation, the Commission finds Special Contract No. NHPUC-113 meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-113 is approved as filed; and it is FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during

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the life of Special Contract No. NHPUC-113, 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 Rehrig by our approval today of this special contract; 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 July 12, 1995 and to be documented by affidavit filed with this office on or before July 28, 1995; 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 July 28, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 31, 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 thirtieth day of June, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,882, 78 NH PUC 316, June 23, 1993. [N.H.] Re Northern Utilities, Inc., DR 91-081, Order No. 20,654, 77 NH PUC 676, Oct. 30, 1992.

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NH.PUC\*06/30/95\*[81001]\*80 NH PUC 422\*Public Service Company of New Hampshire

[Go to End of 81001]

80 NH PUC 422

### Re Public Service Company of New Hampshire

DR 95-131

Order No. 21,725

New Hampshire Public Utilities Commission

June 30, 1995

ORDER approving an electric utility's special rate contract with New England Wood Pellet, Inc., an economic development arrangement designed to assure that the customer will relocate from Massachusetts to New Hampshire. The contract provides for a 75% discount of the otherwise applicable demand charge.

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#### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development — Incentives for relocating from outside the state — Means for achieving — Special rate contracts — Discounted demand charges — Electric utility. p. 423.

#### 2. RATES, § 333

[N.H.] Electric rate design — Demand charges — 75% discount of — Via special rate contract — Relative to relocation of industrial customer from outside the state — Pursuant to economic development incentives — Terms and conditions. p. 423.

## 3. RATES, § 339

[N.H.] Electric rate design — Use of special rate contracts — Discounted demand charges — For purposes of economic development — Incentives for relocation of industrial customer from outside the state. p. 423.

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BY THE COMMISSION:

ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on May 9, 1995 a seven year special contract, Special Contract No. NHPUC-114 (NHPUC-114), between PSNH and New England Wood Pellet, Inc. (NEWP). NEWP manufactures wood pellets for use in residential wood pellet stoves, and is currently located in Acton, Massachusetts. NEWP is proposing to relocate its business to Jaffrey, New Hampshire.

This filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts. NHPUC-114 will become effective when NEWP begins taking service or upon Commission approval, whichever is later, for a period of seven years. PSNH's filing included the special contract, testimony, and a technical statement supporting a discounted rate for NEWP in both redacted and unredacted form.

PSNH requested protective treatment for certain information considered confidential in the testimony and technical statement. On May 15, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,655). On May 19, 1995, the Office of the Consumer Advocate (OCA) filed a Request for Hearing in this docket. On June 20, 1995, as the result of the passage of Senate Bill 168, the OCA withdrew its Request for Hearing in this docket.

[1-3] PSNH will provide service to NEWP under Primary General Service Rate GV. NHPUC-114 provides for rates of electric service lower than those otherwise available under Rate GV by providing a 75 percent discount on the demand charge. PSNH attests that the revenue PSNH will receive exceeds the marginal cost of serving the load in every year of the agreement. PSNH represents that electricity is a significant cost in the manufacturing of wood pellets. NEWP currently generates its own electricity at its Acton, MA location.

NEWP has worked with the Department of Resources and Economic Development (DRED) in obtaining financing for the relocation to New Hampshire. DRED helped NEWP obtain a commercial bank loan and a Community Development Block Grant. PSNH represents that NEWP's financing would be at risk without NHPUC-114. PSNH attests that approval of the financing package to relocate to Jaffrey was predicated in part on obtaining favorable electric rates from PSNH. PSNH represents that NEWP agrees to participate in any DRED programs that are available to and practical for them.

PSNH asserts that NHPUC-114 is necessary to enable NEWP to locate and be successful in New Hampshire. NEWP will initially employ about five people at its Jaffrey location, but is

expected to increase according to PSNH. PSNH states that NHPUC-114 will benefit PSNH and PSNH's other customers by the additional revenue contribution toward fixed costs, a portion of which will go to reduce the FPPAC rate.

Upon review of the filing and the Staff recommendation, the Commission finds Special Contract No. NHPUC-114 generally meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993), and is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-114 is approved as filed; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-114, 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 NEWP by our approval today of this special contract; 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 July 12, 1995 and to be documented by affidavit filed with this office on or before July 28, 1995; 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 July 28, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 31, 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 thirtieth day of June, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*06/30/95\*[81002]\*80 NH PUC 424\*Concord Electric Company

[Go to End of 81002]

80 NH PUC 424

**Re Concord Electric Company**

DR 95-159  
Order No. 21,726

Re Exeter and Hampton Electric Company

DR 95-160  
Order No. 21,726

New Hampshire Public Utilities Commission

June 30, 1995

ORDER approving the joint application of two affiliated electric utilities as to their respective fuel and purchased power adjustment clause rates. For Concord Electric, a fuel adjustment clause (FAC) *credit* of 0.691 cents per kilowatt-hour (Kwh) and a purchased power adjustment clause (PPAC) *rate* of 0.710 cents per Kwh are accepted. For Exeter & Hampton, an FAC *credit* of 0.677 cents per Kwh and a PPAC *rate* of 0.851 cents per Kwh are adopted.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Fuel clause component — Implementation of fuel clause credit — Factors — Undercollections associated with warmer-than-normal winter season — Recovery of undercollection over six-month period — Electric utility. p. 427.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Purchased power component — Applicability to power purchased from qualifying facilities — Determination of appropriate charge — Avoided capacity and energy rates — Time differentiation — Electric utility. p. 427.

3. COGENERATION, § 24

[N.H.] Rates — Purchases of power from qualifying facilities — Purchased power adjustment clause rates — Determination of appropriate charge — Avoided capacity and energy rates — Time-differentiated energy charges — Electric utility. p. 427.

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APPEARANCES: Leboeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; Edwin P. LeBel and Patrick J. Moast for the Staff of the New Hampshire Public Utilities Commission

BY THE COMMISSION:

ORDER

## I. PROCEDURAL HISTORY

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On June 1, 1995 UNITIL Service Corporation, (UNITIL), on behalf of Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H), (collectively the Companies), filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages, supporting testimony, and exhibits for proposed revisions to the Companies' retail fuel adjustment charges (FAC) and purchased power adjustment charges (PPCA) and short-term purchased power rates for qualifying facilities (QFs) for the period of July 1 through December 31, 1995.

On June 2, 1995 UNITIL filed revised tariff Sheets for the short- term power purchases for qualifying facilities to correct a typographical error.

On June 15, 1995, the Commission held a duly noticed consolidated hearing to review the Companies' FAC and PPCA rate filings. The Commission heard testimony from two company witnesses: Karen M. Asbury and David W. Lavoie. The Commission Staff cross-examined the witnesses but did not present testimony.

## II. POSITION OF THE COMPANIES

Representing both CEC and E&H, UNITIL witness Asbury presented the Companies' proposed FAC and PPCA charges for July 1, 1995 through December 31, 1995.

In direct testimony, witness Asbury explained that the net effects from the proposed FAC and PPCA rate changes are increased retail rates due to under collections and lower than forecasted sales. Witness Asbury identifies deficiencies in the Companies' rate mechanism and warmer than expected winter weather as the causes for the under collections.

According to witness Asbury, the Companies' current six month PPCA and FAC filing schedule causes rising consumer rates in the summer and decreasing consumer rates in the winter because fixed costs are recovered over a varying seasonal sales base. This relationship between higher winter/summer cost recovery over respective summer/winter sales contributes to unstable and unpredictable prices from one six month period to the next.

Witness Asbury's direct testimony proposes to mitigate price volatility and stabilize seasonal recoveries by first, recovering the current retail under collection over the next twelve month period instead of the usual six month period, second, adjusting the sales forecast for the rate period using an annual three year average ratio of purchases to sales, instead of the current average ratio for the six month July through December period, and third, adjusting UNITIL's six month summer sales forecast to reflect a lag in sales growth relative to expected economic conditions.

Representing CEC, UNITIL witness Lavoie presented calculations supporting the company's request for a FAC credit of (\$0.00693) per Kwh and a PPCA rate of \$0.00584 per Kwh. The combined effect of the two rates will increase a typical 500 Kwh Concord residential customer's bill by \$1.42 per month.

Also representing E&H, witness Lavoie presented calculations in support of E&H's request

for a FAC credit of (\$0.00679) per Kwh and a PPCA rate of \$0.00654 per Kwh. The combined effect of the two rates will increase a typical 500 Kwh E&H residential customer's bill by \$3.09 per month.

Mr. Lavoie also presented the July 1995 through December 1995 UNITIL Power Corporation (UPC) production plan, associated costs, and estimated short term avoided cost rate in his direct testimony. The UPC production plan is the basis for UPC's fuel, purchased power, and transmission service costs and are used in developing UPC's wholesale rates.

UPC's filed, wholesale billing rates for firm service from July through December 1995 are as follows:

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

6/1-12/31/95 Demand Charge	\$15.83 per KW/Month
Base Energy Charge	1.949 cents per Kwh
Fuel Charge Rates	1.823 cents per Kwh

These rates represent an overall increase in wholesale rates compared to the last six month period due to increases in Demand and Base Energy Charges and a decrease in the Fuel Charge as presented in Exhibits DL-2 though

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DL-13 attached to his direct, written testimony.

In his direct testimony, witness Lavoie stated that the Companies' proposed Demand Charge increase is due to lower revenues from lower than anticipated sales and a scheduled increase in the entitlements from the NEPCO-Slice of System and UI-Bridgeport contracts. The Companies' proposed Base Energy Charge increase is also due to under collection in the Prior period. The Companies' Fuel Charge is projected to decrease due to less than anticipated out of service capacity and lower than forecast energy costs.

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	2.94 cents per Kwh
Off Peak	2.56 cents per Kwh
All Hours	2.73 cents per Kwh
Capacity Rate	\$1.82 per Kw-year

The Companies argued that the proposed short-term power purchase rates requests are consistent with discussions with Staff in DR 90-095 and utilized in DR 90-097.

### III. BRIEFS OF THE COMPANY AND STAFF

At the close of the June 15 hearings, Staff made an oral recommendation to reject the Companies' proposal to recover under collections over twelve months, and to remove the UPC Price Stability Adjustment when calculating the FAC and PPCA rates to be shown on its tariff pages. Upon Staff's recommendation for rejection of the Companies' proposal, the Commission

directed the Staff and UNITIL to each file briefs regarding the Companies' proposal to recover its under recoveries over twelve months.

In their brief, the Companies state that during the past two years it has twice previously proposed to address its concerns relative to price volatility in FAC/PPCA rates.

In this proceeding, the Companies propose to mitigate their volatility concern by recommending to recover its Winter under collection over twelve months instead of six months. They also proposed to adjust their sales forecast for the rate period using an annual three year average ratio of purchases to sales, and also adjusting their summer sales forecast to reflect a warmer than normal summer as a precaution against potential over collection.

The Companies' brief argues that their present proposal is intended to accomplish the goal of preventing the shifting of winter costs to summer customers, who may have different usage patterns than the winter cost causers. In this way, the Companies' proposal attempts to avoid unfairly burdening summer users with winter heating cost impacts and precipitous price swings from variations in weather and load.

The Companies' brief also argues that the Commission must give full recognition to UNITIL's FERC-approved wholesale costs and must also approve these recovery of these charges through the Companies' retail rates. The Companies acknowledge that it is the Commission's discretion to not adopt UNITIL's cost estimates. However, the Companies argue that Staff has not proposed any different cost estimates in the record of this proceeding, and the Commission must approve the Companies proposal as just and reasonable.

In its brief, Staff argues against the Companies' proposal to defer the balance of its under-collection for recovery over twelve months instead of six. According to Staff, the Companies' customer base changes only slightly between winter and summer periods. Staff concludes that on the basis of only slight customer base change, essentially the same customers are being billed over the year for both winter and summer seasonal PPCA and FAC rates.

Staff also argues in its brief that using twelve months to recover each six month PPCA/FAC rate period's possible under/over recovery exposes customers to the risk of price instability from accumulating deferrals as multiple period deferrals are recovered simultaneously in future rate periods. Staff concludes that the current FAC and PPCA mechanism has built in provision which protects customers from price instability due to accumulating

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deferrals.

#### IV. COMMISSION ANALYSIS

[1-3] We have reviewed all the testimony and exhibits in this case, the responses provided by the Companies, and the briefs of the Companies and Staff. Having done so we accept the June 1, 1995, filings of the Companies, with one exception. We will not accept the Companies' proposal to recover the current retail under collection over the next twelve month period instead of the current six month period. We agree with Staff that the Companies' proposal does not adequately resolve the concern of price volatility that the Companies assert, and agree with Staff as well that the proposal may in fact exacerbate the problem. We will consider, however, future proposals the



Companies may want to offer on this issue. Consistent with this finding, we will also reject UNITIL's adjustment to UPC's July-December forecast of sales and revenue intended to repress the volatility in the calendar year's two six month periods.

We will accept the third change to the Companies' calculations in these cases, that is, the adoption of an annual three year average ratio of purchases to sales.

We find that the FAC for the July 1 through December 31, 1995, period shall be a credit of (\$0.00691) per Kwh for CEC and a credit of (\$0.00677) per Kwh for E&H. For the same period, the PPCA for CEC shall be \$0.00710 per Kwh and \$.0.00851 per Kwh for E&H. For a typical CEC residential customer using 500 Kwh per month, the net result of the PPCA and FAC changes is a \$2.25 increase to the monthly bill. For a typical E&H residential customer using 500 Kwh per month, the net result of the PPCA and FAC changes is a \$4.10 increase to the monthly bill.

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.

Based on the foregoing, it is hereby

ORDERED, that CEC's FAC rate for the period July 1 through December 31, 1995, shall be a credit of (\$0.00691) per Kwh while its PPCA rate shall be \$ 0.00710 per Kwh; and it is

FURTHER ORDERED that E&H's FAC rate for the period July through December, 1995, shall be a credit of (\$0.00677) per Kwh while its PPCA rate shall be \$ 0.00851 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 for CEC and E&H shall be as follows:

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

Energy Rates	
On Peak	2.94 cents per Kwh
Off Peak	2.56 cents per Kwh
All Hours	2.73 cents per Kwh
Capacity Rate	1.82 dollars per Kw-year;

and it is

FURTHER ORDERED, that the Companies' proposed adjustments to calculation of sales forecasts are GRANTED; the Companies proposal to recover the current retail under collection over the next twelve month period instead of the current six month period is DENIED; and it is

FURTHER ORDERED, that CEC and E&H file revised tariff pages in compliance with this order on or before July 14, 1995.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1995.

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NH.PUC\*06/30/95\*[81003]\*80 NH PUC 428\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81003]



80 NH PUC 428

**Re New Hampshire Electric Cooperative, Inc.**

DR 95-153  
Order No. 21,727

New Hampshire Public Utilities Commission

June 30, 1995

ORDER approving an electric cooperative's proposed changes in its power cost adjustment clause rate, increasing it from 0.963 cents per kilowatt-hour (Kwh) to 1.551 cents per Kwh, based largely on wholesale price increases from its primary supplier. While acknowledging that power adjustment clause proceedings are inappropriate forums for considering such, the commission expresses concern with the impact on the cooperative's purchased power costs of special rate contracts with several ski resort operators.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment clause rates — Reliance on purchased power — Determination of appropriate charge — Factors — Increasing wholesale rates — Past underrecoveries — Impact of special rate contracts with ski resorts — Electric cooperative. p. 429.

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APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. on behalf of New Hampshire Electric Cooperative, Inc.; Office of the Consumer Advocate by Michael Holmes, Esq. on behalf of Residential Ratepayers; and Thomas C. Frantz and Eugene F. Sullivan, Jr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 1, 1995, 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 July 1, 1995 through December 31, 1995. Supporting testimony and exhibits were included in NHEC's filing. Additional supporting materials were filed on June 9, 1995. NHEC filed 7th Revised Page 43, Rates for Purchases from Qualifying Facilities, on June 2, 1995. The short term rates proposed are the wholesale rates of each of the four utilities from which NHEC purchases power.

At a duly noticed hearing on June 15, 1995, NHEC Manager of Rates and Finance, Teresa L. Muzzey, testified in support of the proposed Power Cost Adjustment (PCA) factor.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. NHEC

NHEC proposes a PCA factor of \$0.01551 per kWh. The proposed PCA factor represents an increase of \$0.00588 per kWh over the current PCA factor of \$0.00963 per kWh. It is equal to the forecasted power costs which are not already included in base rates, plus any under-recovery from the preceding period, divided by the expected energy sales for the PCA period.

NHEC's forecasted power cost requirement for the period is \$25,670,021. In addition, NHEC expects an under-recovery of \$1,921,529 on July 1, 1995. The under-recovery is approximately \$700,000 greater than NHEC anticipated during its last PCA filing. Ex. 1 at 5, Tr. at 7. The forecasted power costs plus the under-recovery minus the anticipated base rate purchased power costs of \$20,649,482 would result in a \$6,942,068 increase of recoverable power costs for the July

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through December 1995 PCA period. However, NHEC is proposing to recover only \$3,982,036 over the PCA period and defer recovery of the remainder. NHEC estimates sales of 256,658,760 kWh over the PCA period resulting in the proposed PCA factor of \$0.01551 per kWh. The increased power costs will increase NHEC's average revenue per kWh by 4.4%. Ex. 1 at 2. Ms. Muzzey stated that a residential customer using 500 kWh per month will have a monthly bill of \$72.98, an increase of \$2.97.

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), NHEC's primary power supplier. NHEC states that an increase in PSNH's wholesale Fuel and Purchased Power Adjustment (FPPAC) rate will increase NHEC's power costs by approximately \$1.65 million over the six-month PCA period. Ex. 1 at 4. NHEC proposes to mitigate the increase by deferring with interest \$900,000 of wholesale FPPAC costs related to the upcoming Seabrook refueling outage and recover the refueling related costs over an eighteen month period that coincides with the Seabrook refueling cycle. The extended unscheduled outage of the Maine Yankee (MY) nuclear plant in which NHEC has a 0.7356% entitlement will add an additional \$2.344 million in replacement power costs. Ms. Muzzey testified that the MY costs would be offset by NHEC's proposal to defer with interest recovery of \$2 million of MY replacement power costs over a four-year period.

Ms. Muzzey testified that all power cost forecasts exclude the load of the four NHEC member ski areas because the ski areas are currently receiving service under temporarily approved special contracts. The special contracts exclude ski area power costs in the determination of NHEC's power bill from PSNH.<sup>1(43)</sup> Ms. Muzzey also testified that NHEC has recently completed a competitive bid for the four delivery points served by Central Vermont Public Service. NHEC expects savings of \$107,000 in the first year from the new power contract. As a result of the bidding process, NHEC incurred legal and consulting costs of \$11,200 which it proposes to pass through the PCA.

### B. Office of Consumer Advocate

The OCA did not file testimony, but raised a number of issues related to the effects of NHEC's ski areas on the PCA factor. OCA's primary concern with NHEC's proposed rate is the effect of the ski area loads on NHEC's costs. OCA believes the ski areas contributed a significant amount to NHEC's under-recovery, but will not contribute their portion of the revenue because the ski area contracts exclude their costs and revenues from the PCA mechanism.

OCA points out that Exhibit 3 indicates the ski areas would have contributed \$74,952 towards the \$1,395,767 under-recovery absent the special contracts. OCA states it is only fair to assess the \$74,952 to the ski areas because the ski areas incurred power costs that will not be recoverable under the ski area contracts.

### *C. Staff*

The Staff did not file testimony in the proceeding, but questioned Ms. Muzzey on a number of power cost issues, including NHEC's sales forecast, the effect of the deferrals on NHEC's financial condition, the recovery of legal and consulting fees in a power adjustment clause, and like OCA, the effect of ski area related purchased power costs in light of the special contracts. Staff believes that the load characteristics of the ski areas combined with the billing provisions in the Amended Partial Power Requirements Agreement (APPRA) has led to large under-recoveries of power costs. Staff stated at the hearing that the Commission should consider the issue of ski area power costs and revenue in the ski area docket and not single out certain customers in a power cost adjustment proceeding.

### III. COMMISSION ANALYSIS

[1] Based on our review of the record, we find that NHEC's proposed Power Cost Adjustment factor of \$0.01551 per kWh is appropriate for the period July through December 1995, and is in the public interest.

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We share the concerns of OCA and Staff about the effects of the ski area special contracts on NHEC's purchased power costs and revenue. We commend the OCA and Staff for their analysis of this issue. The record is clear in this proceeding and in the ski area docket that the ski areas have caused significant increases in NHEC's power costs which were recovered largely from others. We must emphasize, however, that a fuel or purchased power clause proceeding is not the proper forum to address what are essentially rate design problems. Fuel and purchased power adjustment clauses are designed to recover costs on a per kWh basis and are not meant to single out individual customers or rate classes for specific costs incurred. To do otherwise in this proceeding would be unfair to the ski areas and set a precedent we believe is not in the public interest. Neither do we intend to start assessing charges that have the appearance of an exit fee without a thorough review and an approved tariff.

We note that NHEC's concern for rate stability in its filing is consistent with past treatment of Seabrook refueling-related power costs and will approve NHEC's deferral mechanism for Seabrook. We will also approve the deferral of Maine Yankee outage related costs since this is an outage that is not related to a refueling schedule. In recognition of the difficulty in forecasting its duration we will reconsider this deferral during the next PCA filing.

Finally, we will in this instance approve NHEC's legal and consulting fees related to securing lower cost power, but NHEC should be aware that, in general, we believe these types of costs are more appropriately recovered in a base rate proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the Power Cost Adjustment factor for NHEC for the period July 1, 1995 through December 31, 1995 shall be \$0.01551 per kWh, effective on all meters read on and after July 1, 1995; and it is

FURTHER ORDERED, that the short-term capacity and energy rates paid to qualifying facilities shall be as shown in Exhibit 3; and it is

FURTHER ORDERED, that NHEC shall file tariff pages in compliance with this order no later 15 days from the issuance date of the order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1995.

FOOTNOTES

<sup>1</sup>The ski area special contracts were approved on an interim basis for one year pending full Commission review in Docket Nos. DR 94-258, DR 94-259, DR 94-260 and DR 94-261. A hearing on the merits was held June 1, 1995.

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NH.PUC\*06/30/95\*[81004]\*80 NH PUC 430\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81004]

80 NH PUC 430

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-161

Order No. 21,728

New Hampshire Public Utilities Commission

June 30, 1995

ORDER authorizing a local exchange telephone carrier to make certain tariff revisions, resulting in a doubling of the volume discount available to business subscribers as well as reductions in monthly rates for "800 Valuflex" service. The carrier also is allowed to increase the discount for daytime message telephone service (MTS) rates for residential customers. However, the commission expresses concern that MTS rates have not fallen more and notes that it will consider the experiment in intrastate toll competition a failure if greater rate relief is not forthcoming.

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## 1. RATES, § 544

[N.H.] Telephone rate design — Business subscribers — Doubling of discounts for volume calling plans — Reductions in monthly rates for "800 Valuflex" service — Local

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exchange carrier. p. 432.

## 2. RATES, § 584

[N.H.] Telephone rate design — Intrastate toll service — Message toll service rates — Increase in daytime discounts — Discrepancies between business and residential rates — Local exchange carrier. p. 432.

## 3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone services — Intrastate toll services — Experiment in competition — Measures of success — Extent of rate decreases — Message toll service as example. p. 432.

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BY THE COMMISSION:

ORDER

On June 1, 1995, NYNEX filed a petition seeking to revise several optional calling plans (OCP), to increase the Customer-Dialed Calling Card incremental charge and to eliminate the monthly rate for semipublic volume control equipment with a proposed effective date of July 1, 1995.

The OCP modifications which NYNEX proposed include:

1. *Call Around 603 Customers:*

- a. increase the discount for MTS day period rates from 15% to 25%;
- b. introduce a 25% discount on all Calling Card Calls
- c. introduce an anniversary discount which waives the monthly rate every 12 months

2. *Business Package Customers:*

- a. increase the usage discount from 15% to 30%
- b. reduce the monthly rate from \$10 to \$5 for 800 Valuflex

3. *Business Package Plus Customers:*

- a. increase the usage discount from 20% to 40%
- b. reduce the monthly rate from \$10 to \$5 for 800 Valuflex

4. *Customized Netsaver Customers:*

- a. increase the usage discount for credit card and Operator Handled calls from 10% to 40%

b. reduce the monthly rate from \$10 to \$5 for 800 Valuflex

On June 22, 1995, the Office of the Consumer Advocate (OCA) filed a letter with the Commission commenting on the toll reductions proposed by NYNEX. Specifically, the OCA applauded the Company's efforts at moving prices toward costs. However, the OCA noted that NYNEX's proposal included increases in the discount rate of 100% for customers of the Business Package and Business Package Plus plans, while only offering customers of the residential CallAround 603 plan a 67% increase in the discount rate. Citing NHPUC Order No. 20,082, the OCA suggested that before NYNEX's proposal is approved, the Company grant the same increase in discount plans to all customer classes. The OCA also requested that the Commission require the proposed "anniversary discount" to be automatic and apply to all CallAround 603 customers.

In addition, the OCA expressed concern that the proposed revisions do not address Message Telecommunications Service (MTS) day rates for residential and small business customers. The OCA believes that MTS-Day rates should be reduced in a similar manner to access rates and states that NYNEX has not experienced significant revenue losses since implementing the Modified Stipulation (Stipulation) in DE 90-002, indicating that reductions in rates have been offset by increases in traffic volume and line growth.

On June 26, 1995, NYNEX filed a response to the OCA's letter. First, NYNEX asserted that the proposed increase in the CallAround 603 discount is substantial. NYNEX further stated that the Company is not required nor does the Company believe it is appropriate to propose uniform increases in the discount rates for CallAround 603, Business Package and Business Package Plus plans.

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Second, NYNEX stated that prior to receipt of OCA's letter, the Company had agreed with Staff that an automatic anniversary discount would be easier for customers, and that the filing would be amended to reflect that feature in the future.

Third, NYNEX stated that the MTS day rate applies to all NYNEX intrastate customers, both residential and business, and that the Company is under no obligation to reduce toll rates coincident with the reduction in access rates resulting from the Stipulation in docket DE 90-002. In addition, NYNEX asserted that the increasingly competitive market for telecommunications services is best suited for determining the rates of competitive services, and that the Company has determined that further reduction in the MTS day rate, beyond the 2 cent reduction implemented in August 1994 is not appropriate.

Staff reviewed the proposed tariff revisions and the information filed in support of the petition. The Stipulation requires NYNEX to follow specific pricing rules when introducing rate revisions for toll products and to serve a copy of each proposed rate change on each Toll Provider that was a Signatory to the Stipulation. In spite of these requirements, NYNEX failed to serve the Signatories of the Stipulation until two weeks had elapsed from the date the petition was filed with the Commission.

When revising toll prices, the Stipulation requires NYNEX to demonstrate that the average

revenue per minute (ARPM) is not less than the relevant price floor for the particular service. In this filing, NYNEX provided revenue and cost information which support its assertion that the proposed prices result in ARPMs which meet or exceed the appropriate price floors. Consequently, Staff recommends that the filing be approved.

However, Staff expressed concern that in its discussions of the revenue effects associated with the proposed tariff changes, the Company was very guarded in providing the rationale and backup information supporting several of the Company's assumptions. In addition, Staff echoed the OCA's concern that NYNEX has not decreased the standard MTS rates, in spite of the decrease in its price floor.

**[1-3]** We have reviewed the petition and comments from the OCA, NYNEX and our Staff. We find that the proposed tariff revisions to be in the public good and that the public be afforded an opportunity to respond in support of or in opposition to the petition.

However, we note that this is the second instance in which NYNEX failed to serve the appropriate Signatories with a copy of proposed toll rate revisions as required by the Stipulation in DE 90-002, until reminded by Staff. We expect NYNEX to exercise greater attention to the provisions of the Stipulation in the future.

In addition, the Commission is mindful of the significant reductions in the price of access that have occurred since August 2, 1993 when Order No. 20,916 was issued accepting the Modified Stipulation in DE 90-002. We also note the lack of significant reductions in standard MTS rates available to the low volume residential and business consumer. Effective July 1, 1995, the total price of Non-800 access will be 8 cents per minute. The corresponding MTS day rate (0-480 minutes of use) remains at 24 cents per minute. We reiterate our views on toll prices from DE 90-002, Order No. 20,864 Conditionally Accepting the Stipulation:

Toll competition should effectively reduce toll prices well below current levels. Thus, we do not believe that ratepayers realistically face the prospect of an increase in toll rates even absent the ceiling agreed to by the parties. Indeed, should rates remain at current levels, the competitive experiment will have failed and the Commission will consider appropriate steps to inject into the intrastate toll market effective incentives to assure the emergence of real price competition.

NYNEX's failure to reduce the overall MTS rates to the benefit of all ratepayers is disappointing, and we will be monitoring the reaction of other providers to the reduction of the access rates on July 1, 1995.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following tariff pages of New England Telephone and Telegraph Company are approved:

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NHPUC No. 75  
Part A - Section 8 - Sixth Revision of Page 4.1  
Section 9 - Thirteenth Revision of Page 7



First Revision of Page 76  
Second Revision of Page 78  
Second Revision of Page 80  
Section 10 - Fourth Revision of Page 8  
and it is

FURTHER ORDERED, that NHPUC No. 75, Part A, Section 9, Sixth Revision of Page 73 be modified such that the anniversary discount for the CallAround 603 Plan is available automatically; 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 July 12, 1995 and to be documented by affidavit filed with this office on or before July 28, 1995; and it is

FURTHER ORDERED, that NET send a copy of this Order *Nisi* to all Signatories to the Stipulation in NHPUC docket DE 90-002, by first class U.S. mail, postmarked no later than July 12, 1995 and shall be documented by affidavit with the Commission on or before July 28, 1995; 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 July 28, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before 1995, in accordance with N.H. Admin. Rules, Puc 1601.04 (b).

FURTHER ORDERED, that this Order *Nisi* shall be effective as of July 31 , 1995, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1995.

#### 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. [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 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\*07/10/95\*[81005]\*80 NH PUC 433\*Beaver Village Realty Trust

[Go to End of 81005]



80 NH PUC 433

**Re Beaver Village Realty Trust**

DE 92-226

Order No. 21,729

New Hampshire Public Utilities Commission

July 10, 1995

ORDER affirming an earlier directive in which a substandard community water system was ordered to abandon service, with its customers being forced to resort to installation of private wells. Upon the discovery that an individual was still operating the system and serving at least two customers in violation of the abandonment decree, the commission orders the individual to immediately cease and desist from further service and to deactivate and remove all well pumps, valves, fittings, and tanks and fill any associated cavities with sand, gravel, and mortar.

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1. SERVICE, § 63

[N.H.] Commission jurisdiction — To compel abandonment or discontinuance — By substandard community water system — Factors — Bankruptcy — Bacterial contamination — General nonviability of system. p. 434.

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2. SERVICE, § 277

[N.H.] Abandonment or discontinuance — By substandard community water system — Factors — Bankruptcy — Bacterial contamination — Inadequate operation — Noncompliance with previous order to abandon — Continued operation by individual — New cease and desist order. p. 434.

3. WATER, § 12

[N.H.] Water utility operations — Construction and equipment — Abandonment procedures — Cease and desist order — Deactivation and removal of well and pump facilities — Filling in of associated cavities. p. 434.

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BY THE COMMISSION:

ORDER

On January 18, 1995 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,504 ordering the abandonment of a public water utility on June 1, 1995. The water system was constructed by the Beaver Village Realty Trust (Trust) as part of its development of a residential housing development known as Porcupine Park located in the Town of Salem. The abandonment was ordered for, among other reasons, the bankruptcy of the Trust, its failure to

adequately operate the water system, the bacterial contamination of the water supply, and the nonviability of the utility<sup>1(44)</sup> .

At the request of the Town of Salem the Commission continued the date of abandonment to June 30, 1995. On June 30, 1995 the Commission's receivership over the utility ended and its agent, Consumers New Hampshire Water Company, Inc. (Consumers), discontinued servicing the system. On that same date, William Dickey requested and was granted by Granite State Electric Company electric service to the pumps in his name. Mr. Dickey has been operating the system and providing service to the two remaining households on the system, one of which is a tenant.

**[1-3]** Mr. Dickey has never received authority from this Commission to operate a public water utility as required by RSA 374:22 and 26. He has failed to comply with numerous Court orders requiring him to repair or reconstruct the water system to a potable condition. According to the New Hampshire Department of Environmental Services (DES), he is supplying water containing potentially harmful bacteria to his customers, thus creating a public health risk. This is a clear violation of the requirement that one provide safe and adequate service pursuant to RSA 374:1. Finally, by his recent conduct he has violated this Commission's order that the water system be abandoned. DES Tech Bulletin WSPCD-WSED-1995-9 establishes standards for safe and effective abandonment and inactivation of wells, which we hereby adopt as reasonable.

In Order No. 21,504 we indicated that we would not seek criminal or civil sanctions against Mr. Dickey given the exhaustive judicial procedures brought against him by DES. Given Mr. Dickey's recent actions we have reconsidered this position. If Mr. Dickey has not discontinued service to these two customers by 5:00 P.M. of July 12, 1995 we will refer the matter to the Attorney General for appropriate action pursuant to RSA 365:41 and 42 (Supp. 1994) and 374:41 for failure to comply with this Order, violation of our previous orders and failure to comply with Title XXXIV of the Laws of New Hampshire. Mr. Dickey shall also accomplish the complete abandonment of the community water system pursuant to the inactivation procedures and standards of DES, Technical Bulletin WSPCD-WSEB-1995-9, by July 17, 1995 or shall notify us by that date of his inability to do so. In the event that he notifies us of his inability to abandon the system or fails to take action by July 17, 1995, we will order that the abandonment be accomplished by another party. Specifically, the inactivation procedure shall include the following:

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

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Wells:    T{
1. Pull submersible pumps; 2. Fill well cavities with sand
and gravel and plug with mortar; 3. Cut casing below grade and
weld cap to each.
T}
Vault:    T{
1. Remove all contents (valves, fittings, pressure tank,
etc.); 2. Fill cavity with sand and gravel; 3. Seal access door.
T}
Electric: T{
1. Notify Granite State Electric and arrange disconnect;
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2. Have Granite State Electric remove electrical equipment as necessary.  
T}

Based upon the foregoing, it is hereby

ORDERED, that William Dickey discontinue service to the two customers he is known to be serving and any other customers being served in Porcupine Park by 5:00 P.M. of July 12, 1995 or the matter will be referred to the Attorney General for appropriate action pursuant to RSA 365:41 and 42 (Supp. 1994) and 374:41 for failure to comply with this Order, violation of our previous orders and failure to comply with Title XXXIV of the Laws of New Hampshire; and it is

FURTHER ORDERED, that William Dickey accomplish the complete abandonment of the community water system pursuant to the procedures and standards of DES by July 17, 1995 in order to prevent any injury to the public, or notify us by that date of his inability to do so.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1995.

FOOTNOTES

<sup>1</sup> For the complete background of this proceeding refer to Order No. 21,504.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beaver Village Realty Trust, DE 92-226, Order No. 21,504, 80 NH PUC 31, Jan. 18, 1995.

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NH.PUC\*07/10/95\*[81006]\*80 NH PUC 435\*Merrimack County Telephone Company

[Go to End of 81006]

80 NH PUC 435

**Re Merrimack County Telephone Company**

DF 95-026

Order No. 21,730

New Hampshire Public Utilities Commission

July 10, 1995

ORDER authorizing a local exchange telephone carrier to issue a 15-year promissory note in the amount of \$2.1 million to the Rural Telephone Finance Cooperative, with the proceeds to be used for construction of new host and remote central office switches.

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1. SECURITY ISSUES, § 94

[N.H.] Kinds and proportions — Long-term promissory note — Issuance to Rural Telephone Finance Cooperative — Capping of associated interest rates — Purpose of proceeds — Construction of central office switches — Local exchange carrier. p. 436.

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BY THE COMMISSION:

### ORDER

On February 3, 1995 Merrimack County Telephone Company (MCT), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval and authority under RSA 369:1-4 to issue a promissory note and to mortgage its properties, tangible and intangible, including franchises, as security for such promissory note.

MCT proposes to enter into a loan agreement with the Rural Telephone Finance Cooperative (RTFC) providing for the issuance, subject to the Commission's approval, of a promissory note in the principal amount of \$2,105,263 having a term of fifteen (15) years.

The initial interest rate or rates will be

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determined by the RTFC based on market conditions at the time of the closing. The proceeds from the issuance of the promissory note will be used (a) to finance the acquisition and installation of a new host central office switch to be located in the MCT's Contoocook central office and new remote central office switches to be located in MCT's Bradford, Sutton and Warner central offices; and (b) to purchase a subordinated capital certificate in the amount of \$105,263 from the RTFC.

On March 21, 1995 MCT filed an Addendum to the Petition and proposed that the promissory note bear interest at variable rates per annum to be fixed monthly in accordance with standard RTFC loan policies. MCT further proposed that in the event the variable interest rate fixed by the RTFC at any time is equal to or greater than 9.45% per annum, MCT will within 30 days thereafter either (a) exercise the option granted in the loan documents to convert the interest rate to a fixed rate of interest for the duration of the loan or (b) apply by petition to the Commission for an order staying the requirement to convert the interest rate to a fixed rate, in which event the time for converting the interest rate to a fixed rate shall be extended until not later than 30 days following the date of the filing of such petition or until otherwise ordered by the Commission.

Staff and MCT discussed the interest rate levels at length. The Staff recommended that the interest rate be capped at 100 basis points over the RTFC's fixed rate for 15-year loans in effect on the date of closing. This cap would be applicable for any option which MCT adopts for the life of the loan, including fixed, variable or blended rates. Staff states that MCT will be billed monthly on the variable rate option and, therefore, should be able to anticipate when the loan should be converted to a fixed rate option, or some combination of fixed and variable options to keep interest costs to a minimum.

Staff and MCT agreed that in the event the interest rate per annum established under the RTFC procedures rise to a level equal to a rate which is 100 basis points higher than the fixed fifteen year rate at the time of closing, that the interest rate on the note would immediately be converted to a fixed rate for the balance of the term of the loan.

[1] The Commission has reviewed MCT's petition, and all exhibits submitted therewith and Staff's recommendation. We find that the issuance of a promissory note of MCT in the principal amount of \$2,105,263 to the RTFC upon the terms represented in the proposed loan documents, with an interest rate capped as recommended by staff, is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that MCT is authorized to issue a promissory note in the principal amount of \$2,150,263; and it is

FURTHER ORDERED, that the promissory note will bear interest at variable rates, or fixed rates over such periods as MCT may elect in accordance with standard RTFC loan policies; and it is

FURTHER ORDERED, that in the event that the interest rate per annum established under the RTFC procedures for fixed rate fifteen year loans rises to a level equal to a rate which is 100 basis points higher than the fixed rate in effect for fifteen year loans on the date of the closing, the interest rate on the note shall immediately and automatically be converted by the Borrower to a fixed rate for the balance of the term of the loan; and it is

FURTHER ORDERED, that MCT file executed loan documents, containing the definitive terms of the loan, including initial interest rate or rates immediately upon closing; and it is

FURTHER ORDERED, that the mortgaging of MCT's property to secure the repayment of such promissory note is approved; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year MCT, shall file with the Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of said proposed financing until the expenditures of the whole proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1995.

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NH.PUC\*07/10/95\*[81007]\*80 NH PUC 437\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81007]

80 NH PUC 437

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-069

Order No. 21,731

New Hampshire Public Utilities Commission

July 10, 1995

MOTION by telecommunications consulting firm, Auditel, Inc., for an order compelling a local exchange telephone carrier to disclose the terms of special contracts it had executed with various customers for Centrex and integrated services digital network offerings; granted in part and denied in part.

Commission finds that the services covered by the contracts are at least partly subject to competition, such that the contracts need not be disclosed in their entirety. Commission affirms protective treatment for those parts of the contracts that specify terms of years, incremental cost-of-service study data, proprietary information relating to customer operations and plans, and financially sensitive information. Commission finds general information contained in the contracts must be disclosed. It affirms its test of balancing the benefits of disclosure versus those of nondisclosure in deciding whether special contracts should be afforded confidentiality.

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#### 1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Exceptions for certain information — Customer-specific operational and and planning information — Financially sensitive customer data — As distinguished from usage data — Proprietary terms and trademarks — Protection of cost-of-service studies — Confidentiality of term of years — Full versus partial confidentiality. p. 440.

#### 2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Exceptions for certain information — Test governing grants of confidentiality — Balancing of benefits of disclosure versus benefits of nondisclosure — Necessity of evidence supporting protective treatment — Burden of proof on party seeking confidentiality. p. 440.

#### 3. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Especially as to contracts with state agencies — Lesser need for disclosure of contracts with private citizen customers. p. 440.

#### 4. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Especially as to contracts for monopoly services — Effective competition as warranting confidentiality. p. 440.

#### 5. RATES, § 211

[N.H.] Contracts — Special service arrangements — Public disclosure of — Factors — Balancing of benefits — Effective competition — Customer-specific data — Partial disclosure of general terms of Centrex service contract — Nondisclosure of customer-specific and competitively sensitive terms — Local exchange telephone carrier. p. 440.

## 6. SERVICE, § 463

[N.H.] Telephone — Private branch exchange (PBX) — As alternative to carrier-provided Centrex service — Special contract arrangements to prevent bypass via PBX — Proposed protective treatment for such Centrex

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contracts — Factors — Balancing of benefits — Effective competition — Customer-specific data — Partial disclosure of general terms of contract — Nondisclosure of customer-sensitive terms. p. 440.

## 7. CONTRACTS, § 3

[N.H.] Commission jurisdiction — Special rate contracts for otherwise tariffed services — As to approval or rejection — As to disclosure or protective treatment — Commission discretion — No absolute mandate for disclosure. p. 447.

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BY THE COMMISSION:

ORDER

## I. PROCEDURAL HISTORY

On March 3, 1995 Auditel Inc. (Auditel) filed a motion with the New Hampshire Public Utilities Commission (Commission) to remove the confidential treatment granted to special contracts filed by New England Telephone and Telegraph Company (NYNEX), including previously filed contracts in dockets DR 92-105, DR 92-098 (incorrectly listed as DR 93-028), DR 93-054, DR 94-058, DR 94-276, DR 95-010 and all current and future contracts. On April 25, 1995, Auditel amended its motion to specify that it also objected to NYNEX's motions for confidentiality in DR 95-079, DR 95-097, and DR 95-102 which have been held in abeyance pending the determination of Auditel's motion.

On March 16, 1995, NYNEX objected to Auditel's motion. Auditel responded by letter dated March 29, limiting its motion requesting disclosure of the "price and terms" of the special contracts, and excluding from its request NYNEX's cost information.

The Commission's Engineering Staff filed a memorandum in support of Auditel's motion on April 7, 1995. By separate memorandum filed the same date, the Commission's Economics Staff opposed Auditel's motion.

By letters dated April 18, 1995, and April 19, 1995, respectively, both NYNEX and Auditel responded to the Commission Staff memoranda.

On April 20, 1995, the Commission's Engineering Staff filed a lengthy memorandum in response to NYNEX's April 19, 1995 letter to which NYNEX responded by letter dated April 21, 1995.

On April 27, 1995, the Commission's Engineering Staff filed copies of NYNEX's Massachusetts tariffed Centrex contracts from Massachusetts, portions of which are public

information. NYNEX filed a response on April 28, 1995.

The Office of the Consumer Advocate took no position on the Auditel motion. There have been no requests for a hearing on this motion.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Auditel*

Auditel is a telecommunications management company providing analysis and advice regarding telecommunication needs for small and medium size companies. As the entity representing a group of New Hampshire public schools seeking a non-tariffed rate for voice, data and toll services in a special contract, Auditel argues that the NYNEX special contracts for Centrex and ISDN service are not within the exceptions of RSA 91-A, the Right to Know Law and therefore should be disclosed. Auditel asserts that the information sought is general, not specific, customer information which even some customers are not aware is protected. As support, Auditel notes that the information can be obtained from NYNEX with a letter of agency from the customer. Auditel also avers that it obtained a NYNEX Centrex contract from a customer<sup>1(45)</sup> of NYNEX which had no knowledge of the protected status of the contract.

Auditel asserts that the information is not competitively sensitive because there is no competition for Centrex and ISDN services in

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New Hampshire. Auditel also argues that unless all special contracts are made available for public viewing, price and industry segment discrimination can occur. Finally, Auditel invokes RSA 378:19, which states that special contracts are to be "made public in such manner as the commission shall require, and shall constitute a part of the published schedules of the public utility making the same."

### B. *NYNEX*

NYNEX first argues that Auditel's motion violates state and federal constitutional due process requirements by requesting disclosure of all "future contracts." NYNEX's response, therefore, is limited to consideration of a request for disclosure of the specific dockets Auditel listed.

NYNEX asserts that the information sought is customer specific (as opposed to general in nature, as asserted by Auditel) and, therefore exempt from disclosure under RSA 91-A:5, IV. NYNEX also argues that there is competition for Centrex services and Auditel is seeking Commission interference in market forces to better Auditel's position in on-going negotiations for Centrex and other network services for certain public schools in New Hampshire. NYNEX points out that individual customers have no inherent right to a special contract.

Maintaining that it met the standard for protective treatment for the special contracts desired by Auditel, NYNEX asserts that the applicable standard for confidentiality is set forth in N.H. Admin. Rules (hereinafter, rules shall be cited by the prefix PUC only), Puc 204.08. Documents are entitled to protection from disclosure under those rules, NYNEX states, when either (1) the evidence demonstrates that confidential financial or commercial information is not general



public knowledge and has been kept from dissemination in the ordinary course of business, or (2) any of the following conditions exist: competitive disadvantage is likely to occur if the information is made public, invasion of privacy is likely to occur, the information consists of details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, or of financially sensitive customer information. NYNEX argues that these rules set forth in detail the relevant standard for determining confidential treatment and remove the need for the Commission to balance the benefits of disclosure against the benefits of non-disclosure, a test formerly used by the Commission. According to NYNEX, if the rules' requirements are met, the Commission must grant confidentiality.

NYNEX contends that Centrex and ISDN services participate in a competitive market. Therefore, NYNEX argues, the commercial and financial information should be protected. For support, NYNEX cites, *inter alia*, Commission orders in *Re New England Telephone and Telegraph Company*, 76 NHPUC 327 (1991) and *Re Public Service Company of New Hampshire*, DR 94-293, Order No. 21,491 (January 9, 1995).

NYNEX disputes Auditel's assertion that the contested information is general public knowledge, pointing out the requests for protective treatment which it has filed with all its special contracts and the fact that Auditel cannot gain access to them without a letter of agency from the customer.

#### *C. Commission Engineering Staff*

The Commission's Engineering Staff (Engineering) argues that after the Commission has approved a NYNEX Special Contract for Centrex, the Commission should make public the discounted rate, the number of lines, and the duration of the contract. First, no real competition exists for Centrex because NYNEX is currently a monopoly provider of local service. Even if Centrex competition existed, price would not be confidential. Second, Engineering argues that NYNEX has access to PBX prices and fairness dictates that PBX and other potential competitors should have the same access. Third, Engineering asserts that NYNEX has not complied with the requirements of Puc 204.08 because NYNEX did not provide evidence supporting its claims and NYNEX's customers are unaware of the protected nature of the contracts. And fourth, applying the balancing test

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mandated by our case law, Engineering argues that non-disclosure of the information results in more harm to the public than harm to NYNEX. The public harm in this instance is that Auditel and potential customers of Auditel would pay "too high" a price for the services sought.

#### *D. Commission Economics Staff*

The Commission's Economics Staff (Economics) concluded that disclosure of sensitive materials in the contracts will result in competitive disadvantage to NYNEX and, potentially, to NYNEX's customers. The most sensitive materials, according to Economics, include contract prices per line and duration of contract these terms are generally found in the appendices and supporting materials. Economics believes that some information in the special contracts can be disclosed without resulting in competitive disadvantage. However, Economics argues that the

rate, number of lines, and duration of the contract, among other items, should continue to be protected.

The chief argument raised by Economics is that NYNEX's Centrex and ISDN services operate in a market where substitute services are available. As support, Economics cites cases in which the Commission stated that it is appropriate to include PBX and Centrex in a single "business customer switching market." *Re New England Telephone and Telegraph Company*, 76 NH PUC 150, 170 (1991). In addition, Economics refers to the concept of cross-price elasticity as measured by NYNEX's 50% success rate at selling Centrex service to purchasers of customer switching service, i.e. the number of sales attempts where the customer is known to have selected a PBX alternative compared to the total number of purchasers. Economics states that in the recent New York decision authorizing the division of Rochester Telephone into a fully regulated entity and a minimally regulated retail entity, Centrex service was placed in the minimally regulated entity.

As well as the effect on competition between NYNEX Centrex and PBX, Economics further argues against disclosing the special contracts on the basis of the impact on competition among customers of NYNEX. Disclosure might enable a competing company to gain insight into a NYNEX customer's cost structure and otherwise unavailable information regarding financial status, competitive position or plans for growth. Economics points out that NYNEX gains no such otherwise unavailable information about its PBX competitors who, because they are unregulated, are not required to disclose customer specific bids. Consequently, no competing company has an opportunity to gain such information about a PBX customer.

According to Economics, this docket raises one of the several difficult questions we face regarding appropriate methods of regulation in the changing telecommunications marketplace. Arguing that an alternative form of regulation for Centrex might produce a solution, Economics encourages us to focus on a generic Centrex docket while requiring NYNEX to revise its current Centrex tariff to allow appropriate pricing with appropriate term flexibility to compete with PBX providers.

### III. COMMISSION ANALYSIS

#### A. *Background of the Issue*

[1-6] The central issue posed by this motion is the validity of the confidential treatment granted to special contracts filed by NYNEX. This includes a number of pending petitions for confidentiality in this docket and in dockets DR 95-079, DR 95-097 and DR 95-102. In addition, since we have specifically reserved the right to revisit prior decisions on confidentiality<sup>2(46)</sup> our ruling today will also impact on the confidentiality granted in DR 95-079, Order No. 20,509. In terms of Auditel's request that this ruling apply to all future contracts, because of constitutional considerations we can not rule prospectively on the merits of future petitions and we cannot bind future commissions by our ruling. It is our belief, nonetheless, that the reasoning underlying this ruling is sound and that it will withstand the test of time absent a change in the law.

Our reconsideration will examine the method by which we have evaluated the merits

of requests for confidential treatment and then determine if that method is reflected in our current rule. Finally, we will consider whether the NYNEX requests met the requirements established by the rule.

*B. NH RSA 91-A, "The Right-to-Know Law"*

Petitions for confidential treatment by the Commission are governed by RSA 91-A. RSA 91-A, the Right-to-Know Law, requires the Commission to hold all public records open for public inspection. RSA 91-A is the legislature's response to the requirement of the New Hampshire Constitution, part 1, article 8, which states that "the public's right of access to government proceedings and records shall not be unreasonably restricted."

RSA 91-A:5,IV carves out certain exceptions to the general rule favoring disclosure of governmental records. That section provides an exemption from disclosure for the following:

"(R)ecords pertaining to internal personnel practices; confidential, commercial, or financial information; ... examination data used to administer ... examinations; and personnel, medical ... and other files whose disclosure would constitute invasion of privacy."

By these exemptions, the legislature recognized that there are times when the public interest in open government, as protected by our state Constitution, is outweighed by the public interest in internal personnel practices, in the integrity of examinations, in a functioning competitive marketplace, and in privacy. Our focus in this case is on the public interest in an effectively functioning competitive marketplace as well as a telecommunications customer's right to privacy.

*C. Commission Confidentiality Rules, Commission Decisions and Case Law*

Pursuant to our interpretation of RSA 91-A:5,IV, we have established standards as to when and under what circumstances information is considered confidential, commercial, or financial and deserving of confidential treatment. See Puc 204.07 and 204.08. In *Re New England Telephone & Telegraph, Co., Inc.*, DR 85-182, DR 89-010, 74 NHPUC 307 (1989) (hereinafter *DR 89-010*), we specified the particular information which we deem necessary for analyzing requests for confidential treatment. We require:

1. The documents or facts for which protection was sought;
2. The statute that supports exemption;
3. Facts to apply the test for disclosure: weighing the benefits of disclosure to the public against the benefits of non-disclosure to the utility;
4. Analysis of the facts using *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F.Supp. 866 (1981)<sup>3(47)</sup>; and
5. A statement as to whether a revenue loss would result from disclosure and whether ratepayers would bear the loss.

When we undertook the task of codifying requirements into rules, our intent was to provide notice, certainty and uniformity as to the treatment of similarly situated parties. We used the standards enunciated in *DR 89-010* to draft Puc 204.07 and .08, which were approved by the

legislature and became effective December 5, 1994. Taking into account the current changing atmosphere of regulated utilities, we separated the terms discussed in the *Zenith* case, "competitive" and "trade secret", into more easily measured elements. Our rules reflect our understanding of the common and statutory law.

In *Re Eastern Utilities Associates*, 76 NHPUC 236 (1991), we addressed the question of whether information which "unquestionably involve(s) records pertaining to confidential, commercial or financial information" should nevertheless be disclosed in accordance with the balancing test of weighing the public's right to know versus the individual's right to privacy employed by the New Hampshire Supreme Court. *Id.* at 263. Although a term such as "confidential" could be broadly interpreted to include every Commission document, we did

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not believe that was the legislature's intent. We therefore applied the balancing test and, on the facts before us in *Re Eastern*, decided that the benefits of non-disclosure outweighed the benefits of disclosure. *Id.*

Puc 204.08 does not repudiate the balancing test described in *DR 89-010* and *Re Eastern*. Rather, it clearly stated that petitions for confidentiality are considered in light of "RSA 91-A or other provisions of law." Puc 204.08(b)(1) through (b)(4) merely identify the information the Commission will evaluate in determining whether to afford protective treatment to information in accordance with RSA 91-A and applicable case law.

Although the rule does not identify *DR 89-010* as its source, Puc 204.08(b)(1) through (b)(4) enumerate the items mentioned in that case as necessary to our decision whether particular information fits within the exceptions permitted by RSA 91-A:5,IV. Comparing the two documents, we see case requirement 1 (as numbered above) reflected in 204.08(b)(1), case requirement 2 reflected in 204.08(b)(2), case requirement 3 reflected in 204.08(b)(3), and case requirements 4 and 5 reflected in 204.08(b)(4)a., b., and c. Sub-section 204.08(b)(4)d. then diverges from parallel course with the case law requirements; it identifies a further piece of information by which the utility may satisfy the requirement of (b)(4). It lists three specific items which we have judged to meet the standards of (b)(4)a. through (b)(4)c. In other words, evidence that the information consists of fuel supply contracts, details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application, or financially sensitive customer information is enough to fulfill the requirement of (b)(4). Any other interpretation of Puc 204.08(b)(4) does not comport with our intent or interpretation.

We do not accept NYNEX's contention that providing the evidence required by Puc 204.08(b)(4) automatically entitles it to confidential treatment. Merely providing the 204.08(b)(4) information, even adducing evidence that demonstrates all four of the subsections of (b)(4) does not insure a successful petition for confidentiality. The information required by Puc 204.08(b)(1), (2), and (3) must also be supplied, significantly the (b)(3) "(F)acts describing the benefits of non-disclosure to the petitioner, including evidence of harm that would result from disclosure."

After receipt of all the information required by 204.08(b), we decide whether or not the

information provided does in fact fit within the exceptions of RSA 91-A:5,IV as directed by Puc 204.07, using the tests for disclosure and the *Zenith* analysis we described in *DR 89-010*. We will therefore continue to apply the balancing test, measuring the benefits of disclosure against the benefits of non-disclosure.

We are not convinced by NYNEX that the Supreme Court's decision in *Union Leader Corp. v. Fenniman*, 136 NH 624 (1993), obviates the necessity of the balancing test. The Supreme Court found the balancing test inappropriate in that case because the legislative history of RSA 91-A and another statute, RSA 516:36,II (Supp. 1992) construing of the phrase "internal personnel practices" demonstrated that the proceedings of internal police investigations, which were sought by the plaintiff in *Union Leader*, were specifically intended to remain confidential under the Right-to-Know law. *Id.* at 627. Thus the Court reasoned "... the legislature has plainly made its own determination that certain documents are categorically exempt." The legislature also plainly made its own determination in 1989 when RSA 91-A:5,IV was amended to add "library user" to the types of files whose disclosure would constitute invasion of privacy. In doing so, the legislature noted:

"RSA 91-A, or Right-to-Know Law, does not include a definition of what constitutes a public record. The New Hampshire supreme court has applied a balancing test to determine whether a record is public by weighing the benefits of disclosure to the public versus the benefits of nondisclosure. By weighing the benefits of allowing disclosure of library user records against the benefits of denial of disclosure, the general court has determined that the benefits of nondisclosure clearly prevail. This act, therefore exempts library user

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records from RSA 91-A to ensure that the individual's right to privacy regarding the nature of the library materials used by the individual is not invaded."

Laws of 1989, Chapter 184, Section 1, effective July 21, 1989.

Unlike the situation in *Union Leader* and the library user amendment, the terms "confidential, commercial, and financial information" contained in RSA 91-A:5,IV have not been defined by statute or case law to any degree of precision which would enable us to conclude that NYNEX's contracts are clearly exempt from disclosure. We find that those terms are sufficiently broad and undefined to require the balancing test, weighing the benefits of non-disclosure against the benefits of disclosure.

#### *D. The Balancing Test*

##### *1. Competition and the Public Interest*

Our examination turns now to identifying the public interest. The public interest protected by the Right-to-Know law is openness of government proceedings: the Commission must not keep its records secret to the detriment of democratic society. On the other hand, a continually effective, functioning competitive marketplace is essential, as was recognized by the legislature when it created the RSA 91-A:5(IV) exemption for confidential, commercial, and financial information.

Here, an argument has been raised by Auditel and the Engineering Staff that the market for Centrex-type services is not competitive or not fully competitive. Competitiveness within an industry is indeed one factor in determining whether a request for confidentiality comes within the RSA 91-A exceptions, given that protection of certain records allows a business to outbid, outmaneuver or otherwise outsmart its competitors.

Auditel argues that the information it seeks could result in lower prices for the telecommunications services it seeks from NYNEX, thus promoting competition. Lower prices are certainly an anticipated consequence of increased competition, along with higher quality service. However, the facts before us show that Auditel is not a competitor of NYNEX. The disclosure which Auditel requests puts us at risk of manipulating the market in order to assist Auditel to achieve lower prices. The lower prices would come about by our disclosure of ordinarily protected market information, not by the operation of an effectively functioning marketplace.

In our regulated marketplace, when NYNEX or another regulated utility feels competitive pressures, it may seek to go off tariff and lower its prices.<sup>4(48)</sup> The Commission may permit NYNEX to go off tariff because of the benefits to contribution, otherwise lost if NYNEX loses the customer altogether to PBX or other competitor. The public good may be served by allowing NYNEX to go off tariff because lower prices are obtained for large users while preventing pressure on basic exchange customers' prices. We have an obligation not to jeopardize basic exchange quality or prices. We must strike a difficult balance: NYNEX needs to meet its revenue requirement to maintain its contribution and its monopoly service of basic exchange; we need to encourage lower prices for an emergingly competitive industry. However, our regulatory responsibilities extend beyond the obligation to produce the lowest price possible. We must also recognize monopoly service contribution and seek opportunities for real rather than phantom competition.

## *2. The Benefits of Nondisclosure Outweigh the Benefits of Disclosure*

Applying the balancing test discussed above, we can examine the benefits of disclosure against the benefits of non-disclosure of the information contained in the protected documents. In order to analyze those benefits we must first identify the type of information on which protection is sought.

The contracts at issue are special contracts for Centrex telecommunications services. For each special contract, NYNEX filed with Commission an overview and at times a contract description, a cost study section, and the contract itself. The overviews reveal the term of

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years of the contract and describe the contracts by reference to information contained in appendices to the contract. The cost study sections consist of financial details of contract rates and costs for each site, as well as other sensitive information. The contracts themselves contain a title page revealing the name of the company with which NYNEX proposes the special contract and the term of years. The body of the contracts contain numbered sections, including sections detailing some or all of the following:

1. The proposed Centrex service by reference to Appendix A.
2. The governing NYNEX tariff.
3. The centrex rates and charges by reference to Appendix B.
4. Opportunity for growth by reference to Appendix B.
5. Exchange access charges by reference to Appendix B.
6. Payment terms, in which the contract's term of years is revealed.
7. The type of local service available.
8. The manner by which prices are subject to change.
9. Methods for relocation and removal of lines.
10. Methods for notice by the contracting parties.
11. Governing law.
12. Standards and methods for termination.
13. Provisions for the occurrence of force majeure.
14. Limits to liability.

One appendix contains specific information on the number and location of lines, whether lines are analog or digital, maximum growth permitted, engineering specifications per line, and system features including but not limited to call forwarding, call waiting, hold, and delayed and abbreviated ringing. The next appendix contains rates and charges per line, types of facilities, dollar commitments per month, relocation and exchange access charges. Other appendices contain the term of years for the contract, schedules of monthly payments, present value calculations for the dollar commitment amounts in case of early termination of the contract.

We identify three benefits to the public of non-disclosure of the information listed above. First, non-disclosure protects NYNEX's customers' privacy interests and their interests in preserving their positions in their respective competitive markets by protecting their telecommunications contract information which could indicate the customer's financial status, plans for growth, telecommunications strategies, etc. Second, non-disclosure protects NYNEX's position in the competitive business customer switching market. Third, non-disclosure protects basic exchange rates from experiencing upward pressure as a result of Centrex discounts to businesses who gain an unfair bargaining position through access to information which would otherwise be unavailable if NYNEX were an unregulated private enterprise.

We identify the following benefits to the public of disclosure. Arguably, one benefit of disclosure is that the public could gain better insight into the extent to which discounts for Centrex service may be recovered through increased basic exchange rates. However, disclosure itself would not provide this benefit. Such a result would require an analysis of more than just the terms and conditions of special contracts themselves.

Another benefit of public disclosure is that Auditel and other potential NYNEX customers would gain an enhanced bargaining position in their quests for lower prices. However, we do not believe that RSA 91-A was intended to create such a result. In fact, the New Hampshire Supreme



Court has held that it is not the intent of RSA 91-A to disadvantage parties in their bargaining positions by permitting access to government-held financial, security or trade information to which there is a general expectation of privacy. *See Perras v. Clements*, 127 N.H. 603, 605-606 (1986). Surely NYNEX customers do not believe that line locations, numbers of lines, rates and other detailed information about their particular telecommunications services will be made public or available to their competitors. Clearly, if NYNEX were not a regulated entity, these documents would not be

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available for public inspection. Given the increasingly competitive telecommunications world we do not believe that RSA 91-A should be used to access what is essentially private, commercial information, especially when disclosure of such information would obviously undermine NYNEX's ability to effectively compete in the business customer switching market and could harm NYNEX's customers by revealing sensitive financial and/or security information. In view of the foregoing, we conclude that the benefits of non-disclosure outweigh those of disclosure. Therefore, on the basis of our balancing test analysis under RSA 91-A we will uphold the confidentiality of our prior orders in accordance with our specifications at page 25 and 26, *infra*.

#### *E. Customer Proprietary Network Information*

Customer Proprietary Network Information (CPNI) has been discussed at length by the FCC in a series of cases. The orders are *Computer II*, *Computer III*, and *Order on Remand, California I, California II, and California v. FCC* (1994).<sup>5(49)</sup> NYNEX and other Bell Operating Companies (BOCs) disputed the FCC's treatment of CPNI but the 9th Circuit Court of Appeals affirmed it on October 18, 1994.

As defined in those cases, CPNI consists of information about a telephone customer's use of the telephone network, such as the number of lines ordered, service location, type and class of services purchased, usage levels, and calling patterns. CPNI is useful to the BOCs and competitor enhanced service providers in their development and marketing of enhanced services. CPNI can help identify potential customers, design more efficient services, and better meet customer needs. Telephone customers have proprietary and privacy interests in their CPNI.

In its *Order on Remand*, the FCC established rules governing access to CPNI which require prior authorization by customers. In adopting the new CPNI rules the FCC balanced the competing interests of competitive equity, customer privacy, and the need for efficiency in the development of mass market enhanced services. The 9th Circuit Court of Appeals affirmed the FCC's CPNI rules. *California v. FCC*, 39 F.3d 919, 930-933 (1994).

Similarly, we will not make public the type of information which falls within the realm of CPNI.

#### *F. Confidentiality of NYNEX Contracts in Other States*

Auditel researched NYNEX special contract practice in certain other states and argues that contracts similar to those protected *in toto* here are open to the public there except for NYNEX



cost structures. Engineering filed copies of the published tariff pages containing such contracts, obtained from the Massachusetts DPU, as examples of publicly available information regarding NYNEX's discounted Centrex service. While the approach taken by a sister state will not dictate our decision, we nonetheless have reviewed the contracts submitted in comparison with what is requested by Auditel.

We have reviewed the three full tariffed contracts filed by Engineering. A fourth contained only the transmittal letter but no contract. The three were Amherst College Student Residence Centrex, Warren Five Cent Savings Bank, and the Fire Marshall's Office of the Commonwealth of Massachusetts. NYNEX provides Amherst College with a hybrid service for individual students in residence halls; the contract differs from the standard Centrex contract. NYNEX provides the Warren Five Cents Savings Bank with a standard tariffed Centrex contract. The Fire Marshall contract is, apparently, also a standard tariffed Centrex contract.

All three of the Massachusetts tariffed Centrex contracts refer to either Customer Service Agreements or Centrex Service Agreements which are not provided. A Monthly Commitment Amount and a Monthly Service Rate is revealed and is related to "all in service lines as specified in the Customer Service Agreement" (Amherst), and "to facilities associated with Centrex lines, exchange access, and a package of features specified in the Centrex Service Agreement" (Warren Five Cents Savings Bank and Fire Marshall). We presume that customer-

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specific information is contained in the service agreements referenced. Per-line rates are provided in the tariff pages only for future activation of optional features (Amherst) and for commitment amounts for future additional main station lines (Warren Five Cents Savings Bank). The duration of the contracts is not specified in the tariff pages.

We find the information published in the Massachusetts tariffs to be general and not customer-specific. We will make public this kind of information, as did Massachusetts. We will keep confidential the number of lines, the term of years of the contracts and other customer-specific information as determined by consideration of special contracts on a case by case and page by page basis. The degree of competition within a particular market will affect the degree of confidentiality which will be granted.

*G. Reconsideration of Prior Orders*

In its memoranda, Engineering asserted that NYNEX failed to meet the requirements of Puc 204.08. Our amended 204.08 was not in effect when Dockets Nos. DR 92-105, DR 92-098, DR 93-054, DR 94-058, and DR 94-276 were decided. The new rules became effective on December 5, 1994. NYNEX's Motion for Protective Treatment in Docket No. DR 95-010, which was granted confidentiality on January 23, 1995, should have been considered in light of our new rules. Given the language in our order which permits reconsideration, we review, below, our decision that the motion meets the filing requirements of 204.08(b) and passes the test under RSA 91-A as required by 204.08(a).

In its Motion for Proprietary Treatment, dated January 20, 1995, NYNEX did not cite the Commission rules. However, reflecting the requirements of Puc 204.08(b)(1), (2) and (4), NYNEX provided the document for which confidentiality was sought and declared that: the

special contract contains certain customer specific, competitively sensitive data falling within the scope of RSA 91-A:5,IV; that the information consists of details not reflected in tariffs of general application, including network size, routing and configuration, specific service features, pricing and incremental costs, special rates and billing details, the dissemination of which NYNEX regularly seeks to prevent; and that release of the information would likely cause NYNEX competitive harm. NYNEX did not aver facts describing the benefits of non-disclosure or evidence of the harm that would result from disclosure, as required by Puc 204.08(3).

In the course of reviewing numerous special contracts over the years, employing the balancing test required by RSA 91-A, we analyzed the actual documents filed and ascertained the existence of competitive risk based upon our own understanding of the benefits of non-disclosure. However, consistent with the *Zenith* test which we adopted in DR 89-010, Puc 204.08 (3) places the burden on the party seeking confidentiality to provide facts describing the benefits of non-disclosure or evidence of the harm of disclosure. With regard to NYNEX's failure to provide the facts required by PUC 204.08(3), we recognize that the motion in DR 95-010 represented one of the first instances of the application of our newly adopted rules. Given that fact, we chose not to deny the motion with leave for the company to refile. In the future, we will require strict compliance with the rule.

Our analysis of DR 95-010, the Hitchcock Clinic Special Contract, shows a three part document: (I) an overview of the contract, (II) cost study details, and (III) the contract itself. Part I, the overview, contains the term of years of the contract and references to other customer-specific competitively sensitive information contained in appendices to the contract. Part II, cost study details, consists entirely of information we consider customer-specific information entitled to confidential treatment. Part III, the contract itself, consists of nineteen pages, some of which contain competitively sensitive information. Specifically, we consider section 4.1, all of Appendix A, page 2 of Appendix B, and all of Appendices C and D entitled to confidential treatment.

The existence of protected information within a document has, in the past, led to a grant of confidentiality for the entire document. In the interest of full compliance with the applicable

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laws and the intent of the legislature, and as a result of our review of the Massachusetts materials discussed above and the FCC's analysis of CPNI, we will make those parts of special contracts which contain no competitively sensitive information accessible to the public.

Therefore, we will treat the special contracts sought by Auditel in the following manner.

In DR 95-010 the following information shall be public: the overview (with the term of years deleted); the contract (with section 4.1, Appendix A, page 2 of Appendix B, and all of Appendices C & D deleted).

In DR 92-105, the following information shall be public: the contract description (with page 1 deleted); and the contract (with the term of years on the cover page deleted, page 2 - section 6.2, page 4 - section 14, all of Appendix A, pages 2, 4 and 5 of Appendix B and all of Appendix C deleted).

In DR 92-098, the following information shall be public: the contract (with the term of years on the cover page deleted, page 2 - section 6.1, page 5 section 14, and Appendices A, B, C, and D deleted).

In DR 94-058, the following information shall be public: the contract (with page 3 - section 6.2, page 5 - section 14.1, Appendix A, Appendix B, Appendix C, and Appendix D (page 2) deleted).

In DR 94-276, the following information shall be public: the overview (with pages 1, 3 and 4 deleted); the contract (with section 4, Appendix A (pages 1-4), Appendix B (pages 1, 2, 4, 5, and 6) deleted).

Unlike the above four Centrex special contracts between NYNEX and private companies, DR 93-054 considers a Centrex special contract with the State of New Hampshire, one which Auditel has obtained from the Secretary of State's Office. Thus, the question of whether this contract should be public is moot. Nonetheless, were we to address the question, the balancing test would tip in favor of disclosure rather than non-disclosure. The differences affecting the balance are (1) taxpayers' interest in knowing how the state's revenues are spent, and (2) the fact that a state contract is approved in a public forum by the executive branch.

In furtherance of our goal of complying fully with the spirit of the Right to Know Law, we will direct NYNEX and others who file special contracts with motions for confidential treatment after the date of this order to submit redacted copies along with full texts of the special contracts. Thereafter, upon review and approval of a motion for confidential treatment, redacted copies which comply with the specific order granting confidentiality will be available for public review.

#### *H. RSA 378:19 Does Not Mandate Disclosure*

[7] Auditel argues that RSA 378:19, enacted in 1913 and amended in 1951, compels disclosure of NYNEX's special contracts. That statute provides that special "contracts shall be filed and made public in such manner as the Commission shall require, and shall constitute a part of the published schedules of the public utility making the same." When read in conjunction with the later enacted RSA 91-A, we interpret this statute to reserve to the Commission the authority to determine the degree to which the information contained in the special contracts be made public. Here we have determined that portions of the special contracts which are not protected under RSA 91-A or our confidentiality rules may be disclosed. Thus, our decision is consistent with RSA 378:19.

Based on the foregoing, it is hereby

ORDERED, that Auditel's motion to remove the confidential treatment of special contracts filed by NYNEX in dockets DR 92-105, DR 92-098, DR 93-054, DR 94-058, DR 94-276, and DR 95-010 is granted in part and denied in part in accordance with our analysis above; and it is

FURTHER ORDERED, that Auditel's motion to deny confidential treatment of special contracts filed by NYNEX in dockets DR 95-079, DR 95-097, and DR 95-102 shall be granted in part and denied in part in accordance with our analysis above and detailed in orders issued forthwith in each respective docket; and

it is

FURTHER ORDERED, that motions for confidential treatment, filed by NYNEX and other petitioners, which do not comport with the requirements of Puc 204.08 and the terms of this order shall be denied with leave to re-file; and it is

FURTHER ORDERED, that Auditel's motion to remove the confidential treatment of special contracts filed by NYNEX is denied with regard to future petitions for confidential treatment of such contracts.

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1995.

#### FOOTNOTES

<sup>1</sup>The customer was the State of New Hampshire. The contract for Centrex service was released by the Department of Administrative Services which, when it became aware of its inadvertent release of proprietary information, later requested the PUC to impound the contract and preserve its confidentiality.

<sup>2</sup>See, e.g. DR 95-079, Order No. 20,509, "Further Ordered, that this order is subject to the ongoing rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant."

<sup>3</sup>The *Zenith* test referenced in *DR 89-010* emerged from a ruling on a massive international anti-trust case regarding an all-encompassing confidentiality order. The three prongs of the test are 1) Is it a trade secret? 2) Will disclosure cause cognizable harm? and 3) Has serious injury been clearly defined? *Zenith* stands for the proposition that economic information may be a trade secret, that competitive disadvantage is a cognizable harm, and that good cause must be demonstrated.

<sup>4</sup>If the business customer switching service is competitive then a customer will be permitted by market forces to negotiate a special contract and permitted by RSA 91-A to confidentiality. If the business customer switching service is not competitive then a customer will not be permitted by market forces to negotiate a special contract.

<sup>5</sup>\*Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer II*), 77 FCC 2d 384 (1980), (*Final Decision*), *modified on recon.*, 84 FCC 2d 50 (1081) (*Reconsideration Order*), *modified on further recon.*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *affirmed sub nom.*, Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

\*Amendment of Sections 64.702 of the Commission's Rules and Regulations, (*Computer III*), CC Docket No. 85-229, Phase I, *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987), (*Phase I Reconsideration Order*), *further recon.* 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*), *Phase I Order and Phase I Reconsideration Order vacated sub nom.*, California V. FCC, 0=905 F. 2d 1217 (9th Cir. 1990)

(*California*); Phase II, CC Docket No. 85-229, 2 FCC Rcd 3072 (1987) (*Phase II Order*) recon., 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*) further recon., 4 FCC Rcd 5927 (1989) (*Phase II Reconsideration Order*) *Phase II Order vacated sub nom.*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*)(which vacated three orders in *Computer III*).

\*Report and Order, Computer III Remand Proceedings, FCC 900-415, 5 F.C.C.R. 7719 (1990) (*Computer III Remand Proceedings Order*).

\**California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*) (which found that the change in policy of achieving open network architecture as a precondition to removal of structural separation, announced in *Computer III*, did not violate the Administrative Procedures Act).

\**California v. FCC*, 39 F.3d 919 (9th Cir. 1994).

## EDITOR'S APPENDIX

### Citations in Text

[N.H.] Re New England Teleph. Co., DR 92-105, Order No. 20,509, 77 NH PUC 305, June 17, 1992. [N.H.] Re Public Service Co. of New Hampshire, DR 94-293, Order No. 21,491, 80 NH PUC 16, Jan. 9, 1995.

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NH.PUC\*07/11/95\*[81008]\*80 NH PUC 449\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81008]

80 NH PUC 449

### **Re New Hampshire Electric Cooperative, Inc.**

DR 95-031

Order No. 21,733

New Hampshire Public Utilities Commission

July 11, 1995

ORDER approving an electric cooperative's proposal for implementation of a 26% rate discount for those sawmill customers with self-generation capabilities, where sawmill operations were seen as particularly vulnerable to bypass opportunities and where the rates still would provide a positive contribution to fixed costs and would benefit ratepayers overall by helping the cooperative to retain load.

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#### 1. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Sawmill facilities having self-generation capabilities — Particular vulnerability to bypass opportunities — Means of prevention of bypass — Discounted rates for qualifying minimum loads — Continued

contribution to cost as a factor affecting approval — Electric cooperative. p. 450.

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APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On February 8, 1995 the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a Sawmill Generation Deferral Service Rate SGDS along with testimony and supporting exhibits of William Bayard. Rate SGDS would provide a discounted demand charge and energy charge for sawmills within NHEC's territory, subject to certain conditions.

The Commission, on March 13, 1995 approved Rate SGDS on an interim basis for a period of one year, in order to give the Commission a full opportunity to review the filing. *See* Order No. 21,570.

Public Service Company of New Hampshire (PSNH) requested and was granted full intervention. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor. *See* Order No. 21,615 (April 17, 1995).

On May 8, 1995 OCA filed direct testimony of Kenneth E. Traum. Neither PSNH nor Staff pre-filed testimony but participated in discovery and technical sessions with the parties. The Commission heard evidence on the filing June 1, 1995.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. NHEC

William Bayard for NHEC testified that sawmills are particularly vulnerable to self-generation and that extra measures are necessary to keep them on NHEC's system. Rate SGDS would provide a \$3.50 per kW discount on the demand charge and a 1.4 cent per kWh discount on the energy charge for an overall discount of about 26% from standard rates. NHEC believes this rate will keep its sawmill customers from going to self-generation while still ensuring contribution to NHEC's fixed costs. NHEC will receive from PSNH a credit of \$6.50 per kW of demand for the sawmill load. The discounted rate is greater than NHEC's marginal cost to serve those customers and would provide approximately \$100,000 contribution to NHEC's fixed costs per year.

NHEC estimates that sawmills at risk of

**Page 449**

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self-generation contribute approximately \$567,000 per year in revenues. With the discount,

NHEC expects to retain over \$500,000 per year in sawmill load revenue.

To be eligible, a sawmill must demonstrate that its primary or secondary Standard Industrial Classification or SIC code is 242 and that self generation is a viable and economic alternative, having a simple payback of no more than five years. A sawmill taking under Rate SGDS must commit to five years of service.

Though Rate SGDS is a retail rate under the jurisdiction of this Commission, its development involves modification of NHEC's wholesale arrangement with PSNH, the Amended Partial Requirements Agreement (APRA) and thus requires approval from the Federal Energy Regulatory Commission (FERC). FERC approved the filing on October 18, 1994, subject to approval by this Commission.

#### B. *PSNH*

Stephen P. Hall of PSNH urged support of Rate SGDS in order to maintain the sawmills as customers of NHEC and thereby maintain them as users of PSNH's power pursuant to APRA. Mr. Hall testified that PSNH was willing to agree to less revenue from sawmill customers in order to maintain them on the system, which enures to the benefit of PSNH's ratepayers and shareholders alike.

#### C. *OCA*

Kenneth E. Traum of the OCA proposed a lesser discount to the sawmills, believing that 26% was greater than necessary to keep the sawmills on NHEC's system. OCA suggested that a discount of approximately half the amount proposed would be appropriate but stated it had not conducted an analysis of sawmill customers to reach this conclusion. OCA contended, however, that a shorter payback period would result in tighter eligibility requirements and lessen the chance of free riders.

OCA also sought commitment from PSNH and NHEC that it would not seek recovery of any discount revenues from residential ratepayers, a commitment neither utility was willing to provide.

#### D. *Staff*

Staff neither supported nor opposed Rate SGDS. In questioning of witnesses, Staff noted that the service, though discounted, would cover its marginal cost to serve and that PSNH and, to a far lesser extent NHEC, stood to gain from keeping the sawmills on NHEC's system.

### III. COMMISSION ANALYSIS

[1] Having reviewed the testimony, we are persuaded that Rate SGDS is just and reasonable and in the public interest. We will, therefore, approve it. We agree that sawmills are unusually vulnerable to self-generation and that if steps are not taken to keep them as customers, many of them are likely to leave the system. We approved a similar discounted rate for sawmills in PSNH's territory in Docket DR 93-083, Order No. 20,945 (August 25, 1993).

Because of the wholesale relationship between NHEC and PSNH, Rate SGDS will result in lower wholesale charges to NHEC. Because Rate SGDS does not drop below the marginal cost to serve these customers and keeps them on NHEC's system contributing to NHEC's fixed costs, it benefits NHEC's member/ratepayers. Rate SGDS will also result in less revenue to PSNH. But



Rate SGDS works to the benefit of PSNH's ratepayers and shareholders as well, in that by reducing the rate to sawmills, NHEC is more likely to retain those customers who under the APRA take electricity from PSNH. PSNH's ratepayers and shareholders, therefore, will obtain the benefit of the reduced revenue rather than suffer the harm of losing all or a significant portion of the revenue generated by existing sawmill customers.

We find the sawmill discounted rate to be a responsible step taken by NHEC to retain these vulnerable customers. The rates to be charged to NHEC's customers are just and reasonable and serve the public interest in that they make it more likely to keep the sawmill customers on NHEC's (and ultimately PSNH's) system. The loss of sawmills as customers would have a negative effect on all other NHEC (and PSNH)

Page 450

customers in that the fixed costs now borne by all of the customers including the sawmills, could only be recovered from the remaining customers.

To accomplish the discount for the sawmills, NHEC and PSNH have amended the APRA to a credit from PSNH to NHEC, which NHEC passes on in the form of lower retail rates to its sawmill customers. This modification to the provisions of the APRA has already been approved at FERC, on the condition that this Commission also approve the change. Our approval of Rate SGDS should satisfy the final component of the FERC proceeding regarding change to the wholesale agreement between PSNH and NHEC.

We find OCA's proposal for a lesser discount to be based more on speculation than on reliable data. We will reject, therefore, OCA's proposal for a lesser discount and approve Rate SGDS as filed. We also will not require a commitment from NHEC or PSNH that they will never seek to pass on to residential ratepayers the "lost" revenue due to the discount. We will address that issue in the event either NHEC or PSNH seeks a rate increase which attempts to recover sawmill discounted revenues.

Based upon the foregoing, it is hereby

ORDERED, that Sawmill Generation Deferral Service Rate SGDS is just and reasonable and is APPROVED.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

#### 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. [N.H.] Re New Hampshire Electric Co-op., Inc, DR 95-031, Order No. 21,570, 80 NH PUC 138, Mar. 13, 1995. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-031, Order No. 21,615, 80 NH PUC 205, Apr. 17, 1995.

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NH.PUC\*07/11/95\*[81009]\*80 NH PUC 451\*Consumers New Hampshire Water Company



[Go to End of 81009]

80 NH PUC 451

**Re Consumers New Hampshire Water Company**

DF 95-187

Order No. 21,734

New Hampshire Public Utilities Commission

July 11, 1995

PETITION by water utility for authority to raise the limit on the proportion of short-term debt it can carry, from \$3.1 million (10% of net assets) to \$4 million (12.7% of assets); granted.

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1. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Short-term notes — Limit on debt as percentage of net assets — Raising of limit — Factors — Pending rate case — Expected infusion of equity — Water utility. p. 451.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Consumers New Hampshire Water Company (Consumers), is requesting authorization to increase its short term debt limitation from the currently approved level of \$3,100,000 to \$4,000,000. This would increase Consumers' short term debt limitation from 10% to 12.7% of net assets. The Petitioner states that Consumers will reach its short term debt limitation upon borrowing money to pay the first half property taxes for 1995. Consumers states further that it will exceed the limit in December 1995 when the second half property taxes are paid. The Petitioner avers that a number of events, including a current rate case, DR 95-124, and an equity infusion that should occur between now and January 1997, will allow Consumers to reduce the short term

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borrowing to a level below the limit of 10%.

Based upon the foregoing, it is hereby

ORDERED, that Consumers is granted authorization to increase its short term debt limitation from its current level of \$3,100,000 to \$4,000,000.

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

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NH.PUC\*07/11/95\*[81010]\*80 NH PUC 452\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81010]

80 NH PUC 452

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-167

Order No. 21,738

New Hampshire Public Utilities Commission

July 11, 1995

ORDER authorizing an interexchange telephone carrier to restructure rates for its "EasyReach" service to match those for "500 Personal Number" service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "EasyReach" service — Rate changes — Mirroring of rates for "500 Personal Number" service — Access codes as differentiating the services — Interexchange carrier. p. 452.

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BY THE COMMISSION:

**ORDER**

[1] On June 9, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T) requesting authority to restructure its AT&T EasyReach Service, for effect July 10, 1995.

AT&T indicated that the purpose of the proposed restructure was to make EasyReach have the same capabilities and pricing structure as AT&T 500 Personal Number Service. The principal difference between the two services is the method of access, *i.e.* EasyReach calls are made by dialing 1-700 and AT&T 500 calls are made by dialing 1-500.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its AT&T EasyReach Service tariff.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

*Table of Contents*  
1st Revised Page 14

*Section 12*  
1st Revised Pages 2-8  
Original Pages 9-15;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

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NH.PUC\*07/11/95\*[81011]\*80 NH PUC 453\*LDDS Communications, Inc.

[Go to End of 81011]

80 NH PUC 453

**Re LDDS Communications, Inc.**

DR 95-170  
Order No. 21,739

New Hampshire Public Utilities Commission

July 11, 1995

ORDER approving an interexchange telephone carrier's plan to clarify its "EasyAnswer Association" service tariffs, having a revenue-neutral effect.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "EasyAnswer Association" service — Clarification of applicable tariffs — Rate-neutral changes — Interexchange carrier. p. 453.

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BY THE COMMISSION:

**ORDER**

[1] On June 12, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc. (LDDS) requesting authority to revise its EasyAnswer Association tariff, for effect July 11, 1995.

The proposed revisions are administrative. LDDS has clarified the rate section of the

EasyAnswer Association tariff. LDDS indicated that the filing will not increase any rate or charge, cause the withdrawal of service, or conflict with other schedules or rules.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect July 11, 1995:

- 2nd Revised Page 1
- 1st Revised Page 1.1
- 1st Revised Page 1.2
- 1st Revised Page 98
- Original Page 98.1;

and it is

FURTHER ORDERED, that LDDS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

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NH.PUC\*07/11/95\*[81012]\*80 NH PUC 453\*MCI Telecommunications Corporation

[Go to End of 81012]

80 NH PUC 453

**Re MCI Telecommunications Corporation**

DR 95-174

Order No. 21,740

New Hampshire Public Utilities Commission

July 11, 1995

ORDER authorizing an interexchange telephone carrier to reduce minimum monthly usage levels associated with its "Execunet" and "Friends and Family" calling plans and to implement a surcharge applicable to off-campus calls made under the college-aimed "MCI Masters" plan.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "Execunet" and "Friends and

Family" calling plans — Reductions in

**Page** 453

minimum monthly usage levels — Interexchange telephone carrier. p. 454.

2. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special "MCI Masters" 800 calling plan for college subscribers — Assessment of surcharge for off-campus calls — Interexchange telephone carrier. p. 454.

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BY THE COMMISSION:

ORDER

[1, 2] On June 13, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to 1) reduce the total monthly usage spending levels associated with Execunet and Friends & Family; 2) make textual changes to the PrePaid Card tariff; and 3) add an Access surcharge and Directory Assistance to the MCI Masters tariff. The MCI Masters tariff is used in campus situations.

The proposed reduction in total monthly usage spending levels associated with the discounts in Execunet and Friends & Family reduces the mid and highest tier usage requirements by 50 cents.

Proposed textual changes in the MCI PrePaid (debit card) tariff address refunds for inactivated prepaid cards.

An access surcharge of 40 cents per call is being proposed for MCI Masters off campus calls placed through an MCI 800 number. In addition, Directory Assistance is being added to the MCI Masters tariff.

We find the proposed changes in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

38th Revised Page 1  
 20th Revised Page 2  
 19th Revised Page 3  
 25th Revised Page 3.1  
 4th Revised Page 25.3  
 3rd Revised Page 59.8  
 1st Revised Page 59.10;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

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NH.PUC\*07/11/95\*[81013]\*80 NH PUC 454\*American Telecommunications Enterprises, Inc.

[Go to End of 81013]

80 NH PUC 454

**Re American Telecommunications Enterprises, Inc.**

DE 94-277

Order No. 21,741

New Hampshire Public Utilities Commission

July 11, 1995

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

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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

**Page 454**

services. p. 455.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 455.

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BY THE COMMISSION:

ORDER

[1, 2] On November 23, 1994, American Telecommunications Enterprises, Inc. (ATE), a Florida 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.

ATE 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 ATE 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. ATE 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, ATE shall notify the Commission of the change.
5. ATE 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. ATE shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. ATE 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. ATE 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. ATE 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. ATE shall compensate the appropriate Local Exchange Company for all originating and terminating access used by ATE pursuant to NET Tariff N.H.P.U.C. 79, 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 ATE

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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 ATE to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that ATE shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 25, 1995, and an affidavit proving publication shall be filed with the Commission on or before August 7, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. ATE 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 ATE shall file a compliance tariff with the Commission on or before July 25, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective August 10, 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 eleventh day of July, 1995.

Notice of Conditional Approval of  
AMERICAN TELECOMMUNICATIONS ENTERPRISES, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On November 23, 1994, American Telecommunications Enterprises, Inc. (ATE), a Florida corporation, filed with the New Hampshire Public Utilities Commission

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(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. 21,741, issued in Docket No. DE 94-277, the Commission granted ATE conditional approval to operate as of August 10, 1995, subject to the right of the public and interested parties to comment on ATE 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 ATE's petition to do business in the State should submit written comments no later than August 7, 1995, 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\*07/11/95\*[81014]\*80 NH PUC 457\*Corporate Telemanagement Group of New Hampshire, Inc.

[Go to End of 81014]

80 NH PUC 457

**Re Corporate Telemanagement Group of New Hampshire, Inc.**

DR 95-175

Order No. 21,742

New Hampshire Public Utilities Commission

July 11, 1995

ORDER authorizing an interexchange telephone carrier to introduce new "gold" and "silver" calling card services, which provide term and/or volume discounts. The carrier also may offer a "CTG+4" service package for outbound toll, inbound 800, and credit card calling, under which a customer can select multiple personal identification numbers.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card services — "Gold" and "silver" term and/or volume discounts — Special "CTG+4" package for toll, 800, and credit card calling — Availability of multiple personal identification numbers — Interexchange telephone carrier. p. 457.

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BY THE COMMISSION:

ORDER

[1] On June 14, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Corporate Telemanagement Group of New Hampshire, Inc. (CTG) requesting authority to introduce Promise Gold Card, Promise 800 Travel-The Silver Card, and CTG + 4 Package and reduce rates for CTG Promise Package Dial 1 Access and 800 Business Line Termination.

Promise Gold Card and Promise 800 Travel-The Silver Card, are calling card services with term or volume discount options.

CTG + 4 Package is a discount package for outbound toll, inbound 800 and credit card calls.

The 800 service included in the package is unique in that a customer can have multiple pin numbers; when the pin number is dialed after the 800 number, the call rings through to the number associated with the pin.

We find the proposed changes in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission

**Page 457**

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will authorize the introduction of Promise Gold Card, Promise 800 Travel-The Silver Card, and CTG + 4 Package, and reduce rates for CTG Promise Package Dial 1 Access and 800 Business Line Termination.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of CTG's tariff, NHPUC No. 1 are approved for effect July 13, 1995:

10th Revised Page 1  
6th Revised Page 4  
5th Revised Page 36  
2nd Revised Page 39  
1st Revised Page 45  
Original Page 46;

and it is

FURTHER ORDERED, that CTG file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of July, 1995.

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NH.PUC\*07/13/95\*[81015]\*80 NH PUC 458\*Conquest Operator Services, Corporation

[Go to End of 81015]

80 NH PUC 458

**Re Conquest Operator Services, Corporation**

DE 95-116  
Order No. 21,743

New Hampshire Public Utilities Commission

July 13, 1995

ORDER granting an interexchange telephone carrier interim authority to offer intrastate

long-distance services.

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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 services. p. 458.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 458.

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BY THE COMMISSION:

ORDER

[1, 2] On April 28, 1995, Conquest Operator Services, Corp. (Conquest), 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.

Conquest 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 Conquest 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:

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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. Conquest 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, Conquest shall notify the Commission of the change.

5. Conquest 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. Conquest shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. Conquest 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. Conquest 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. Conquest 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. Conquest shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Conquest pursuant to NET Tariff N.H.P.U.C. 79, 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 Conquest 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;

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(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 Conquest to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Conquest shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than July 24, 1995, and an affidavit proving publication shall be filed with the Commission on or before August 11, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Conquest 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 Conquest shall file a compliance tariff with the Commission on or before July 27, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective August 14, 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 thirteenth day of July, 1995.

Notice of Conditional Approval of  
CONQUEST OPERATOR SERVICES, CORP.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On April 28, 1995, Conquest Operator Services, Corp. (Conquest), 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. 21,743, issued in Docket No. DE 95-116, the Commission granted Conquest conditional approval to operate as of August 14, 1995, subject to the right of the public and interested parties to comment on Conquest 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 Conquest's petition to do business in the State should submit written comments no later than August 11, 1995, 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\*07/14/95\*[81016]\*80 NH PUC 461\*UNITIL Service Corporation

[Go to End of 81016]

80 NH PUC 461

### **Re UNITIL Service Corporation**

Additional applicants: Concord Electric Company; Exeter and Hampton Electric Company

DR 95-176  
Order No. 21,744

New Hampshire Public Utilities Commission

July 14, 1995

ORDER suspending an electric utility's proposed introduction of "energy bank" service for new or expanding industrial customers with incremental loads of 200 kilowatts or greater. Commission finds that the filing warrants close examination vis-a-vis economic development criteria, given its concerns with proposed requirements on customer eligibility, contributions in aid of construction, and minimum service terms.

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## 1. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Special "energy bank" service proposal — Suspension — To allow for adequate investigatory period. p. 461.

## 2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — Proposal for special "energy bank" service for industrial and large power customers — Factors requiring suspension — Troublesome customer eligibility and service term provisions — Economic development criteria — Electric utility. p. 461.

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BY THE COMMISSION:

## ORDER

[1, 2] On June 15, 1995, UNITIL Service Corporation (UNITIL) filed with the New Hampshire Public Utilities Commission (Commission) on behalf of Concord Electric Company (CECo) and Exeter & Hampton Electric Company (E&H) (collectively, the Companies) proposed rate schedules for its Energy Bank Service offering, effective July 15, 1995. On June 29, 1995 the Public Utility Policy Institute (PUPI) filed a Petition for Intervention.

The proposed rates will be available to new and expanding industrial customers with incremental electrical loads of at least 200 Kw. Such customers must warrant that they will build any new facility to appropriate, cost-effective energy efficiency standards and agree that they will not be eligible to participate in the Companies' Demand-Side Management programs. Under the proposal, customers would enter into contracts for an initial term of at least three, but not more than five, years. UNITIL also requests approval of the Companies' purchases of power under the Power Sales Agreement which must be filed with and approved by the Federal Energy Regulatory Commission.

UNITIL avers that the Energy Bank rates are priced competitively with the national average rates for industrial customers and will encourage customers to locate or expand their operations in the Companies' service territories.

The Commission is required by 1995 N.H. Laws, Chapter 272 to establish by November 16, 1995, procedures for the review and approval of generally available rate schedules for electric service that foster economic development. The rates established by such tariffs must take into consideration eligibility criteria, the effect on the utility's fixed and variable costs, the amount of new demand and energy involved, the effect on employment within the state, material adverse competitive impact on existing in-state firms, end-user participation in conservation programs, and other economic development enhancement programs established by the State.

The Commission finds that the Legislature intended the Commission to adopt its procedures prior to approving economic development

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tariffs filed by utilities, and believes that those procedures should set forth substantive



guidelines consistent with the statute as well as administrative filing requirements. Therefore, the Commission intends, within 30 days, to issue a preliminary order establishing such procedures with a request for comments. The Commission will review the filed comments, issue a final order adopting its procedures, and then consider the individual filings in light of those procedures. Should UNITIL wish to provide an economic development incentive to customers prior to the completion of this process, it is not precluded from filing a special contract pursuant to RSA 378:18.

Meanwhile, we note that the filing, *inter alia*, raises issues concerning eligibility, the three year minimum term of the contract, requirements for customer contributions in aid of construction, and end-user participation in conservation programs. These issues and others will be fully explored once the Commission's substantive procedures are in place.

Based upon the foregoing, it is hereby

ORDERED, that CECo tariff NHPUC No. 12-Electricity Pages 26 A and B and Pages 40-A to 40-D, and E&H tariff No. 17-Electricity Pages 26 A and B and Pages 40-A to 40-D are hereby suspended; and it is

FURTHER ORDERED, UNITIL notify all persons of the opening of this docket by publishing an attested copy of this Order no later than July 24, 1995, in a newspaper of general circulation in that portion of the state in which it conducts operations, publication to be documented by affidavit filed with the Commission on or before July 31, 1995; 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 UNITIL and the Office of the Consumer Advocate on or before August 11, 1995, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02(a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before August 17, 1995; and it is

FURTHER ORDERED, that PUPI's Petition for Intervention is granted.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1995.

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NH.PUC\*07/14/95\*[81017]\*80 NH PUC 462\*Public Service Company of New Hampshire

[Go to End of 81017]

80 NH PUC 462

**Re Public Service Company of New Hampshire**

DR 95-180  
Order No. 21,745

## New Hampshire Public Utilities Commission

July 14, 1995

ORDER suspending an electric utility's proposal for new economic development rates and business retention rates for large manufacturing customers.

The economic development rate would be available to new or expanding industrial customers with loads greater than 200 kilowatts (Kw). A discount of 10% to 30% would apply for the period 1995 to 1998, but would drop to 5% to 10% by 2002.

The business retention rate would be available to existing industrial customers who otherwise might relocate their facilities to outside the state. Such customers must employ at least 25 people, with priority given to customers with loads of 400 Kw or greater and with electric costs representing 4% or more of total production expenses. A discount to the demand charge of 50% to 100% would apply from 1995 to 1998, but would drop to 10% to 25% by 2002.

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## 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic

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development rate proposals — Business retention rate proposals — Targeting of large industrial customers having new or expanded load — Gradually decreasing discounts — Suspension of proposed rates — Denial of interim or temporary rate authority — To allow for adequate investigatory period — Electric utility. p. 464.

## 2. RATES, § 345

[N.H.] Electric rate design — Industrial customers — Special economic development and business retention rate proposals — Special discounts for new or expanded load — Customer eligibility — Suspension — To allow for adequate investigatory period. p. 464.

## 3. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate options — To allow for adequate investigatory period — Proposal for special economic development and business retention rates for industrial customers — Electric utility. p. 464.

## 4. RATES, § 636

[N.H.] Interim or temporary rates — Denial of such authority — During suspension period — Pending outcome of related generic proceeding — To allow for adequate investigatory period — Special economic development and business retention rate proposals — Electric utility. p. 464.

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BY THE COMMISSION:

## ORDER

On June 26, 1995, Public Service Company of New Hampshire (PSNH or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of its Economic Development Energy Service Rate ED (Rate ED) and Business Retention Service Rate BR (Rate BR), supporting testimony, and a Petition for Temporary Rates. The Rates are effective July 26, 1995 through December 31, 2002. On June 30, 1995, the Public Utility Policy Institute (PUPI) filed a Petition for Intervention.

Rate ED would provide reduced prices to manufacturing customers locating or expanding in PSNH's service territory. The minimum amount of new or expanded load must be greater than either 200 kilowatts (kW) or ten percent of the customer's existing kW demand requirements. The discount, to be negotiated with the Company, is a range of 10 to 30% for the years 1995-1998, falling to 5 to 10% by 2002. The customer must certify to PSNH that it would not locate or expand in its service territory absent the rate and sign a service agreement under which it agrees to purchase all of its electricity requirements from the Company for the term of the agreement. The customer must also agree to participate in any conservation and load management programs offered by PSNH for which it is eligible.

Rate BR would provide reduced prices to existing manufacturing customers who would otherwise relocate or cease all or a part of their operations in New Hampshire. It is available to customers served under PSNH's Primary General Service Rate GV or Large General Service Rate LG who employ at least 25 people, with priority given to customers whose loads are 400 Kw or larger and whose cost of electricity is 4% or more of the customer's total production cost. The discount, to be negotiated with the Company and applied to the customers demand charges, is a range of 50 to 100% for the years 1995-1998, falling to 10 to 25% by 2002. The customer must demonstrate that it is pursuing all other appropriate forms of assistance, that it has no direct competitors located in PSNH's service territory who are served exclusively under a standard rate and that it is participating in applicable conservation and load management programs offered by PSNH. Customers must agree to purchase all of its electricity requirements from PSNH for the term of the service agreement and continue to take service from PSNH through December 31, 2002.

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PSNH requests that if the Commission suspends the proposed rates, it approve them as temporary rates for the duration of any Commission rate investigation.

The Commission is required by 1995 N.H. Laws, Chapter 272 to establish by November 16, 1995, procedures for the review and approval of generally available rate schedules for electric service that foster economic development and retain existing load within the state. The rates established by such tariffs must take into consideration eligibility criteria, the effect on the utility's fixed and variable costs, the amount of new demand and energy involved, the effect on employment within the state, material adverse competitive impact on existing in-state firms, end-user participation in conservation programs, and other economic development enhancement programs established by the State.

**[1-4]** The Commission finds that the Legislature intended the Commission to adopt its

procedures prior to approving economic development and load retention tariffs filed by utilities, and believes that those procedures should set forth substantive guidelines consistent with the statute as well as administrative filing requirements. Therefore, the Commission intends, within 30 days, to issue a preliminary order establishing such procedures with a request for comments. The Commission will review the filed comments, issue a final order adopting its procedures, and then consider the individual filings in light of those procedures. Given this expeditious schedule, we find it impractical and potentially counter-productive to approve Rate ED and Rate BR as temporary rates. Should PSNH wish to provide economic development or business retention incentives to customers prior to the completion of this process, it is not precluded from filing special contracts pursuant to RSA 378:18.

Meanwhile, we note that the filing, *inter alia*, raises issues concerning customer eligibility and the level of PSNH's discretion in determining such eligibility, the flexibility of the discounts and need for negotiations between PSNH and its customers, and the requirement to take service until December 31, 2002. These issues and others will be fully explored once the Commission's substantive procedures are in place.

Based upon the foregoing, it is hereby

ORDERED, that PSNH tariff NHPUC No. 36-Electricity Original Pages 73 through 78 (Rate ED) and Original Pages 79 through 83 (Rate BR) are hereby suspended; and it is

FURTHER ORDERED, that PSNH's Petition for Temporary Rates is denied; and it is

FURTHER ORDERED, PSNH notify all persons of the opening of this docket by publishing an attested copy of this Order no later than July 24, 1995, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before July 31, 1995; 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 PSNH and the Office of the Consumer Advocate on or before August 11, 1995, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02 (a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before August 17, 1995; and it is

FURTHER ORDERED, that PUPI's Petition for Intervention is granted.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1995.

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NH.PUC\*07/17/95\*[81018]\*80 NH PUC 465\*Consumers New Hampshire Water Company

[Go to End of 81018]

## Re Consumers New Hampshire Water Company

DR 95-124  
Order No. 21,746

New Hampshire Public Utilities Commission

July 17, 1995

ORDER suspending and scheduling prehearing conferences relative to a water utility's petition for a 23.1% rate increase.

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### 1. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate increase — To allow for adequate investigatory period — Necessity of prehearing conferences — Water utility. p. 465.

### 2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Inclusive of second step increase — Necessity of suspension — To allow for adequate investigatory period — Issues to be addressed — Construction work in progress — Negative salvage values. p. 465.

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BY THE COMMISSION:

### ORDER

On June 20, 1995, Consumers New Hampshire Water Company, Inc. (Consumers) filed with the New Hampshire Utilities Commission (Commission) proposed rate schedules and supporting documentation which, if approved, would increase revenues by \$1,205,783 or 23.1% on an annual basis, effective July 20, 1995. It also proposed a second step increase to reflect changes in rate base, expenses and capital structure which would amount to an additional revenue increase of \$348,803 or 5.39% over rates in the main filing. Consumers is not seeking temporary rates; however, it intends to place the 23.1% rate increase into effect under bond on January 20, 1996 should the case not be resolved by that date.

The increase in revenue is proposed to be allocated to Consumers' metered customers by increasing its GMS-A rate, applicable to Avery, Green Hills, Hardwood, Harvest Village, Hudson, Maple Hills, Oakwood, Pine Haven, R & B, and SpringWood Hills, by 34%. The GMS-L rate (Litchfield) would also be increased by 34%.

The proposed increase to the GMS-B rate applicable to Atkinson, Beacon Hill, Beaver Hollow, Brook Park, Cohas Landing, East Derry/Farmstead, Gage Hill, Goldenbrook, Liberty Tree, Londonderry, Nesenkeag, Rolling Hills, Sawmill, Scobie Pond, Smythe Woods, Souhegan Woods, South Road, Stonegate, W & E, and Williamsburg would be 18.5%.

No increase is being sought to private and public fire protection charges.

[1, 2] The filing raises, *inter alia*, the following issues: the depreciation study, including the

use of negative salvage values, simulated plant records and reduced depreciation lives; plant additions and construction work in progress; proforma adjustments; the cost of service study and rate design; capital structure; and rate case expenses, all of which require a thorough investigation prior to rendering a decision thereon.

Based on the foregoing, it is hereby

ORDERED, that Consumers' proposed revisions to its tariff NHPUC No. 9 - Water, First Revised Pages 3, 4 and 42; Supplement No. 1, superseding first revised page 43; First Revised Pages 44-49, 51, 53, 54, 56, 58, 60, and 62-66 are hereby suspended; and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.05, and First Technical Session be held before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire on August 4, 1995, at 10:00 a.m.; and it is

FURTHER ORDERED, that each party

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provide a preliminary summary of its position with regard to the Petition at the Prehearing Conference; and it is

FURTHER ORDERED, that the Commission will be conducting informational public hearings in a number of municipalities served by Consumers as a result of requests filed by Town and State officials. The following hearing dates have been established by the Commission to be held at 7:00 p.m., respectively:

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

Litchfield	October 25, 1995
Griffin Memorial School Gym	
Windham	October 26, 1995
Center School Auditorium	
Raymond	November 6, 1995
High School Cafeteria	
Hudson	November 8, 1995
Memorial School Gym	

and it is

FURTHER ORDERED, that the following schedule be adopted for the remainder of the proceeding unless otherwise changed following the Prehearing Conference:

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

Written Data Responses to	
Questions Posed at the	
First Technical Session	August 15, 1995
Data Requests by Staff and	August 29, 1995
Intervenors	
Company Data Responses	September 12, 1995
Technical Session	September 15, 1995
Last Follow-up Data	
Responses	September 26, 1995
Testimony by Staff and	October 19, 1995

Intervenors	
Data Requests by the Company	October 30, 1995
Data Responses by Staff and Intervenors	November 9, 1995
Settlement Conferences	November 16 & 21, 1995
Filing of Settlement Agreement, if any	November 29, 1995
Hearings	December 5, 6 & 7, 1995;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Consumers notify all persons desiring to be heard at this hearing by publishing an attested copy of this Order of Notice no later than July 21, 1995, 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 August 4, 1995; and it is

FURTHER ORDERED, Consumers serve a summary of its proposed rate change and a copy of this Order of Notice on the Town Clerks in areas served by Consumers by first class U.S. Mail, postmarked no later than July 21, 1995; 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 Consumers and the Office of the Consumer Advocate on or before July 28, 1995, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.02(a)(2); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene file said Objection on or before August 3, 1995.

By order of the New Hampshire Public Utilities Commission this 17th day of July, 1995.

TERRY J RAKOCY PRES  
CONSUMERS NEW HAMPSHIRE  
WATER CO  
322 NASHUA RD  
LONDONDERRY NH 03053

CECIL WILLIAMS CHAIR  
LITCHFIELD BOARD OF  
SELECTMEN  
255 CHARLES BANCROFT HWY  
LITCHFIELD NH 03051-2397

HAROLD T JUDD ESQ  
RANSMEIER & SPELLMAN  
PO BOX 600  
CONCORD NH 03302-0600

CONSUMER ADVOCATE  
8 OLD SUNCOOK RD  
CONCORD NH 03301-7319

*EXCEPT FOR DISCOVERY  
FILINGS, AN ORIGINAL & 8  
COPIES TO:*

DR SARAH P VOLL  
EXEC DIRECTOR & SECRETARY  
NHPUC  
8 OLD SUNCOOK RD  
CONCORD NH 03301-7319

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NH.PUC\*07/17/95\*[81019]\*80 NH PUC 467\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81019]

80 NH PUC 467

## **Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-079  
Order No. 21,747

New Hampshire Public Utilities Commission

July 17, 1995

MOTION by local exchange telephone carrier for protective treatment of a special digital centrex service contract with the state; denied as to both customer-specific usage data cited therein and the contract itself. Commission notes that taxpayer interests require disclosure to assure the integrity of state contracting practices.

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### 1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special service contract — Mere assertion of need for confidentiality insufficient — Necessity of evidence of harm absent nondisclosure — Denial of protective treatment as to customer-specific usage data relied upon — Denial as to actual contract itself — Telephone carrier and state government — Taxpayer interests as a factor — Preservation of integrity and open contracting practices. p. 467.

### 2. SERVICE, § 152

[N.H.] Contracts — Special service arrangements — Between telephone carrier and state government — Disclosure versus protective treatment — Taxpayer interests as a factor — Necessity of disclosure. p. 467.



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BY THE COMMISSION:

ORDER

On March 23, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract, pursuant to RSA 378:18, for the provision of digital centrex services to the State of New Hampshire. The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure.

In its motion, NYNEX states that the contract and supporting documents should be afforded protective treatment, pursuant to RSA 91-A, in that they contain customer specific, competitively sensitive data which fall within the scope of the exceptions to disclosure contained within RSA 91-A:5,IV.

The Commission Staff did not object to the motion. The Office of Consumer Advocate takes no position.

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. We agree that certain customer specific information contained within the special contract and supporting information appears to fall within the exceptions to public disclosure in RSA 91-A:5,IV.

**[1, 2]** As we noted in Order No. 21,698 (June 20, 1995), NYNEX must file more than mere conclusions that public disclosure of the materials would harm the company, pursuant to

**Page 467**

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our newly adopted rule, N.H. Admin. Rules, Puc 204 (hereinafter Puc 204). Because this filing was made prior to the issuance of that order, however, we will address this request for protective treatment rather than rejecting the filing as inadequate. Any such requests made after June 30, 1995, however, shall be required to meet completely the standards of Puc 204.08, including Puc 204.08(b)(3) and (4) which require facts describing the benefits of non-disclosure to the petitioner, including evidence of harm that would result from disclosure. As we stated in Order No. 21,698, "rote statement of a need for confidentiality or allegation of harm will not suffice."

Our analysis of the filing submitted in this docket follows that contained in our recent order in DR 95-069, Order No. 21,731 dated July 10, 1995, pages 26 and 27, regarding DR 93-054 in which NYNEX sought confidentiality of a centrex contract between NYNEX and the State of New Hampshire. Although the question of whether the contract in DR 93-054 should be confidential was moot because the contract had already been released to the public, we applied the balancing test for confidentiality and found that the benefits of disclosure would outweigh the benefits of non-disclosure. The interest of taxpayers in how the state's revenues are spent outweigh the interest of the state in keeping its telephone records private. In addition, the executive branch approves state contracts in a public forum, thus removing the expectation of

privacy. We will therefore deny NYNEX's motion for confidential treatment of this filing.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Proprietary Treatment of the special contract between NYNEX and the State of New Hampshire for the provision of centrex service and all supporting documents 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 Public Utilities Commission of New Hampshire this seventeenth day of July, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-161, Order No. 21,698, 80 NH PUC 360, June 20, 1995. [N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*07/18/95\*[81020]\*80 NH PUC 468\*Hampton Water Works Company, Inc.

[Go to End of 81020]

80 NH PUC 468

### **Re Hampton Water Works Company, Inc.**

DF 94-215

Order No. 21,753

New Hampshire Public Utilities Commission

July 18, 1995

ORDER approving a water utility's proposed merger with four nonjurisdictional affiliates, Massachusetts-American Water Company, Salisbury Water Company, Connecticut-American Water Company, and New York-American Water Company. All of the utilities involved are owned by American Water Works Company, Inc. Hampton Water Works will be the surviving company and will go by the name New England-American Water Company upon completion of the merger.

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#### 1. CONSOLIDATION, MERGER, AND SALE, § 12

[N.H.] Commission jurisdiction — Mergers between jurisdictional and nonjurisdictional entities — Pre-existing corporate affiliations as a factor — Water systems. p. 473.

## 2. CONSOLIDATION, MERGER, AND SALE, § 13

[N.H.] Necessity of commission approval — Interstate mergers and transfers — Pre-

**Page** 468

existing corporate affiliations as a factor — Water systems. p. 473.

## 3. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Grounds for approval or disapproval — Overall public good — Standard test of no net harm — No compelling reasons for a merger versus no compelling objections to such. p. 473.

## 4. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval — Economy and efficiency — Improved costs of capital — Streamlining of management and operations — Merger of jurisdictional and nonjurisdictional affiliated water utilities. p. 473.

## 5. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Terms and conditions — Accounting and recordkeeping — Maintenance of separate corporate records — Special reporting and filing requirements — Merger of jurisdictional and nonjurisdictional affiliated water utilities. p. 473.

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APPEARANCES: Dom S. D'Ambruoso, Esq., of Ransmeier and Spellman for Hampton Water Works Company, Inc.; the Office of the Consumer Advocate by Thomas S. Lyle; and Robert J. Frank, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

On September 13, 1994, Hampton Water Works, Inc. (Hampton) filed a Petition for Approval of Merger with Massachusetts-American Water Company, Salisbury Water Company, Connecticut-American Water Company and New York-American Water Company with the New Hampshire Public Utilities Commission (Commission). On September 29, 1994, Hampton filed the executed Agreement and Plan of Merger and copies of the applications filed in Connecticut, Massachusetts and New York.

An Order of Notice set a prehearing conference for November 30, 1994. Hampton requested additional time to file its supporting testimony, with the consent of the Commission Staff (Staff). The request was granted on December 21, 1994. Hampton filed a second consented-to motion for an extension to file its testimony on January 11, 1995, which the Commission granted on January 13, 1995. On January 13, 17, and February 1, 1995, Hampton filed direct testimony of James Perry and Stephen Alcott.

At the February 17, 1995, prehearing conference, the parties agreed to the revised proposed procedural schedule setting the hearing for May 18, 1995. Order No. 21,552 (February 28,

1995).

Prior to the final hearing, Staff filed the direct testimony of Minot Hill, Amanda Noonan, and Jane Emerson. The Office of Consumer Advocate (OCA) filed Comments on Merging the Companies on April 28, 1995. On May 15, 1995, Hampton submitted a Joint Recommendation which was entered into by Hampton and Staff.

The duly noticed hearing was held May 18, 1995. On June 16, 1995, Staff sent a Memorandum to the Commission indicating that customer service complaints were being handled by the Port Chester, New York office rather than the Hampton office. Hampton responded on June 23, 1995 that effective June 22nd the staff at the Hampton office would provide customers with the option of assistance from the Hampton office or from the Port Chester, New York office. We deliberated this matter at our June 26, 1995 public meeting.

## II. POSITION OF THE PARTIES AND STAFF

### A. Hampton

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#### 1. The Proposed Merger

The Petitioner in this case is a New Hampshire corporation operating a duly authorized water utility serving approximately 7387 customers in Hampton, North Hampton and Rye, New Hampshire. Hampton seeks Commission approval for a proposed merger with four affiliates which are all out-of-state water utilities. Under the proposed merger, Hampton would be the surviving corporation. The proposed merging companies are as follows: Massachusetts-American Water Company, Salisbury Water Supply Company located in Connecticut, the Connecticut-American Water Company, the New York American Water Company, Inc., and Hampton (collectively, the merging companies). All of the merging companies are commonly owned by American Water Works Company, Inc. (American). American has another subsidiary, American Water Works Service Company (Service Company).

Each of the five merging companies has executed an Agreement and Plan of Merger (Merger Agreement). The Merger Agreement calls for a merger with Hampton remaining as the surviving corporation. Upon completion of the merger, Hampton would amend its corporate charter and change its name from Hampton to New England-American Water Company, Inc. (New England-American). The surviving corporation will continue to operate as a New Hampshire corporation subject to this state's laws. Hampton would then seek to qualify to do business as a foreign corporation in each of the three other affected states and conduct its utility operations under the current name of each merging company as a "d/b/a".

According to Hampton's original filing, its written and oral testimony and its commitments in the Joint Recommendation, the proposed merger will cause no adverse impact on its operations and on the ratepayers of the merging companies; on the contrary it claims that the proposed merger will result in benefits as a result of certain efficiencies which the merger would bring about. Hampton contends that "local customers and officials will continue to deal with the same personnel as currently such that, at this level, the changes should not be apparent." Testimony of James M. Perry, Exhibit 6, p. 15-16.

Mr. Perry also indicated that the local operation and management of New England-American will remain in Hampton, New Hampshire (for the Hampton and Salisbury operations), Greenwich, Connecticut (for the Connecticut-American and New York-American operations) and Hingham, Massachusetts (for the Massachusetts-American operations). Hampton proposes that post-merger New England American will continue to contract with the Service Company for technical, engineering, financial and managerial services. These services will continue to be provided at cost.

Mr. Perry would continue to serve as Vice-President of the Service Company in order to assure that the policies and Procedures of American continue to be implemented. Mr. Perry would also serve as President of New England-American.

According to Hampton, the merger is intended to streamline the management and operations of the merging companies in order to deliver more efficient and effective service to their customers. Hampton claims that the merger will produce a lower cost of capital than each of the merging companies has had in the past. This is a direct ratepayer benefit, according to Hampton. Ratepayers will also benefit, Hampton contends, as a result of the consolidation of the companies' accounting and customer service departments intended to produce a more effective workforce.

Hampton argues that the merger will have no adverse impact on the jurisdiction and authority of the regulatory bodies in each of the affected states. It indicates that separate accounting records will be maintained so that the ratemaking authority of each commission will not be diminished or impaired. In his pre-filed testimony, Mr. Perry suggested that the affected states might want to enter into an agreement to delineate the lines of their respective jurisdictions. At the final hearing, however, Hampton presented no testimony on this issue, but Hampton's counsel suggested that a "compact or memorandum of understanding" among the affected states might be useful if the merger

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were approved.

At the final hearing Mr. Perry presented the terms of a Joint Recommendation entered into by Staff and Hampton. The Joint Recommendation consists of a number of commitments which Hampton is willing to make in the event that the Commission approves the merger and it is discussed in detail below.

Hampton also presented the testimony of William D. Patterson of Smith Barney, Inc. in New York which provides financial services for utilities throughout the United States. Mr. Patterson presented testimony relative to New England-American's anticipated ability to finance on reasonable terms and the anticipated benefits of the merger as it relates to financing costs. With regard to the former, Mr. Patterson testified that if the merger were approved he believed that New England-American would be able to raise debt and equity on "reasonable" terms. *Id.* at 3. He suggested that New England-American would be able to secure an "A" credit rating for its senior debt, thereby giving it access to a broader array of investors at reasonable costs<sup>1(50)</sup>. Mr. Patterson also indicated that the merger would result in lower issuance costs and the "potential"

for lower debt interest costs. *Id.* at 5.

Mr. Perry testified that the merging companies' shareholders will bear the cost of the proposed merger. He also testified that although there may be a direct shareholder benefit to the merger he could not identify one. Transcript, p. 53. He testified that "any quantified benefit" to Hampton will be shared "appropriately and proportionately" with Hampton's customers. Transcript, p. 84. Mr. Patterson testified that he saw an indirect shareholder benefit to the proposed merger. He indicated that bondholders would perceive less risk which would translate into greater access and more favorable financing terms, which provides an indirect benefit to the shareholders. He also suggested that to the extent the merger results in a reduction of the companies' cost structure, it will provide an intangible benefit to the merged company even though those savings are passed along to ratepayers. *Id.* at 100-101.

## 2. Joint Recommendation

The Joint Recommendation is not a settlement agreement; rather, Staff and Hampton agreed that if the merger were approved, a number of terms and conditions should be attached to such approval. We will highlight the most significant aspects of the Recommendation.

Hampton agrees that any Commission order which approves the merger shall be subject to revocation or modification in the event that the approval of any other state "impairs, modifies, amends or in any way alters the conditions or qualifications upon which such Commission Order is based." Joint Recommendation, Exhibit 11, p. 6. Hampton also agrees that the merger shall not occur unless all affected states approve the same allocation formula; thus, an order approving the proposed merger may need to be amended to ensure that the formula for allocation of common expenses is uniform and fair throughout all of the affected states. *Id.*

Hampton also agrees to continue to conduct its post-merger operations in a manner which will not adversely affect the public interest. *Id.* at 7. For instance, Hampton agrees to continue its Advisory Board.

Hampton commits to prepare a separate five-year capital budget for each of the five utility operations. These capital requirements will then be aggregated and financed. New England-American will allocate the expenses of any financing in proportion to the amount of proceeds each operation receives. *Id.* at 8.

Hampton agrees to maintain an independent capital structure and an independent cost of capital for ratemaking purposes. It commits to maintain post-merger Hampton's books in strict accordance with the *Uniform System of Accounts* as required by Commission rules and to continue to report to this Commission as a separate operation. *Id.* at 8-9.

Hampton agrees to maintain a local office and sufficient staff so that customers will receive "over the counter service" and it assures that its current level of customer service will not be adversely impacted as a result of the merger. *Id.* at 9.

Hampton also commits to make a number of filings with this Commission, including (a) quarterly financial statements, (b) year-end

financial statements for the five operation, (c) annual reports of New England-American and American, (d) annual reports to other regulatory commissions detailing charges to each operation by the Service Company and any other affiliate agreements, (e) annual projected construction budgets for each operation, (f) a summary of Hampton's construction activities, (g) monthly summaries of customer complaints, and (h) detailed information of regulatory activities in other states. *Id.* at 10.

#### B. OCA

Although the OCA did not participate in the final hearing, it filed a lengthy letter expressing its position and concerns. It states that there are no compelling reasons to warrant the merger, but also that there are no "objectionable reasons" to deny it.

The OCA states that it "does not oppose or support the merger". Letter of Thomas S. Lyle dated April 28, 1995 to Dr. Sarah P. Voll, p. 2. It states that "although certain benefits may accrue to New Hampshire customers, those benefits are not commensurate with the additional risks resulting from the merger". *Id.* Those risks, according to the OCA, include the possibility that the poor performance by one of the out-of-state operations could prove to be a financial drain on the New Hampshire operation.

#### C. Staff

As indicated above, Staff submitted the pre-filed testimony of Jane A. Emerson of the Economics Department, Minot D. Hill of the Finance Department and Amanda O. Noonan of the Consumer Assistance Department. At the final hearing Staff presented the oral testimony of Ms. Noonan and Ms. Emerson.

Ms. Noonan testified that the proposed merger could have an adverse impact on Hampton's customers. Specifically, Ms. Noonan expressed concern that the reduction and relocation of Hampton's Customer Service staff could reduce the level of customer service. The customer service staff for all five operations would be centralized in Port Chester, New York, and Ms. Noonan indicated that the customer service staff will have to be familiar with the operations of five utilities operating under the rules of four different jurisdictions. She indicated that the commitments made by Hampton in the Joint Recommendation alleviate some of these concerns but that she was not fully satisfied that there will be no adverse impact on customers. Transcript, p. 106-110.

Ms. Emerson testified that she examined the proposed merger from the standpoint of its effect on the capital structure and cost of debt and equity for post-merger Hampton. She indicated that initially her concern was that it would be difficult to determine the capital structure of Hampton for ratemaking purposes if post-merger Hampton were a single entity conducting four other utility operations. Ms. Emerson testified that Hampton had satisfied that concern by agreeing to keep separate books and records, as specified in the Joint Recommendation, so that the capital structure of Hampton's operation could be separately tracked. Similarly, she indicated that her initial concerns over the cost of equity had been addressed because Hampton agreed that each state commission would set the cost of equity for the operation(s) within its own jurisdiction.

Ms. Emerson also testified that Hampton's ratepayers should be responsible only for their



share of financing costs. Again, this was addressed through assurances that only Hampton's share of any financing would be put into Hampton's capital structure. Finally, Ms. Emerson expressed a less optimistic view as to whether the merger would result in any savings to ratepayers. She indicated that it was impossible to quantify any such savings, but that it was possible that some savings would be attained. Transcript, p. 117-120.

The pre-filed testimony of Minot Hill sets forth in detail the mechanics of the proposed merger and the concerns of the Commission's Finance Department relative to record-keeping requirements. Mr. Hill's testimony related that in past multi-state mergers, smaller state divisions did not receive the same degree of managerial attention as a separate independent company. Additionally, he indicated that the process of making allocations to specific utility operations can be difficult with a multi-state entity.

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Mr. Hill recommended that the Commission impose certain reporting requirements and make clear that it has the authority to examine the books and records of any post-merger entity as well as those of any service company. Pre-filed Testimony of Minot D. Hill, Exhibit 8, p. 12-15.

In sum, Staff neither supports nor opposes the proposed merger. However, the Joint Recommendation sets forth certain requirements that Staff believes should be adopted if the Commission approves the merger request.

### III. COMMISSION ANALYSIS

[1, 2] At the outset, we address a threshold legal issue raised by Hampton's Petition and post-hearing legal memorandum. Hampton questions this Commission's jurisdiction to approve or disapprove the proposed merger because there is no statute which explicitly addresses the proposed transaction. We find that we have such jurisdiction. There are many occasions when the statutory source of this Commission's jurisdiction does not precisely define every utility activity which we are authorized, and indeed obligated, to regulate. There are certain corporate transactions which so fundamentally implicate the interests of ratepayers that our approval is necessary. It is difficult to imagine a more fundamental application of our general supervisory powers under RSA 374:3 than a proposed interstate merger such as the one before us in this case. Accordingly, we conclude that notwithstanding the fact that there is no explicit statute which states that we must approve interstate merger requests, we find that such authority is reasonably implied from RSA 374:3. Such authority is consistent with our obligation to determine whether acquisition of stock of a New Hampshire public utility by another public utility is in the public interest. *See*, RSA 374:33.

[3, 4] Initially, we offer some comments on the applicable legal standard which Hampton must meet in this case. Hampton is correct that we have adopted a "no net harm" test in prior cases involving utility acquisitions. In this case, Hampton's merger request raises certain policy concerns which were not evident in, for instance, *Re Eastern Utility Associates*, 76 NHPUC 236 (1991). In this case, Hampton will operate five different utility operations in four states as a single corporate entity. We believe that Staff has raised legitimate concerns about the continued ability of this Commission to perform its regulatory responsibilities effectively and efficiently. It is obvious that in order to meet this obligation the Commission needs to be provided with



financial books and records which reflect the costs and revenue requirements of Hampton's New Hampshire operation. Staff expressed a concern that it may become more difficult to obtain the necessary financial information despite assurances from Hampton to the contrary. Moreover, the proposed inter-state merger raises the potential for conflicting rulings among the responsible regulatory bodies. Thus, the "no net harm" test must account for these risks, even though they may not be quantifiable. Thus, the "no net harm" test becomes indistinguishable from the more generally discretionary "public good" standard such as that set forth in *Grafton*.

[5] In examining the merger proposal, our obligation is to ensure that the interests of ratepayers are balanced against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities. *See, Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539,540 (1915). After a careful review of the record, and in light of the commitments made by Hampton in its testimony and in the Joint Recommendation, we approve the merger request but under the conditions set forth below.

We are satisfied that Hampton has shown that the proposed merger will not result in harm to its customers and that the proposed transaction is in the overall public good. The Joint Recommendation sets forth certain record-keeping and additional filing requirements which, if carried out, should minimize any risk of adverse impact on the ability of this Commission to carry out its responsibilities. We adopt the Joint Recommendation in its entirety and incorporate by reference the obligations set forth therein. Post-merger Hampton shall be required to strictly comply with all Commission rules and if additional reporting or filing requirements are

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found to be necessary we will then so direct them.

As set forth in the Joint Recommendation, this order approving the proposed merger shall not be effective until and unless each of the other jurisdictions approves the merger and shall become effective only under conditions which do not modify or amend the assumptions underlying the merger as represented to us by Hampton. Likewise, we reserve the right to amend or modify this order if the approval of any other state will negatively impact Hampton's operation or its customers.

In closing, we expect that all of the commitments made by Hampton in the Joint Recommendation, the letter of June 23, 1995 and elsewhere in this proceeding will be diligently carried out on a proactive basis. Our approval of the merger proposal is premised upon a good faith assumption that Hampton will follow through on its promise to promote ratepayer savings without compromising customer service.

Based upon the foregoing, it is hereby

ORDERED, that Hampton's proposed merger request is APPROVED under the terms and conditions set forth above and in the Joint Recommendation; and it is

FURTHER ORDERED, that this Order shall not be effective until and unless every affected jurisdiction approves the proposed merger; and it is

FURTHER ORDERED, that Hampton shall keep this Commission fully informed as to the status of its request for like approvals in other jurisdictions as set forth in the Joint

Recommendation.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.

#### FOOTNOTES

<sup>1</sup>Mr. Patterson also indicated that New England-American will have the opportunity to achieve lower debt interest costs than the merging utilities through access to "Rule 144A" offerings to issue debt to institutions which invest in large public offerings. Rule 144A is a Securities and Exchange Commission (SEC) rule which allows for the resale of non-SEC registered securities to institutional buyers. This secondary market liquidity tends to make such securities more attractive to investors, thereby reducing interest costs.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-009, Order No. 21,522, 80 NH PUC 65, Feb. 7, 1995.

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NH.PUC\*07/18/95\*[81021]\*80 NH PUC 474\*Public Service Company of New Hampshire

[Go to End of 81021]

80 NH PUC 474

### **Re Public Service Company of New Hampshire**

DR 93-247

Order No. 21,754

New Hampshire Public Utilities Commission

July 18, 1995

ORDER denying rehearing of Order No. 21,660 (80 NH PUC 272, *supra*), in which the commission had accepted an electric utility's proposed tariff revisions relative to its radio-controlled load management services such that an electric thermal storage system would be eligible for service under the radio-controlled option only if such system were "dynamic" as opposed to "static" and a customer's backup source of heat was either wood- or coal-fired, and not fueled by oil, propane, or any other alternative fuel.

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#### 1. RATES, § 322

[N.H.] Electric rate design — Load factors — Space-heating customers — Radio-controlled load management service options — Eligibility criteria — Reliance only on wood- or coal-fired

backup sources of heat — "Dynamic" versus "static" electric thermal storage system — Affirmation of load controlled service parameters — Factors — Meeting of conservation objectives — Provision of savings to

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ratepayers — Success in retaining load. p. 475.

## 2. PROCEDURE, § 32

[N.H.] Rehearing — Reasons for denying — Failure of petitioner to intervene earlier — Respondent utility not subject to traditional rate-of-return/cost-of-service regulation — Contractual insulation of ratepayers from harm — As to electric utility's load controlled service option. p. 475.

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BY THE COMMISSION:

### ORDER

[1, 2] On May 22, 1995 the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,660 (Order) approving certain modifications to Public Service Company of New Hampshire's (PSNH) Load Controlled Service (LCS) rate. The modifications explicitly provided that only coal and wood stoves could be utilized as back-up sources of heat during interruptions of service to Rate LCS customers. Prior to the approval of these modifications any non-electric heat source qualified as an acceptable source of back-up heat, including heating sources operated with propane or natural gas. *See*, Order No. 21,464 (December 19, 1994).

On June 21, 1995 the Dupont Group, appearing as a limited intervenor on behalf of the Propane and Gas Association of New England (Gas Association), filed a Motion for Rehearing (Motion) of Order No. 21,660 pursuant to RSA 541:3 (Supp. 1994).

On July 5, 1995 PSNH filed an objection to the Motion solely on procedural grounds.

The issue for our consideration in the Order was whether the proposed amendments to the tariff, limiting the back-up source of heat required for eligibility for Rate LCS to coal and wood stoves, was just and reasonable. The Order found the revised terms and conditions to the tariff to be just and reasonable because it continued to meet the original objectives of the original filing: conservation and load management, load retention, and savings to space heating customers. The order went on to find that the revisions would also reduce the risk of "free riders" based on the evidence presented by PSNH. That is, while we favor customer choice, we also recognized that customers wishing to utilize oil or gas heat may do so under the customary Rate D without the need for PSNH to further discount kilowatt sales to customers whose load is not at risk.

In the Motion, the Gas Association requests an opportunity to establish that PSNH's calculations relative to free riders are faulty, and that the exclusion of gas heaters as a back-up, non-electric source of heat will likely hasten full residential conversions to alternative primary sources of heat leading to further load loss for PSNH.

We will initially address the merits of the Motion. Assuming, for the sake of argument, the

Gas Association could establish that PSNH's rate LCS modifications would result in loss of load, then it would raise a seemingly valid issue. The issue would only be valid, however, under traditional rate of return or cost of service regulation. Under traditional rate regulation, reduced electric heating loads could lead to revenue losses which in turn could lead to increases in other electric rates (all other things being equal).

PSNH, however, is not currently subject to traditional rate regulation. Its rates are governed by the Rate Agreement entered into between its parent company Northeastern Utilities and the State of New Hampshire. Under the Rate Agreement a reduction in revenues does not place the ratepayer at risk of increased rates during the Fixed Rate Period. The result of any mismanagement or miscalculations by PSNH is borne by the shareholders. Thus, we see no need to alter our decision even if the Gas Association could establish the accuracy of its assertions.

Furthermore, we agree with PSNH that the Gas Association should have intervened earlier in the proceeding and presented its position and evidence as part of the proceeding. *Appeal of Gas Service, Inc.*, 121 N.H. 797 (1981).

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Based upon the foregoing, it is hereby

ORDERED, the Motion for Rehearing of Order No. 21,660 filed by Propane and Gas Association of New England is denied.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,464, 79 NH PUC 688, Dec. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-247, Order No. 21,660, 80 NH PUC 272, May 22, 1995.

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NH.PUC\*07/18/95\*[81022]\*80 NH PUC 476\*Global Telemedia, Inc., aka Global Wats One, Inc.

[Go to End of 81022]

80 NH PUC 476

### **Re Global Telemedia, Inc., aka Global Wats One, Inc.**

DE 95-132

Order No. 21,755

New Hampshire Public Utilities Commission

July 18, 1995

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to confusion over its corporate identification as well as evidence of its financial deficiencies.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Financial liabilities — Unclear corporate identity — Interexchange telephone carrier. p. 476.

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BY THE COMMISSION:

ORDER

[1] On May 10, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Global Telemedia, Inc. (Global), a Florida corporation, 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. Global proposes to do business as a reseller of intrastate toll services.

Global TeleMedia, Inc. supplied a Form 10-QSB which had been filed with the U.S. Securities and Exchange Commission (SEC) under the name of "Global Telemedia International, Inc., f/k/a Phoenix Advanced Technology, Inc." However Exhibit 1 to the applicant's petition, a Certificate of Authority from the New Hampshire Secretary of State, indicates registration as Global Wats One, Inc. In response to Staff's data request regarding their corporate entity Global stated that they "[h]ave made application with the Secretary of State to amend the name of the corporate entity [from Global Wats One, Inc. to Global Telemedia, Inc.] and are awaiting our revised certificate."

Staff identified in data requests to Global several areas requiring resolution, including absence of evidence indicating financial competence such as Exhibit 2. Global in its reply of July 3, 1995, filed a SEC form 10-K and 10-QSB in response to Staff's request for financial statements. The Report of Independent Accountants submitted in Global's audited financial statements for both fiscal years 1994 and 1993 contain "going concern" declarations. Specifically, the Report of Kaufman Rossin & Co. dated April 12, 1994 states:

"[t]he Company's current liabilities exceed its current assets and the Company continues to incur losses from operations. Such uncertainties raise substantial doubt about the Company's ability to continue as a going concern."

Further the Report of Coopers & Lybrand, L.L.P., dated March 29, 1994 and amended March 15, 1995 states:

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"The Company has continued to have operating expenses in excess of revenues and has been named as a defendant in a lawsuit. Such subsequent uncertainties at March 15,

1995, raise substantial doubt about the Company's ability to continue as a going concern."

Staff recommends that Global's petition be denied based on the evidence that it lacks the necessary financial qualifications.

We have reviewed the record, and take particular notice of the negative Reports of the Independent Accountants. We agree with the recommendation of our Staff that the public good would not be served by approving the petition before us; it is hereby

ORDERED, that Global is denied authority to conduct business as telecommunications public utility in the State of New Hampshire, without prejudice.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.

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NH.PUC\*07/18/95\*[81023]\*80 NH PUC 477\*MFS Intelenet of New Hampshire, Inc.

[Go to End of 81023]

80 NH PUC 477

**Re MFS Intelenet of New Hampshire, Inc.**

DR 95-182  
Order No. 21,756

New Hampshire Public Utilities Commission

July 18, 1995

ORDER authorizing an interexchange telephone carrier to introduce time-differentiated rates for calling card service, with off-peak usage billed at a 10% discount.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Calling card service — Time-differentiated pricing — Discount of 10% for off-peak calls — Interexchange carrier. p. 477.

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BY THE COMMISSION:

ORDER

[1] On June 27, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc. (MFS) requesting authority to introduce peak and off peak rates for MFS Intelenet Calling Card Service and make various administrative changes to its tariff for effect July 27, 1995.

The proposed peak period is 8:00 a.m to 5:00 p.m. Monday through Friday and all other time is proposed to be off-peak. The peak rate is the existing rate of 26 cents per month. The rate for off-peak calling is a 10 percent discount from the peak rate.

The administrative changes renumber part of the tariff and make it easier to read. No terms or conditions have been changed.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect July 27, 1995, as filed:

- 3rd Revised Page 1
- 1st Revised Page 22
- 1st Revised Page 24
- 3rd Revised Page 25
- 2nd Revised Page 25.1
- 2nd Revised Page 25.2
- Original Page 25.3
- Original Page 25.4
- 3rd Revised Page 28
- 2nd Revised Page 28.1;

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and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.

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NH.PUC\*07/18/95\*[81024]\*80 NH PUC 478\*One Call Communications, Inc., dba OPTICOM

[Go to End of 81024]

80 NH PUC 478

**Re One Call Communications, Inc., dba OPTICOM**

DR 95-178  
Order No. 21,757

New Hampshire Public Utilities Commission

July 18, 1995

ORDER approving an interexchange telephone carrier's clarification that directory assistance service cannot be accessed by way of person-to-person or collect calls.

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1. RATES, § 589

[N.H.] Telephone rate design — Toll service — Person-to-person and collect calls — Ineligibility for directory assistance service — Interexchange carrier. p. 478.

2. SERVICE, § 449

[N.H.] Telephone — Information and special service — Directory assistance — No access via person-to-person or collect calls — Interexchange telephone carrier. p. 478.

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BY THE COMMISSION:

ORDER

[1, 2] On June 23, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from One Call Communications, Inc., d/b/a Opticom (Opticom) requesting authority to clarify that its directory assistance tariff prohibits person-to-person and/or collect calls to directory assistance, for effect June 21, 1995.

We find the proposed clarification to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Opticom to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's tariff, NHPUC No. 1 are approved for effect as filed:

5th Revised Page 2  
4th Revised Page 2.2  
2nd Revised Page 61;

and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.



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NH.PUC\*07/18/95\*[81025]\*80 NH PUC 479\*Frontier Corporation fka Rochester Telephone Corporation

[Go to End of 81025]

80 NH PUC 479

**Re Frontier Corporation fka Rochester Telephone Corporation**

Additional applicant: Allnet Communication Services, Inc.

DE 95-138

Order No. 21,758

New Hampshire Public Utilities Commission

July 18, 1995

ORDER authorizing a large telecommunications parent company, Frontier Corporation, to acquire control of ALC Communications, and in turn, that carrier's subsidiary, Allnet Communication Services, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval — Expectations of economic and marketing efficiencies — Technical and financial qualifications of purchasing utility — Retention of existing rate structures — Compliance with standard of no net harm — Telecommunications carriers. p. 479.

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BY THE COMMISSION:

**ORDER**

Frontier Corporation (Frontier) f/k/a Rochester Telephone Corporation, and Allnet Communication Services, Inc. (Allnet), (collectively, the Petitioner), filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a transaction whereby Frontier will acquire operating control of Allnet's parent corporation, ALC Communications (ALC), and in turn, of Allnet (Petition).

The Petitioner proposed that a newly formed subsidiary of Frontier will merge into and with ALC. ALC will be the surviving entity and ALC will become a wholly-owned subsidiary of Frontier. Petitioner requests timely approval so as to accommodate consummation of the transfer no later than August 1, 1995.

Allnet, a Michigan corporation, is a subsidiary of ALC, a Delaware corporation. Allnet was authorized by the Commission in Order No. 21,642, (May 2, 1995) in Docket No. DE 95-094. Allnet expects to rely on many of its existing management and operational staff to provide service.

Frontier, a publicly held New York corporation, is the parent company of a number of local exchange and long distance companies. In New Hampshire, Frontier has two certificated subsidiaries.

The first certificated subsidiary, Frontier Communications of New England, Inc. (formerly Long Distance North of New Hampshire, Inc. (LDN)) was authorized by Order No. 20,039 (Jan. 21, 1991) in DE 87-249. In Docket No. DE 95-004, by Order No. 21,533 (February 14, 1995) the Commission approved transfer of control of LDN to Frontier Communications of New England, Inc.

The second certificated subsidiary is Frontier Communications International, Inc. (formerly RCI Long Distance, Inc.). Frontier Communications International, Inc. was authorized by Order No. 21,445 (Nov. 30, 1994) in Docket DE 94-171. On February 14, 1995, in Order No. 21,532, through Docket DE 95-001, the Commission approved the name change of RCI Long Distance to Frontier Communications International, Inc.

Further, Frontier received authority to acquire control of West Coast Telecommunications, Inc. pursuant to Commission Order No. 21,527 (February 8, 1995) in Docket No. DE 94-287. See also Confirming Order No. 21,621, (Apr. 18, 1995).

[1] The Petitioner evidenced its technical, managerial, and financial competence in the record of the above dockets. Staff has reviewed updated financials filed with this Petition and believes the Petitioner remains financially qualified. The combined companies will have

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annual revenues exceeding \$1.5 billion. The Petitioner represents that the transfer of control will be essentially transparent to the customers, as it proposes to maintain existing tariffed rates and services currently on file with the Commission by Allnet. The Petitioner anticipates achieving economic and marketing efficiencies from the transfer.

We find that the transfer of control of Allnet's parent corporation, ALC, will result in no net harm, which is the standard by which we evaluate merger petitions. See, *Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of control may in fact produce net benefits to Frontier's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval of a transaction whereby Frontier will acquire operating control of Allnet's parent corporation, ALC Communications and, in turn, control of Allnet is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] *Re Allnet Communication Services, Inc.*, DE 95-094, Order No. 21,642, 80 NH PUC 252,

May 2, 1995. [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 Long Distance North of New Hampshire, Inc., DE 95-004, Order No. 21,533, 80 NH PUC 77, Feb. 14, 1995. [N.H.] Re RCI Long Distance, Inc., DE 94-171, Order No. 21,445, 79 NH PUC 657, Nov. 30, 1994. [N.H.] Re RCI Long Distance, Inc., DE 95-001, Order No. 21,532, 80 NH PUC 76, Feb. 14, 1995. [N.H.] Re West Coast Telecommunications, Inc., DE 94-287, Order No. 21,527, 80 NH PUC 71, Feb. 8, 1995. [N.H.] Re West Coast Telecommunications, Inc., DE 94-287, Order No. 21,621, 80 NH PUC 214, Apr. 18, 1995.

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NH.PUC\*07/19/95\*[81026]\*80 NH PUC 480\*Lower Village Hydroelectric Associates

[Go to End of 81026]

80 NH PUC 480

## **Re Lower Village Hydroelectric Associates**

DE 95-139

Order No. 21,759

New Hampshire Public Utilities Commission

July 19, 1995

ORDER establishing a procedural schedule for considering a hydro group's petition for condemnation of property belonging to APC Paper Company, Inc.

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### 1. EMINENT DOMAIN, § 9

[N.H.] Condemnation proceedings — Proposed taking of private mill property by hydro group — Procedural schedule — Notice to mortgage holder — Issues to be addressed — Value of associated water rights — Appropriate damages. p. 480.

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BY THE COMMISSION:

### ORDER

[1] On May 19, 1995, Lower Village Hydroelectric Associates (Lower Village) filed with the New Hampshire Public Utilities Commission (Commission) a petition and supporting testimony for condemnation of land owned by APC Paper Company, Inc. (APC).

The Commission set a prehearing conference for July 11, 1995, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff).

Connecticut Valley Electric Co. and Central Vermont Public Service Corporation (CVEC) and APC sought intervention, without objection.

At the prehearing conference Lower Village, APC, CVEC, and Staff agreed that the

**Page 480**

issue of the scope of this proceeding ought to be addressed through the submission of memoranda and, in light of certain time limits placed on Lower Village by the Federal Energy Regulatory Commission, agreed to the following abbreviated procedural schedule:

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

Submission of Memoranda on	
Scope of Proceeding	August 10, 1995
Hearing Date for Argument	
on Scope, if necessary,	
2:00 P.M.	August 17, 1995
Hearing on merits,	
10 a.m.	September 27, 1995

Also at the prehearing conference, in accordance with the Order of Notice requiring the parties to state their preliminary positions, Lower Village indicated that it believed that there was no disagreement on the tract of land that is the subject of the petition and no disagreement on the easement right which Lower Village is seeking. Lower Village indicated that it believed that the significant issue to be addressed in this proceeding is whether the value of the water rights and the damages are as set forth in the petition. Lower Village believes that APC is seeking damages which are speculative and which should be sought in another forum if in fact they ever do occur.

APC opposed the petition on the grounds that the engineering for the dam structure which Lower Village proposes to erect will not assure the integrity for the mill structure owned by APC during periods of high water due to ice damming, spring run-off and/or storm run-off. APC indicated that it is having an engineering study done that will analyze the engineering assumptions underlying the Lower Village structure and determine what the impact would be on the mill structure. APC indicated that it expects to receive the results of this study on August 20, 1995.

CVEC indicated that it had various interests related to this project and that should any of those interests arise it planned to bring them to the attention of the Commission. CVEC does not anticipate, however, that it will file a memorandum on the scope issue, though it reserved that right.

Staff stated that at this point in time it was a neutral observer and that it had no substantive issues to raise.

At the prehearing conference we granted intervention to APC and CVEC. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

During the prehearing conference the Commission raised an issue with regard to notice to the mortgage holders of the property in question and Lower Village indicated that it would provide notice to them. Also raised at the time of the prehearing conference was the need for APC to report to the Commission and the parties the results of the engineering study and what impact that has on the position which it takes in this proceeding. APC indicated that it would notify the Commission and all parties of the results of that study as soon as possible, keeping in mind that

there was at least a possibility that there might not be a need for a Commission decision on the scope issue depending on the results of the study.

Based upon the foregoing, it is hereby

ORDERED, that APC and CVEC are granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1995.

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NH.PUC\*07/19/95\*[81027]\*80 NH PUC 481\*Paul E. Zimmerman

[Go to End of 81027]

80 NH PUC 481

**Re Paul E. Zimmerman**

DR 94-209, DR 95-126

Order No. 21,760

New Hampshire Public Utilities Commission

July 19, 1995

ORDER refusing to stay Order No. 21,598 (80 NH PUC 180, *supra*) in spite of respondent's appeal of the decision to the state supreme court. [The decision had found that a realty firm

**Page 481**

manager was a public telecommunications utility by virtue of his provision of shared tenant service via a private branch exchange system connecting tenants in his buildings.] However, the commission does stay a customer complaint that was filed subsequent to issuance of the commission order, finding the supreme court case to have direct bearing on the commission's authority to hear such a complaint.

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1. SERVICE, § 463

[N.H.] Telephone — Private branch exchange systems — Used in providing shared tenant services — Investigation as to degree of regulation necessary — Ongoing proceeding despite appeal to state court — But stay of related customer complaint. p. 482.

2. RATES, § 559

[N.H.] Telephone rate design — Joint use — Shared tenant services — Via private branch exchange system — Rolled in versus separately metered billing as a factor — Investigation as to degree of regulation necessary — Ongoing proceeding despite appeal to state court — But stay

of related customer complaint. p. 482.

### 3. APPEAL AND REVIEW, § 73

[N.H.] Proceedings pending appeal — Petitions for stay — Continuation of ongoing investigatory proceedings — Stay of ensuing customer complaint proceedings — As to shared tenant telecommunications service. p. 482.

### 4. PROCEDURE, § 42

[N.H.] Stay — As to proceedings that have been appealed — Continuation of ongoing investigatory proceedings — Stay of ensuing customer complaint proceedings — As to shared tenant telecommunications service. p. 482.

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BY THE COMMISSION:

### ORDER

The New Hampshire Public Utilities Commission (Commission) issued Order No. 21,598 (March 28, 1995) in Docket DR 94-206 which, among other things, found Paul E. Zimmerman (Zimmerman) to be a public utility. Zimmerman appealed the decision to the New Hampshire Supreme Court on June 21, 1995. Zimmerman also filed a request with the Supreme Court that the Commission stay the effect of the order pending the outcome of the Supreme Court appeal.

On May 3, 1995, Dwight DeVork, a former customer of Zimmerman, filed a request for reparations for amounts he felt had been overcharged. The complaint was docketed as DR 95-126. On June 15, 1995 Zimmerman filed a request that the Commission stay any proceedings in the complaint pending the outcome of the Supreme Court appeal. Zimmerman filed a similar request with the Supreme Court.

[1-4] As has already been stated to the Supreme Court, we find no basis on which to stay the implementation of Order No. 21,598. The evidence demonstrated that some customers of Zimmerman had not been given full disclosure of the availability of alternative service and the full terms under which Zimmerman charged for telephone service. Customers should not be denied the disclosures required by the Order during the pendency of the Supreme Court appeal. We also found that it would be appropriate to investigate the degree to which systems similar to Zimmerman's, often referred to as "shared tenant services", should be regulated. We believe that investigation should proceed without undue delay.

We will, however, grant the request for stay of the customer complaint. We recognize that if Zimmerman is found not to be a public utility, we will have no jurisdiction over his rates and terms of service and any order of reparations to a customer would at that point have to be reimbursed. For that reason, we will stay the proceedings in DR 95-126 pending the outcome of the Supreme Court appeal.

Based upon the foregoing, it is hereby

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ORDERED, that the proceedings in Docket DR 95-126 are stayed pending outcome of the

Supreme Court appeal of Order No. 21,598.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Zimmerman, DE 94-209, Order No. 21,598, 80 NH PUC 180, Mar. 28, 1995.

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NH.PUC\*07/19/95\*[81028]\*80 NH PUC 483\*Granite State Telephone

[Go to End of 81028]

80 NH PUC 483

**Re Granite State Telephone**

DR 95-190

Order No. 21,761

New Hampshire Public Utilities Commission

July 19, 1995

ORDER authorizing a local exchange telephone carrier to reduce its switched access service rate elements.

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1. RATES, § 588

[N.H.] Telephone rate design — Switched access service — Originating carrier common line charge — Originating local switching access charge — Reductions — As means of mitigating excess earnings — Local exchange carrier. p. 483.

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BY THE COMMISSION

ORDER

[1] On July 3, 1995, the New Hampshire Public Utilities Commission (Commission) received a request from Granite State Telephone (GST) requesting authority to 1) make rate revisions to their Originating Carrier Common Line Access Service and Originating Local Switched Access Service for effect on August 1, 1995; and 2) waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002.

The proposed revisions include a reduction to the Originating Carrier Common Line access

rate element and a reduction to the Originating Local Switching access rate element.

This filing results in intra-state revenue reductions of \$118,476 on an annualized basis. These reductions and revisions are being filed as a result to staff inquiry regarding the Company's earnings level. Staff analysis indicated that the source of the Company's overearning was its intra-state access revenues. We find these mechanisms of reducing excess revenue in the public good. Although this change will not directly reduce customers' basic bills, it fosters competition in the New Hampshire intra-state toll market. We will closely monitor the reaction of the intra-state toll providers.

Therefore, the Commission will authorize GST to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following pages of GST's tariff, NHPUC No. 7 are approved for effect as filed:

2nd Revised Page 1.3

*Section 17*

2nd Revised Page 1

2nd Revised Page 3;

and it is

FURTHER ORDERED, that the Executive Director serve a copy of this order on the parties to DR 90-002; 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 July 31,

**Page 483**

1995; and it is

FURTHER ORDERED, that the GST shall file a compliance tariff with the Commission within two weeks from the issuance date of this order, as required by N.H. Admin. Rules, Puc 1601.05 (k); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 1, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

FURTHER ORDERED, that GST is granted authority to waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of July, 1995.

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NH.PUC\*07/20/95\*[81029]\*80 NH PUC 484\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81029]



80 NH PUC 484

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-179

Order No. 21,763

New Hampshire Public Utilities Commission

July 20, 1995

ORDER suspending a local exchange telephone carrier's proposed introduction of frame relay service, a virtual private data network service that allows a customer to simulate a dedicated high-speed data network.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for frame relay service — Simulation of dedicated high-speed data network — Suspension — To allow for adequate investigatory period — Local exchange telephone carrier. p. 484.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offering — To allow for adequate investigatory period — Proposal for frame relay service — Simulation of dedicated high-speed data network — Local exchange telephone carrier. p. 484.

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BY THE COMMISSION:

ORDER

[1, 2] On June 26, 1995, New England Telephone and Telegraph Company (NYNEX or Company) petitioned to introduce Frame Relay Service, a virtual private data network service which allows customers to simulate a dedicated high speed data network.

Staff requires time to investigate the filing and material filed in support of the proposed tariff and therefore has requested that the proposed tariff pages be suspended.

We have reviewed Staff's request and will suspend the proposed filing to allow a thorough review of the tariff filing and the accompanying supporting materials.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of NYNEX are suspended:

NHPUC No. 75

Part C, Section 12

Original Table of Contents Page 1

Original Pages 1 through 7

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 1995.

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NH.PUC\*07/21/95\*[81030]\*80 NH PUC 485\*Kearsarge Telephone Company

[Go to End of 81030]

80 NH PUC 485

## Re Kearsarge Telephone Company

DR 95-181

Order No. 21,764

New Hampshire Public Utilities Commission

July 21, 1995

ORDER authorizing a local exchange telephone carrier to reduce switched access charges, reduce intrastate billing and collection rates, and write off the transition charge associated with a change in accounting for post-retirement benefits other than pensions.

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### 1. EXPENSES, § 49

[N.H.] Employee pensions and welfare — Post-retirement benefits other than pensions — Change in accounting methods — Compliance with Statement of Financial Accounting Standards No. 106 — Associated transition costs — Write-off over 12-month period — Local exchange telephone carrier. p. 485.

### 2. RATES, § 588

[N.H.] Telephone rate design — End-user originating and terminating charges — Switched access service — Reduction in charges — Local exchange carrier. p. 485.

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BY THE COMMISSION:

### ORDER

[1, 2] Kearsarge Telephone Company (Kearsarge), on July 11, 1995 filed a request to a) write off their FAS 106 transition obligation (Other Post Employment Benefits) over a one-year period, b) reduce their intrastate originating switched access rates, c) reduce their intrastate terminating switched access rates, d) reduce intrastate billing and collection charges and e) establish a customer credit of 11.26% on intrastate services.

Kearsarge also requested authority to waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002.

In addition, Kearsarge requested a waiver to Order No. 21,064 in Docket DR 93-260 which specified a 20 year amortization for the write-off of FAS 106 transition obligations, in order to effect a one-year period write-off.

The proposed reductions to their intrastate originating switched access rates would move those rates to the current NECA rate levels. The proposed reduction in billing and collection charges by \$.05 and related extension of the life of the contract between Kearsarge and NYNEX, would enhance revenue stability.

This filing results in intrastate revenue reductions of \$900,138 on an annualized basis, distributed as follows: FAS 106 transition \$130,000; reduction of intrastate originating access rates \$43,070; reduction of intrastate terminating switched access rates \$247,068; reduction of B&C charges \$120,000, and a customer credit of 11.26% or \$360,000. These reductions and revisions are being filed as a result to staff inquiry regarding the Company's earnings level. Staff noted that the customer credits applicable to intrastate toll services is intended to be revenue neutral to NYNEX and shall not reduce the amount of toll revenues to be remitted pursuant to the designated toll carrier and billing and collection agreements between Kearsarge and NYNEX.

The Commission finds the distribution and the mechanisms of reducing excess revenues in the public good. The changes directly reduce customers' intrastate billings, enhances revenue stability and fosters competition in the New Hampshire intra-state toll market. We note the company's intention to further provide an increase to the customer credit after the 12 month write off of FAS has expired. We anticipate and expect that the reduction in intrastate access rates shall cause the intra-state toll

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providers to react accordingly.

Therefore, the Commission shall authorize Kearsarge to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED *NSI*, that the following pages of Kearsarge's tariff NHPUC No. 7 are approved for effect as filed:

*Section 7* 4th Revised Sheet 2

*Section 1* Original Sheet 9

is granted; and it is

FURTHER ORDERED, that the Executive Director serve a copy of this order on the parties to DR 90-002; and it is

FURTHER ORDERED, that Kearsarge file with the Commission its revised billing and collection agreement pursuant to Order 21,690; 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 August 7, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission within two weeks from the issuance of this order, in accordance with N.H. Admin. Rules, Puc 1601.05(k); and it is

FURTHER ORDERED, that Kearsarge is granted authority to waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 16, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Kearsarge shall file revised tariffs twelve months from the effective date of this order to adjust for the FAS 106 write-off.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Chichester Teleph. Co., Kearsarge Teleph. Co., and Meriden Teleph. Co., DR 93-260, Order No. 21,064, 78 NH PUC 727, Dec. 15, 1993. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 95-137, Order No. 21,690, 80 NH PUC 339, June 9, 1995.

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NH.PUC\*07/21/95\*[81031]\*80 NH PUC 486\*Daniels Lake Water Works, Inc.

[Go to End of 81031]

80 NH PUC 486

### **Re Daniels Lake Water Works, Inc.**

DR 95-145  
Order No. 21,765

New Hampshire Public Utilities Commission

July 21, 1995

ORDER requiring the owner-representative of a water utility to appear before the commission to verify his intent as to seeking a franchise so as to operate as a water utility. The utility is reminded that it cannot charge customers for water service until a franchise is obtained.

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## 1. FRANCHISES, § 3

[N.H.] Necessity of securing — Before customers can be charged for service — Water utility. p. 487.

## 2. PARTIES, § 16

[N.H.] Respondents — Necessary parties — Owner of water utility — As applicant for franchise — Notice of mandatory appearance before commission — To verify intent to pursue franchise application. p. 487.

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BY THE COMMISSION:

ORDER

On May 26, 1995, Daniels Lake Water Works, Inc. (Daniels Lake) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a franchise and establishment of rates, including temporary rates. Daniels Lake would serve approximately 22 customers in a limited portion of Weare, New Hampshire. The petition requests temporary rates of \$49.02 per month.

The Commission set a prehearing conference for July 19, 1995, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

Edward L. Shank, a customer, sought intervention, without objection.

At the prehearing conference the Staff and five customers appeared. There was no one present on behalf of Daniels Lake. According to a telephone message received by Staff, the petitioner felt he was being harassed and threatened by customers and therefore would not appear at the hearing. Customers who were present stated they had not engaged in any harassing or threatening behavior and were not aware of any other customers who had done so.

The Staff reminded all customers that the Commission process should be utilized to air frustrations and complaints in this matter. Similarly, Daniels Lake representatives should be prepared to respond to all Commission orders and regulations in a businesslike and professional manner.

Also at the prehearing conference, customers and Staff expressed frustration at the difficulty in getting notices to customers in a timely way and a general lack of responsiveness by Daniels Lake. Both customers and Staff expressed hope that the responsiveness of the company would improve as we continue in this process.

Because Daniels Lake was not present, no procedural schedule was set and the technical session that was scheduled to be held between the company, Staff and customers was instead an information sharing session between Staff and the customers.

[1, 2] Staff recommended that the Commission order Josef Fitzgerald of Daniels Lake to

appear before the Commission on Friday, July 28, 1995 at 1:30 p.m. and make known his intent to pursue his petition. This hearing would be followed by a technical session to provide responses to questions already propounded by Staff and customers. If Mr. Fitzgerald fails to appear at the July 28, 1995 hearing, Staff recommends that the petition be dismissed. Daniels Lake would continue to be prohibited from charging customers for water.

We will grant Mr. Shank's request for full intervention. We find the recommendation that Mr. Fitzgerald appear on July 28, 1995 at 1:30 p.m. to be appropriate and will so order it. We will also order that the transcript of the July 19, 1995 hearing be sent to Mr. Fitzgerald and to Mr. Shank.

Based upon the foregoing, it is hereby

ORDERED, that Edward L. Shank is granted full intervention in this case; and it is

FURTHER ORDERED, that Josef Fitzgerald is ordered to appear at a hearing Friday July 28, 1995 at 1:30, to be followed by a technical session with the Staff and intervenors; and it is

FURTHER ORDERED, that if Mr. Fitzgerald fails to appear July 28, 1995, the Commission will dismiss his petition for franchise; and it is

FURTHER ORDERED, that Daniels Lake has no authority to charge customers for water service and cannot charge for water service until it receives a written order of the Commission to do so.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1995.

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NH.PUC\*07/24/95\*[81032]\*80 NH PUC 488\*Merrimack County Telephone Company

[Go to End of 81032]

80 NH PUC 488

**Re Merrimack County Telephone Company**

DR 95-197

Order No. 21,766

New Hampshire Public Utilities Commission

July 24, 1995

ORDER authorizing a local exchange telephone carrier to reduce switched access charges as well as intrastate billing and collection rates.

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1. RATES, § 588

[N.H.] Telephone rate design — End-user originating and terminating charges — Switched access — Reduction in charges — Associated reduction in billing and collection charges —

Establishment of customer credit — Local exchange carrier. p. 488.

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BY THE COMMISSION:

ORDER

[1] Merrimack County Telephone Company (Merrimack), on July 14, 1995 filed a request to a) reduce their intrastate switched access rates, b) reduce intrastate billing and collection charges and c) establish a customer credit of 18.4% on intrastate services.

Merrimack also requested authority to waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002.

The proposed reductions to their intrastate originating switched access rates would move those rates towards the interstate rate levels. The proposed reduction in billing and collection charges by \$.05 and related extension of the life of the contract, would enhance revenue stability.

This filing results in intrastate revenue reductions of \$975,631 on an annualized basis, distributed as follows: reduction of intrastate originating access rates \$176,241; reduction of intrastate terminating switched access rates \$241,147; reduction of B&C charges \$130,474, and a customer credit of 18.4% or \$427,769. These reductions and revisions are being filed as a result to staff inquiry regarding the Company's earnings level. Staff noted that the customer credits applicable to intrastate toll services is intended to be revenue neutral to NYNEX and shall not reduce the amount of toll revenues to be remitted pursuant to the designated toll carrier and billing and collection agreements between MCT and NYNEX.

The Commission finds the distribution and the mechanisms of reducing excess revenues in the public good. The changes directly reduce customers' intrastate billings, enhances revenue stability and fosters competition in the New Hampshire intra-state toll market. We anticipate and expect that the reduction in intrastate access rates shall cause the intra-state toll providers to react accordingly.

Therefore, the Commission will authorize Merrimack to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following pages of Merrimack's tariff NHPUC No. 7 and NHPUC No. 8 are approved for effect as filed:

NHPUC No.7: *Supplement No. 3*

NHPUC No. 8: 1st Revised Page 1.3

*Section 17*: 1st Revised Page 1;

2nd Revised Page 2;

2nd Revised Page 3;

and it is

FURTHER ORDERED, that the Executive Director serve a copy of this order on the parties

to DE 90-002; 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

**Page 488**

before the Commission no later than July 31, 1995 ; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission within two weeks from the issuance of this order, in accordance with N.H. Admin. Rules, Puc 1601.05(k); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 1, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

FURTHER ORDERED, that MCT is granted authority to waive its right to maintain access rates at the levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002; and it is

FURTHER ORDERED, that, in accordance with Order No. 21,690, the billing and collection amendment and the B&C Workpaper (Schedule 3) are subject to proprietary treatment.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of July, 1995.

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NH.PUC\*07/31/95\*[81033]\*80 NH PUC 489\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81033]

80 NH PUC 489

**Re New Hampshire Electric Cooperative, Inc.**

DR 94-160

Order No. 21,767

New Hampshire Public Utilities Commission

July 31, 1995

ORDER, in a least-cost planning proceeding, affirming the use of competitive bidding techniques as an appropriate method by which to establish an electric cooperative's avoided costs for purposes of pricing long-term purchases of power from qualifying small power production facilities. Commission authorizes, but does not require, the cooperative to issue its suggested request for proposals in order to solicit such bids. Commission also declines to rule on the impact of such bids on the cooperative's existing power purchase agreement with an electric utility.

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## 1. COGENERATION, § 30

[N.H.] Rates — Purchases of power from qualifying facilities — Methods and bases for pricing — Competitive bidding — Appropriateness for establishing avoided costs — Electric cooperative — Previous all-requirements purchases from electric utility notwithstanding. p. 494.

## 2. COGENERATION, § 4

[N.H.] State commission jurisdiction — To compel computation of avoided costs — As basis for pricing purchases of power from qualifying facilities — Discretion to abandon such requirements. p. 494.

## 3. COGENERATION, § 25

[N.H.] Rates — For purchases of power from qualifying facilities (QFs) — Avoided cost as a basis — Necessity of determining long-term avoided costs — Prior to soliciting bids from QFs — Consistency with least-cost planning principles. p. 494.

## 4. COGENERATION, § 27

[N.H.] Rates — Necessity of purchasing power offered by qualifying facilities (QFs) — Avoided cost as a ceiling price — Purchases from QFs as means of avoiding capacity charges billed by other suppliers. p. 495.

## 5. COGENERATION, § 11

[N.H.] Service obligations — Interconnection — Open transmission access — Purchases of power from qualifying facilities (QFs) — No geographical restrictions — Purchases from QFs within or outside of purchasing utility's service area. p. 495.

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## 6. COGENERATION, § 14

[N.H.] Service obligations — Wheeling — Offering of power from qualifying facilities (QFs) — No right of first refusal by host or wheeling utility — Mandatory transmission access — QFs included as beneficiaries. p. 495.

## 7. COGENERATION, § 24

[N.H.] Rates — Purchases of power from qualifying facilities — Necessity of competitive bidding process — Necessity of all-source bidding. p. 496.

## 8. COGENERATION, § 30

[N.H.] Rates — Purchases of power from qualifying facilities (QFs) — Methods and bases for pricing — Competitive bidding — Parameters for requests for proposals — Solicitation of total of 20 megawatts of capacity — Minimum of 1 megawatt per bid — Encouragement of QF participation — Appropriateness of market-based process — Electric cooperative. p. 496.

## 9. COGENERATION, § 30

[N.H.] Rates — Necessity of purchasing power offered by qualifying facilities — Methods and bases for pricing — Competitive bidding — Negative impacts on other suppliers

notwithstanding — Consistency with least-cost planning principles — Electric cooperative. p. 496.

#### 10. ELECTRICITY, § 4

[N.H.] Operating practices — Resource acquisitions — Least-cost planning principles — Purchases of power from qualifying facilities — Electric cooperative. p. 496.

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APPEARANCES: Mark Dean, Esq., for New Hampshire Electric Cooperative; Catherine Shively, Esq. Gerald M. Eaton, Esq. and Day, Berry & Howard by Robert P. Knickerbocker, Jr., Esq. for Public Service Company of New Hampshire; Michael Holmes, Esq. of the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers; and Robert J. Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

On August 1, 1994, New Hampshire Electric Cooperative, Inc. (NHEC) filed its first Least Cost Integrated Resource Plan with the New Hampshire Public Utilities Commission (Commission). NHEC filed supporting direct testimony of Duane T. Kexel on August 8, 1994. By order of notice dated November 2, 1994, NHEC was required to file supplemental testimony relating to its proposed competitive bidding procedures for setting its avoided costs pursuant to Order No. 21,398 in DR 94-004. In that order we held that "properly designed and implemented competitive bidding procedures" would provide an appropriate means of establishing NHEC's long-term avoided costs. NHEC filed its proposed RFP and supporting testimony in response to the Commission's Order of Notice in this case.

At the duly noticed prehearing conference on December 1, 1994, the Commission established bifurcated final hearing dates in order to consider separately competitive bidding and non-bidding issues. The hearing on competitive bidding issues was scheduled for March 23, 1995. Order No. 21,459. (December 13, 1994).

On February 7, 1995, Public Service Company of New Hampshire (PSNH) filed an untimely motion to intervene which the Commission granted at its public meeting on February 13, 1995.

By Secretarial letter, the Commission noted on March 13, 1995 that it had come to its attention that a disagreement had developed over the scope of the proceeding as a result of PSNH's intervention. A prehearing conference was thereafter held on March 21, 1995 in order to address this disagreement, at the conclusion of which the Commission issued an oral

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decision which limited the scope of the March 23, 1995 hearing.

The hearing relating to NHEC's proposed implementation of Order No. 21,398 was held on March 23 and April 17, 1995. Prior to the hearing NHEC filed a Settlement Stipulation entered into by NHEC and Staff as well as a prehearing memorandum.

On March 28, 1995, pursuant to the Commission's oral directive at the March 21, 1995 prehearing conference, PSNH submitted a motion and supporting memorandum requesting the Commission to expand the scope of the proceeding. In response, NHEC filed a timely Objection.

Post-hearing memoranda were filed by NHEC and PSNH on May 31, 1995; replies thereto were filed by NHEC on June 14, 1995 and by PSNH on June 15, 1995.

On June 8, 1995, NHEC filed a Motion to Strike Portions of the PSNH Post-Hearing Brief to which PSNH filed a timely objection. On the same date, NHEC filed an Offer of Settlement relating to all issues other than competitive bidding raised in its LCIP filing. On June 9, 1995 a hearing was held to consider the aforementioned Settlement.

We deliberated this matter at our June 26, 1995 public meeting.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. NHEC

NHEC proposes to implement Order No. 21,398 by establishing market based long-term avoided costs through Request for Proposals (RFPs) which would be reviewed and approved by the Commission. Prefiled Supplemental Direct Testimony and Exhibits of Dennis R. Eicher, Steven Kaminski and James M. Lauzon, Exhibit 1, p. 14. After the proposed RFP in this case is issued, NHEC states that it should be required to update its avoided costs only to the extent that it has received expressions of interest from QFs seeking to sell additional power. *Id.* at 9.

According to the Settlement Stipulation, NHEC would submit a report to the Commission which summarizes the bidding, evaluation, and post-bid negotiations. NHEC's long-term avoided costs would be calculated based upon the weighted average of energy and capacity rates contained in the final Power Purchase Agreement(s); this weighted average is intended to account for certain non-price factors for which PURPA allows consideration in determining avoided costs<sup>1(51)</sup>.

The key features of the RFP proposed in this proceeding are as follows: bidders will be limited to those power generation facilities defined as QFs under federal or state law; the solicitation is limited to 20 MW of capacity with a minimum 1 MW bid; proposals would be sought for capacity for terms of up to 20 years; and eligible QFs may be located within or outside NHEC's service territory. Transcript, Day I, A.M. Session, p.14-15.

NHEC disagrees with PSNH that the proposed RFP would violate its wholesale contract with PSNH, a document entitled "Amended Partial Requirements Agreement" (APRA). It claims that the Commission "may delay, but may not avoid, establishing long-term avoided costs," but that under PURPA the Commission is under "an absolute obligation to determine the long-term avoided costs of any electric utility subject to the Commission's rate regulation." NHEC Post-Hearing Brief, p.1.

NHEC argues that under the Commission's past decisions, electric utilities are required to establish long-term avoided costs biennially, but it concedes that there is no state or federal mandate which requires the Commission to continue this practice, and that the Commission has the discretion to abandon its previous order and practices regarding integrated resource planning. *Id.* at 1-2. NHEC contends, however, that PSNH failed to articulate a single rational public

policy reason for why the Commission should abandon its long-standing policy of requiring biennial avoided cost determinations for all New Hampshire electric utilities. *Id.*

According to NHEC, the issuance of RFPs is an established mechanism to provide a defined marketplace in which to obtain market-based prices for QF purchases. *Id.* at 6. NHEC also argues that the Commission should require

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NHEC to enter into contracts with QFs which meet the bidding requirements in order to ensure sufficient QF participation. *Id.* It contends that in the absence of such a requirement, "it is unlikely that bidding will yield QF rates which bear rational relationships to market realities." *Id.* at 7.

NHEC argues that it is legally required by PURPA to purchase the energy and capacity made available to it regardless of the QFs' geographic location. NHEC contends that there is no authority for the "right of first refusal" to which PSNH claims it is entitled with regard to QF power wheeled over its transmission system. NHEC Reply Brief, p.1-2. NHEC contends that the RFP appropriately conditions its obligation to purchase on the bidders' ability to deliver capacity and energy to NHEC's system. This places the burden of obtaining transmission on distant QFs who submit bids.

NHEC contends that the proposed RFP will not result in a breach of the APRA because any purchase NHEC makes as a result of the proposed RFP will be "pursuant to the requirements of governmental authorities", an exemption expressly provided for in the APRA. NHEC Post-Hearing Brief, p. 19. According to NHEC, "purchases by NHEC of QF power, at rates established through competitive bidding, will satisfy NHEC's PURPA obligations and fall squarely within the 'governmental requirements' exception in the APRA." *Id.* at 22-23.

Likewise, NHEC argues that the proposed RFP does not violate the obligation of good faith and fair dealing which is legally implied in the APRA. NHEC points out that PSNH has acknowledged that its sales to NHEC could be displaced by purchases from QFs. *Id.* at 9-10.

NHEC contends that PSNH's Post-Hearing Memorandum contains arguments relating to issues which the Commission excluded from the scope of this proceeding. Specifically, NHEC contends that PSNH is asking the Commission to reconsider its previous decision relative to the appropriate methodology for determining NHEC's long-term avoided costs. This issue, argues NHEC, is not within the scope of this proceeding because the Commission excluded it in its April 17, 1995 oral decision on PSNH's Motion to Expand the Scope of Proceeding. NHEC has moved the Commission to strike those portions of PSNH's Memorandum which relate to methodology. *See*, NHEC Motion to Strike Portions of PSNH's Post-Hearing Brief.

#### B. PSNH

PSNH argues that the Commission should reject NHEC's proposed RFP because it is a "distortion" of Order No. 21,398 and because it violates the APRA. Testimony of Gary A. Long, Exhibit 5, p. 3. At the hearing in this matter, Mr. Long testified that the proposed RFP would disrupt the settlement agreements reached during NHEC's reorganization and its emergence from bankruptcy in 1992. According to Mr. Long, the RFP represents an attempt to shift costs from

NHEC to PSNH's retail and wholesale customers rather than a proposal to further PURPA. Transcript, Day I, P.M. Session, p. 56.

PSNH contends that the Commission is not obligated to establish NHEC's long-term avoided costs. It argues that NHEC is under no present legal obligation to purchase energy or capacity from a QF for a "specified term"<sup>2(52)</sup> because NHEC is "essentially an all requirements purchaser of PSNH power through at least November 1, 2006." PSNH Post-Hearing Memorandum, p. 4, n.5.

Additionally, PSNH contends that the Commission has already approved the adoption of PSNH's long-term avoided costs as those of NHEC<sup>3(53)</sup>. *Id.* at 4, citing 74 NH PUC 375, 85-86 and 77 NH PUC 53, 62 (Report & Order No. 20,383).

According to PSNH the Commission should reject the proposed RFP based upon independent public interest concerns. PSNH calls the RFP a "sham designed to permit NHEC to avoid its contractual obligations to purchase its power requirements from PSNH under the APRA." *Id.* at 7. Mr. Long testified that PSNH believes that NHEC had already breached the APRA by encouraging the Commission to approve the proposed RFP, "although the effects of the breach had not been felt yet, and may not be felt depending upon what this Commission does ... ." Trans. Day I, P.M. Session, p. 54. According to PSNH,

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NHEC's proposal would improperly shift costs associated with NHEC's liability for Seabrook and other unavoidable costs to PSNH's customers which would cause PSNH and its customers to subsidize QFs which displace PSNH sales to NHEC. PSNH Post-Hearing Memorandum, p.7. *Id.* at 58; Post-Hearing Memorandum, p. 7. Even if the RFP does not violate any express terms of the APRA, PSNH suggests that it would also violate NHEC's implied obligation of good faith and fair dealing because it could be viewed as an improper attempt to evade NHEC's obligations under APRA. PSNH Post-Hearing Memorandum, p.15, n.29.

PSNH argues that the proposed RFP violates the APRA because it was always understood that the so-called "governmental authorities" section of the APRA would only allow NHEC to purchase from a QF which is located within NHEC's service territory. *Id.* at 11. According to PSNH, NHEC is only required by PURPA to purchase QF output from a utility outside of its service territory if the host utility voluntarily agrees to wheel the QF power at its avoided cost<sup>4(54)</sup>. PSNH argues that this right to voluntarily wheel such power translates into a "right of first refusal" to purchase the QF supplies. *Id.* at 13-14. PSNH contends that the Energy Policy Act of 1992 does not interfere with this right which PURPA and FERC accorded to the host utility. *Id.*

Finally, PSNH also argues that the Commission should reject the proposed RFP because any purchase resulting from the RFP would be at a rate above NHEC's true avoided costs. This would be contrary to PURPA as reinforced by recent FERC decisions which hold that utilities may not be required to purchase QF power at rates which exceed the purchasing utility's avoided costs. PSNH supports this position by again arguing that the Commission should adopt PSNH's avoided costs as those of NHEC. Additionally, PSNH argues that the proposed RFP is violative of a recent FERC decision which held that competitive bidding must be "all-source" bidding and

thus must include both QF and non-QF supplies. *See, Southern California Edison Co.*, 70 FERC par. 61,215 (February 23, 1995).

#### C. OCA

The OCA entered into the Settlement Stipulation which provides that NHEC's proposed RFP should be approved. The Stipulation is addressed in more detail, *infra*, under the Commission's analysis. The Stipulation did not address any of the issues raised by PSNH's late intervention. The OCA offered no testimony in this proceeding and took no position with regard to the legal and policy issues raised by PSNH's late intervention.

#### D. Staff

Likewise, Staff entered into the Settlement Stipulation, offered no testimony in this proceeding and took no position relative to the disputed issues. During the hearings, however, Staff did conduct limited cross-examination of NHEC's and PSNH's witnesses.

### III. COMMISSION ANALYSIS

#### A. Scope of The Proceeding

We first address the ongoing debate over the appropriate scope of this proceeding prompted by PSNH's late intervention. The controversy continues to center on the FERC's decision in *Carolina Power & Light Co.*, 48 FERC para. 61,601 (July 25, 1989), which PSNH argues provides dispositive support for its position that NHEC's avoided costs are, as a matter of law, equivalent to those of PSNH. NHEC has moved to strike certain portions of PSNH's Post-Hearing Memorandum which cite *Carolina Power* as support for the argument that competitive bidding is an inappropriate method to determine NHEC's avoided costs. NHEC argues that PSNH is attempting to circumvent our scoping order in which we declined to reconsider our approval of competitive bidding as an appropriate avoided cost methodology<sup>5(55)</sup>.

PSNH acknowledges our unwillingness to revisit the issue of avoided cost methodology which was the subject of DR 94-004, but argues that it is free to rely upon *Carolina Power* to support its position relative to other issues

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which are legitimately part of this proceeding. For instance, PSNH argues that if NHEC's avoided costs for QF purchases are equal to those of PSNH's avoided costs during the term of the APRA, then there is no need to set NHEC's avoided costs at this time<sup>6(56)</sup>.

[1] We stand by our previous decision and decline to entertain arguments which could and should have been raised by PSNH in DR 94-004 relative to the appropriate methodology for determining NHEC's long-term avoided costs for QF purchases. We continue to believe that properly designed competitive bidding procedures constitute an appropriate methodology for NHEC to set its long-term avoided costs. PSNH argues that we are legally precluded from approving a market-based avoided cost methodology to set NHEC's avoided costs. We have already determined that we are under no such legal constraints, and PSNH's reliance on *Carolina Power* does not convince us otherwise<sup>7(57)</sup>.



Although we agree with NHEC that PSNH has advanced arguments which are outside of the scope of this proceeding, it is unnecessary to strike PSNH's Memorandum. The record is clear relative to the scope of this proceeding and we accord the disputed portions of PSNH's Memorandum their appropriate weight.

Our ruling herein does not mean that we will not, under any circumstances, revisit the issue of methodology. If NHEC elects not to issue the RFP and a QF petitions for a long-term rate, we reserve the right to reopen our investigation of the appropriate methodology to determine NHEC's avoided costs.

#### B. Should The Commission Require NHEC To Establish Its Long-Term Avoided Costs?

[2, 3] Initially, we note our agreement with PSNH and NHEC that we are under no immediate legal obligation to establish NHEC's current long-term avoided cost for QF purchases. We concur that it is within our discretion to abandon the Commission's past policy of requiring electric utilities to establish, in advance of QF rate requests, their long-term avoided costs. That policy originated as part of the Commission's determination that QF supply options should be incorporated into the overall long term resource plans of electric utilities. *See, Re Public Service Company of New Hampshire, 73 NH PUC 117 (April 7, 1988)*. The threshold issue then becomes whether it is in the public good to exempt NHEC from the policy requiring it to set long term avoided costs in advance of a legal obligation to do so and require NHEC to wait until it becomes obligated under federal and state law to make such information available.

PSNH argues is that it would serve no practical purpose to establish NHEC's avoided costs because, as discussed above, it argues that NHEC's avoided costs are equal to (or no higher) than those of PSNH. Post-Hearing Memorandum, p. 4. We reject this argument because, although cloaked under a different rationale, it is the same argument which we held above is outside the scope of this proceeding.

Additionally, we note that PSNH's request for intervention did not ask that we reconsider the methodology which we approved in Order No. 21,398. Rather, PSNH requested that it be permitted an opportunity to

... present testimony, evidence and argument as to how NHEC's bidding process should be designed so that it will meet the requirements of [Order 21,398] and also will best serve the purposes of PURPA, LEEPA and the public good of New Hampshire's electric customers, without violating APRA.

PSNH's Petition to Intervene, p.1.

We agree with NHEC that we should not abandon the policy requiring electric utilities to post their avoided costs. It is appropriate and practical for NHEC to determine its avoided costs in advance of a formal offer from a QF. This approach is consistent with the policy objectives articulated in Order No. 19,052 which require utilities to integrate QF resource options with other supply and demand alternatives. PSNH has presented no persuasive reason to exempt NHEC from this policy.

#### C. Avoided Cost vs. Capacity Need

[4] PSNH contends that the RFP is inconsistent with the public good because NHEC is not mandated under state or federal law to purchase QF power to meet its capacity needs prior to 2006 when the APRA expires. This argument reflects a fundamental misunderstanding of PURPA, LEEPA and the concept of avoided cost. Under PURPA and FERC's implementing regulations, electric utilities are required to purchase the capacity and energy made available by QFs. 18 C.F.R. sec. 292.303(a) (1994). The rate which a purchasing utility is required to pay to QFs for power cannot exceed that utility's "full avoided cost". 18 C.F.R. sec. 292.101(b)(6) (1994); *Connecticut Light & Power Co.*, 70 FERC 61,102 (January 11, 1995); NH RSA 362-A:4. Under this definition of avoided cost, utilities which have an immediate need for new capacity will have higher avoided costs than those with large surplus capacity. PURPA and LEEPA require electric utilities to pay QFs for capacity to the extent that such purchases allow a utility to avoid capacity costs. There is no doubt that NHEC can avoid capacity charges under the APRA as a result of QF purchases; the APRA expressly provides for such purchases and the record is clear that PSNH anticipated the potential for such purchases when it negotiated the APRA. Transcript Day I, P.M. Session, P. 81-86.

#### D. PSNH's Alleged "Right of First Refusal"

[5, 6] Next, PSNH argues that the proposed RFP improperly invites offers from QFs outside of NHEC's service territory. According to PSNH, PURPA does not require NHEC to purchase from distant QFs. Post-Hearing Memorandum, p.11-15. As the "host" utility, PSNH claims to have a "right of first refusal" to purchase QF power which is wheeled through its transmission system and that any distant QF which desires to sell to NHEC must first obtain PSNH's concurrence. This argument lacks any merit. There is no "right of first refusal" in PURPA or in FERC's implementing regulations and PSNH points to no authority which provides even tangential support for such a right. Any doubt over the rights of QFs to compel purchases from distant utilities was eliminated by the enactment of the Energy Policy Act of 1992 (EPAAct) which amended Section 211 of the Federal Power Act (FPA). EPAAct made QFs eligible to seek mandatory transmission orders under Section 211 of the FPA. A careful reading of the cases relied upon by both PSNH and NHEC reveals that QFs now have the right to seek mandatory transmission access without waiving their PURPA right to force distant utilities to purchase QF power at avoided cost.

The dispositive case is the FERC's decision in *Utah Power & Light Co.*, 62 FERC para. 61,018 (1993). Prior to *Utah Power & Light* (1993), FERC repeatedly refused to include QFs among the beneficiaries of "voluntary" transmission orders which FERC imposed as a condition to mergers. The rationale which FERC provided was that

if the [FERC] were to give QFs the right to obtain transmission access on their own account, *QFs would be able to impose upon utilities in distant markets the obligation to purchase their power at rates based on those utilities' avoided costs. This occurs because the Commission's PURPA rules impose this obligation on any utility to whom the QF can convey power.* Typically, QF sales to a non-native utility have only occurred with the consent of the purchasing utility itself. To grant QFs what would be a major extension of their rights under the PURPA scheme is justified neither on the record of this case nor by section 210 of PURPA itself.



*Utah Power & Light Co., PacifiCorp, and PC/UP&L Merging Corporation*, 47 FERC para. 61,209, at pp. 61,739-40 (1989) (emphasis added).

Four years later, in *Utah Power & Light* (1993), the FERC abandoned this practice because with the enactment of EPAct "the statutory basis for [the FERC's] decision to exclude QFs from transmission in prior orders has been eliminated." *Utah Power & Light* (1993) 62 FERC at p. 61,156. Merging utilities are now required to provide open firm transmission service to any electric utility, as well as to QFs, at cost-based rates<sup>8(58)</sup>. QFs, in turn, lose none of

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their PURPA right to compel purchases from any utility to whom such power is "made available". 18 C.F.R. sec. 292.303(a) (1994).

E. FERC's "All Source" Bidding Requirement

[7] Finally, PSNH argues that the FERC recently held that in order for competitive bidding to comply with PURPA, it must be "all source" bidding. Post-Hearing Memorandum, p. 17-18. PSNH relies upon a recent FERC decision which rejected a directive of the California Commission which required a utility to limit bidding for certain capacity to only QFs. *Southern California Edison Co.* 70 FERC para. 61,215 (February 23, 1995). *Edison* requires that bidding "reflect prices available from all sources able to sell to the utility whose avoided cost is being determined." *Id.* at 26. NHEC's proposed RFP complies with the FERC's "all source" requirement because it is open to all sources available to NHEC under the APRA. By so holding, we reject PSNH's argument that the APRA limits NHEC to purchases from QFs located within its service territory because PURPA obligates NHEC to purchase from QFs who make power available to NHEC irrespective of the location of the source.

F. The Proposed RFP

[8] We next consider whether the proposed RFP reflects bidding procedures which are properly designed to result in a market-based avoided cost rate consistent with Order No. 21,398. In that Order we concluded that 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." Order No. 21,398, p. 11. By identifying the lowest cost QF resources, we held that competitive bidding conforms with least cost planning principles and thereby protects the interests of NHEC's ratepayers. *Id.* at 12.

After reviewing the record and considering the extensive arguments advanced by PSNH we conclude that the proposed RFP is consistent with Order No. 21,398 and that it is reasonably designed to result in an avoided cost rate which approximates prices in the wholesale market.

With regard to the size of the proposed RFP, PSNH contends that at 20 MW the solicitation exceeds that which is necessary to establish market prices. NHEC counters that the RFP is reasonable in light of its unrefuted testimony that it has inquiries from QFs seeking to sell approximately 100 MW to NHEC. Transcript, Day I, A.M. Session at p. 40-43. Additionally, NHEC contends that 20 MW of capacity is sufficiently large to "permit meaningful participation by a variety of different sized and different technology-based QFs so that the bidding accurately reflects prices available from all sources able to sell to NHEC." NHEC's Prehearing

Memorandum, p.14. We recognize that any limitation on the amount of power that can be solicited or the types of suppliers which can participate will affect the market price. On the other hand, we believe that 20 MW will allow sufficient participation among available suppliers in order to ensure prices that reasonably reflect market rates.

#### G. The APRA

[9, 10] Having concluded that the RFP will yield a reasonable estimate of the true market price for wholesale power, we turn to the question of whether the proposed RFP is consistent with the APRA. PSNH argues that the APRA prohibits NHEC from soliciting QF power and that any QF contracts which result from the proposed RFP will constitute a breach of NHEC's express and implied contractual obligations. NHEC counters that the APRA "means what it says" and that the Section IV(a)(1) of the APRA expressly permits purchases from independent power producers when the purchase is "pursuant to governmental authorities." NHEC Post-Hearing Brief, p. 19; Exhibit 8, p.5.

As a matter of general policy, with the evolution of wholesale competition we believe that utilities should be allowed to lower their power costs through transactions which fall within the parameters of their legal obligations, even if those actions negatively affect a utility's other suppliers. If NHEC can implement competitive bidding procedures that enable it to lower its

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supply costs consistent with its obligations under APRA, then it may proceed to issue the proposed RFP. It is in the public good and consistent with least cost planning principles to encourage utilities to allow their customers to share in the benefits of the competitive wholesale market.

Although we initially agreed to address issues related to the disputed provision in the APRA as it applies to the proposed RFP, after further consideration, we believe that it would be inappropriate to issue such a declaratory ruling at this time. This is a least cost planning docket. Our decision here is consistent with orders in previous least cost planning dockets in which we decline to "pre-approve" or order utilities to make specific resource decisions.

Accordingly, although we are authorizing NHEC to establish its avoided cost through competitive bidding we do not specifically direct NHEC to issue this RFP or to enter into contracts with winning bidders. If NHEC is uncertain as to its rights and obligations under the APRA, then it should first attempt to work with PSNH to arrive at a mutual agreement with regard to the APRA's meaning. If the parties cannot reach such an agreement and NHEC still wishes to proceed with the RFP, it should seek the appropriate declaratory relief from the FERC or an appropriate judicial forum. Although we reserve the right to address this dispute in the context of a separate proceeding, we believe that such a determination should be conducted in the forum which has primary jurisdiction. Recognizing the financial risks to PSNH and the costs to both parties of protracted litigation, we again urge the parties to seek a negotiated resolution of this matter.

If NHEC elects not to issue the RFP or to seek declaratory relief with regard to its contractual obligations, we direct NHEC to submit an alternative methodology within sixty days of this order. PSNH will be free at that time to advance its arguments with regard to the

appropriate avoided cost methodology.

In conclusion, although we decline to enter the fray over the parties' differing interpretations of APRA, we do find that the RFP, as amended by the Stipulation, provides a reasonable means of implementing Order No. 21,398.

#### E. Undisputed LCIP Issues

NHEC's 1994 LCIP raised a number of important issues unrelated to competitive bidding which were the subject of an Offer of Settlement entered into by NHEC and Staff. These include NHEC's commitment to include in its 1996 LCIP an assessment of the environmental, economic and energy price and supply impacts on the state, as well as an assessment of the LCIP's impact on state compliance with EPAct. The Settlement further provides that NHEC's next filing will include a peak load forecasting component and expanded supply-side planning. NHEC has also agreed to gather additional data relative to its commercial and industrial customers in order to develop DSM programs for that customer class. It further provides that NHEC (a) will improve its integration methodology, (b) will investigate the cost and benefit allocation in its standard water heater control program, and (c) will use the capacity and energy costs of its marginal resource for the purpose of evaluating DSM programs.

Having reviewed the terms of the Settlement, we find that it provides appropriate steps to improve NHEC's planning process and we will expect to see them incorporated in its 1996 LCIP. We find that, as amended, NHEC's planning process is adequate in accordance with RSA 378:39.

Based upon the foregoing, it is hereby

ORDERED, that NHEC may issue the proposed RFP to establish its long-term avoided costs pursuant to its obligations under PURPA and LEEPA; and it is

FURTHER ORDERED, that the wholesale contract entitled Amended Partial Requirements Agreement discussed herein is subject to the primary jurisdiction of the Federal Energy Regulatory Commission and any disputes thereunder which have been raised in this proceeding should be brought before that federal agency or an appropriate judicial forum; and it is

FURTHER ORDERED, that NHEC's Least Cost Integrated Resource Plan as amended by the Offer of Settlement is consistent with RSA 378:39 and is hereby accepted; and it is

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FURTHER ORDERED, that if NHEC elects not to issue the RFP or to seek declaratory relief with regard to its contractual obligations, we direct NHEC to submit an alternative methodology to determine its long-term avoided costs within sixty days of this order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 1995.

#### FOOTNOTES

<sup>1</sup>These non-price factors include dispatchability, reliability, and project feasibility.

<sup>2</sup>QFs may compel utilities to purchase energy and capacity pursuant to the Public Utilities

Regulatory Policies Act of 1978 (PURPA), 16 USCA Sec. 824a-3 (1995), as implemented by regulations of the Federal Energy Regulatory Commission (FERC), by requiring a utility to purchase QF output for a "specified term". 18 C.F.R. Sec. 292.304(d).

<sup>3</sup>We will not elaborate on PSNH's arguments which relate to utilization of a wholesale supplier's avoided costs to determine the avoided costs of the purchasing utility. We ruled in our oral scoping order that we would not in this proceeding revisit the issue of methodology. We address this issue in detail in the Commission Analysis, *infra*.

<sup>4</sup>The host utility in these circumstances refers to the utility in whose service territory the QF is located and which under PURPA can voluntarily agree to wheel the QF output to a distant utility. See, 18 C.F.R. sec. 292.303(d).

<sup>5</sup>We issued our initial order relative to the appropriate scope of this proceeding during the March 21, 1995 prehearing conference. At our invitation PSNH thereafter filed a motion seeking to enlarge the scope of the proceeding which we ruled upon at the April 17, 1995 hearing. At that time we decided that we would not, within this proceeding, revisit the issue of whether competitive bidding is an appropriate methodology for determining NHEC's long-term avoided costs.

<sup>6</sup>We specifically agreed to hear arguments over whether the Commission should set NHEC's long-term avoided costs at the April 17, 1995 hearing. Transcript, Day II, p.12-13.

<sup>7</sup>We believe that *Carolina Power* is distinguishable from the circumstances in this case. Because we have already determined that we will not revisit the issue of methodology in this proceeding, however, we decline to present any detailed analysis on that issue. As set forth, *infra*, if NHEC elects not to issue the RFP, we will invite further argument on the issue of methodology.

<sup>8</sup>PSNH itself acknowledges that there is no "wheeling" issue in this case in light of Northeast Utilities's open access tariff. Post-Hearing Memorandum, p. 14, n.27; Transcript, Day II, p. 90-91.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DE 94-004, Order No. 21,398, 79 NH PUC 590, Oct. 25, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 86-41, Order No. 19,052, 73 NH PUC 117, Apr. 7, 1988.

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NH.PUC\*08/01/95\*[81034]\*80 NH PUC 498\*State Line Plaza Water Company

[Go to End of 81034]

80 NH PUC 498

### Re State Line Plaza Water Company

DR 94-292  
Order No. 21,768

New Hampshire Public Utilities Commission

August 1, 1995

APPLICATION by water utility for authority to increase rates by \$5,396 (49.2%); granted pursuant to settlement, providing for an increase in the customer charge from \$274 per year to \$380 per year and in the consumption charge from \$1.15 per hundred cubic feet (Ccf) to \$1.48 per Ccf.

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1. RATES, § 604

[N.H.] Water rate design — Annual flat customer charges — Separate usage-based charges — Increases in — Factors — Increase in wholesale price charged by nonjurisdictional municipal supplier. p. 500.

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2. RETURN, § 115

[N.H.] Water utility — Capital structure of 100% equity — Mirroring of overall return and return on equity — Rate of return of 10.29%. p. 500.

3. SERVICE, § 284

[N.H.] Connections and instruments — Meter inspection and testing — Individual customer meters versus company master meter — Successful efforts to correct underregistering master meter — Water utility. p. 500.

4. EXPENSES, § 144

[N.H.] Water utility — Purchase of own liability insurance policy — Completion of mandatory meter testing project — Purchases of water from nonjurisdictional municipal supplier. p. 500.

5. EXPENSES, § 89

[N.H.] Rate case expense — Allowance to be based on actual billings — Recovery via quarterly surcharge — Water utility. p. 500.

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APPEARANCES: Stephen P. St. Cyr and Lynn Bennett for State Line Plaza Water Company; and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

## I. PROCEDURAL HISTORY

On February 3, 1995, State Line Water Company (State Line or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for rate increase due to an increase in the price of water from its wholesale supplier, the City of Haverhill, Massachusetts. The petition was accompanied by supporting testimony, exhibits and proposed tariff pages. The Commission, by Order No. 21,549 (February 23, 1995), suspended the tariff pages and set a prehearing conference for March 23, 1995, to be followed by an initial technical session. On March 16, 1995, in accordance with the proposed procedural schedule, State Line submitted supplemental testimony and exhibits.

At the duly noticed prehearing conference on March 23, 1995, State Line and the Commission Staff (Staff) agreed to the procedural schedule as stated in the Order of Notice. There were no requests for intervention.

Staff filed the testimony of Richard Deres, Jane Emerson, James Lenihan and James Thyng on May 4, 1995. On May 12, 1995, State Line informed the Commission that it had no data requests on Staff testimony and would consider the issues of liability insurance and the cost of testing meters raised by Staff in its testimony.

A hearing on the merits was held on June 20, 1995, at which State Line and Staff presented a Settlement Agreement (Agreement). On July 12, 1995, State Line filed a letter in response to questions raised by the Commission concerning fire protection and rate case expenses, and reiterated its request that the rate change take effect July 1, 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *State Line*

State Line serves an affiliated Plaza that straddles the New Hampshire - Massachusetts border in Plaistow, New Hampshire and Haverhill, Massachusetts. Thirteen of the tenants are located in New Hampshire and four are located in Massachusetts. State Line purchases water from the City of Haverhill through a master meter located in Haverhill, and distributes the water to the tenants on both sides of the border. It charges a consumption rate equal to the rate it is charged by Haverhill plus a customer charge that represents the other operating and maintenance expenses and a return on its rate base. Separately, the Plaza also provides fire protection. Costs for that protection are passed

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on to the plaza tenants when they are charged by Haverhill.

In its prefiled testimony, State Line requested an increase in the consumption charge from \$1.15 to \$1.48 per hundred cubic feet for its 13 New Hampshire customers to reflect the increases in the consumption charge levied by Haverhill since 1987. In addition, it requested an increase in the customer charge from \$274 to \$344 per year. Together, the proposed increase totalled \$5,396 or 49.2%. The Company also requested that the increase become effective July 1, 1995 and that the Commission consider a mechanism that would permit the Company to pass through consumption rate increases imposed by Haverhill without the need for a full rate case.

### *B. Staff*

Staff presented four witnesses. Economist Jane Emerson recommended a cost of equity of 10.29%. Since State Line's capital structure is 100% equity, the overall cost of capital is also 10.29%. Richard Deres of the Finance Department testified that he had reviewed the Company's filing and concurred with the requested rate increase. He recommended that State Line carry adequate liability insurance rather than relying on coverage under J. P. Realty Development, the shopping plaza's manager. James Lenihan reviewed the impact of the increase on current rates, noting in his prefiled testimony that further adjustments to the impact might be required following a review of the results of meter testing and revised consumption figures. He also recommended that rate case expenses be surcharged over a period of at least three years, rather than two.

In his prefiled testimony, James Thyng of the Engineering Department addressed the testing of both the customer water meters and the master water meter. He recommended that periodic testing of water meters be performed in accordance with N.H. Admin. Rule Puc 605.04, which stipulates the frequency of testing according to the size of the meter, and that the Company address the impact on charges of the under-registration of the master meter. Mr. Thyng also noted that the water system is inspected and monitored by the City of Haverhill under the Massachusetts public drinking water program. The program, which is similar to New Hampshire's, meets all federal Environmental Protection Agency (EPA) regulations.

### *C. Settlement Agreement*

[1-5] At the June 20, 1995 hearing on the merits, State Line and Staff presented an Agreement. The Agreement stipulated a rate base of \$11,204 as specified in the Company's testimony. It adopted the Staff's recommended rate of return of 10.29%. It adopted the operating expenses as specified in the Company's testimony, adjusted by an additional \$1,365 for the liability insurance and \$88 for the meter testing recommended in Staff testimony. The stipulated revenue requirement is, therefore, \$4,956 plus the consumption charge passed through from Haverhill of \$11,885. The recommended rates are a customer charge of \$380 per year per customer and the consumption charge of \$1.48 per hundred cubic feet. The Company and Staff agreed that rate case expenses would be submitted to the Commission for review and approval and would be surcharged without interest over a period of time specified by the Commission.

### III. COMMISSION ANALYSIS

We have reviewed the filing and the Agreement entered into between State Line and the Commission Staff. We find that the Agreement includes an appropriate cost recovery opportunity for the Company, which primarily reflects the rate it is charged for the water it obtains from the City of Haverhill. We agree with Staff recommendations regarding insurance and meter testing, and find that rate recognition for these two items is also reasonable. We will therefore approve the Agreement.

We noted during the hearing that Haverhill appears to apply increases in consumption charges retroactively and, as far as the Company is aware, without an opportunity to challenge the rates before the municipal water commission. However, the Company testified that it is treated like any other customer, and both



Staff and the Company agreed that water was not available from another source. The Town of Plaistow does not have a municipal water system, and State Line lacks the well area to enable it to install wells. Further, Staff testified that Haverhill's water is of excellent quality, and it maintains its system fully in accord with the requirements that would be imposed by the New Hampshire Department of Environmental Services, were it a New Hampshire system. There does appear to be a jurisdictional gap in the enforcement of EPA regulations as applied by the Massachusetts Department of Environmental Protection on New Hampshire customers. However, Haverhill is applying the same standards to State Line's customers on both sides of the border on a voluntary basis and the formal gap in jurisdiction has not presented a problem.

The issues of metering raised by Staff were resolved prior to the hearing. State Line has tested all of the system's meters (both the master meter and the meters of the 13 customers). Customers' meters were generally found to be correct although the master meter under-registered. However, the volumetric charge has been applied according to the usage registered on each customer meter, rather than the customer usage being employed to pro-rate the total usage registered on the master meter. As a result, customers have properly paid for their usage and the correction of the master meter will not result in an additional increase to customers at this time. We do not find it necessary to remedy in this proceeding any under-payments by State Line to Haverhill that may have occurred in the past due to the slow master meter.

We have reviewed the Company's filing of July 12, 1995. We are satisfied that the fire protection system is a parallel system, charged separately as a fee imposed by the landlord, and is not included in the water company's rate base.

We have also reviewed the summary of rate case expenses. The figure for July is an estimate, for which Staff is obtaining an actual billing. We will allow the rate case expenses to be surcharged without interest over three years. The resulting surcharge is \$21.10 per customer per quarter; the surcharge for the final quarter will reflect Staff's reconciliation between the estimated and actual July 1995 billing.

Finally, we will grant the Company's request that the rate increase take effect for service after July 1, 1995 and not pro-rated on the October bill. We note that the Company has been paying Haverhill the higher consumption charge effective July 1, 1994.

Based upon the foregoing, it is hereby

ORDERED, that the Agreement between State Line and the Staff is hereby approved; and it is

FURTHER ORDERED, that the rate case expenses are approved and may be surcharged without interest over three years; and it is

FURTHER ORDERED, that State Line submit a properly annotated compliance tariff with the Commission on or before August 14, 1995 in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this first day of August,



1995.

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NH.PUC\*08/01/95\*[81035]\*80 NH PUC 501\*Bedford Waste Services Corporation

[Go to End of 81035]

80 NH PUC 501

**Re Bedford Waste Services Corporation**

DR 95-008

Order No. 21,769

New Hampshire Public Utilities Commission

August 1, 1995

ORDER approving settlement as to the establishment of initial rates for a sewage disposal utility serving a residential complex still under development. An annual rate of \$480.10 will be charged each customer, payable in quarterly installments.

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1. RATES, § 501

[N.H.] Sewage disposal utility — Service in residential development — Annual flat charge per customer — Quarterly installment

**Page 501**

payments. p. 503.

2. VALUATION, § 86

[N.H.] Depreciation — Factors affecting propriety of — Contributed property — No depreciation allowance for — Sewage disposal utility. p. 503.

3. EXPENSES, § 89

[N.H.] Rate case expense — First-ever rate-making proceeding for — Sewage disposal utility — Voluntary forgoing of recovery. p. 503.

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APPEARANCES: Charles F. Cleary, Esq. for Bedford Water Services Corp.; and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 17, 1995, Bedford Waste Services Corporation (Bedford or Company) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File a Rate Schedule. On March 24, 1995, Bedford filed proposed permanent rate schedules, supporting testimony and documentation, a Motion to Waive certain filing requirements and a Petition for Determination of Temporary Rates. The Commission suspended the proposed permanent rate schedule, granted in part requests for waivers, and set a prehearing conference for May 4, 1995.

At the prehearing conference, continued until May 8, 1995, Bedford and the Staff of the Commission (Staff) agreed to a procedural schedule that concluded in a hearing on the merits on June 29, 1995. There were no intervenors. At the June 29th hearing on the merits, Bedford and Staff filed a Settlement Agreement (Agreement), which Staff presented to the Commission through the testimony of Mark Naylor.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Bedford*

Bedford received a franchise from the Commission by Order No. 21,453 issued December 6, 1994 in Docket No. DE 94-138. The Company is providing sewer service to the Bedford Three Corners Development in the Town of Bedford, which is being constructed in five Phases with an eventual build-out of 78 houses. Robert S. LaMontagne is both the builder of the Development and the President of Bedford. At the present time, Phases I and II, with a total of 41 homes, are complete and the houses are being sold. At the time of the hearing, there were 12 customers receiving service.

In its original filing, Bedford testified that the total estimated cost to build the sewer plant for the five Phases, including holding tanks, pumps, sewer pipes and leach fields, would be \$425,000. The plant would be financed by a loan from Robert S. LaMontagne in the amount of \$100,000 at an interest rate of 8%, and through an anticipated contribution in aid of construction by Mr. LaMontagne in the amount of \$325,000. Annual operating costs of \$38,300 were based on a budget for interest on the \$100,000 loan of \$8,000, operating expenses of \$10,300 and depreciation expense of \$20,000. The filing requested the establishment of a temporary rate of \$380 per annum and a permanent rate of \$491 per annum for the 78 anticipated customers of the system.

### B. *Staff*

Staff did not prefile testimony in the case but rather worked with Bedford in technical sessions. However, at the prehearing conference Staff stated that it had concerns regarding the inclusion in the filing of plant that had not yet been installed and a depreciation expense on plant constructed with contributions in aid of construction. Because the system is being constructed in Phases, Staff indicated that a

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different approach to rate setting would be required.

### C. *Settlement Agreement*

**[1-3]** Under the Agreement, the stipulated rate base is \$100,693, of which \$100,000 is

non-contributed plant and \$693 is working capital. An additional \$69,918 of installed plant has been contributed. The rate of return is 8.02%, comprised of 8% on the \$100,000 loan and 10.29% on the \$1,000 equity component. Staff and Bedford agreed to an estimated operation and maintenance expense of \$3,373 based on per unit costs of \$50 for maintenance, \$1.28 for postage and \$31 as a management fee. These figures will be used until Bedford develops actual cost data in the operation of its system. The stipulated revenue requirement is \$19,684, resulting in a rate of \$480.10 for each of Phase I and II's 41 customers.

As the remaining Phases are completed, Bedford will continue to charge the same rate, with the increases in revenue being offset by proportional increases in plant costs. Mr. Naylor testified that the Company will balance the contributed and non-contributed plant for Phases III through V such that the amount in rate base will justify the revenue requirement for the 78 customer completed system.

Finally, Bedford and Staff agreed that Bedford would forgo recovery of any rate case expenses to which it may have been entitled in this proceeding.

### III. COMMISSION ANALYSIS

We have reviewed the original filing, the Agreement and Staff's supporting testimony, and find that it is in the public good and results in rates that are just and reasonable. We will therefore approve the Agreement and establish permanent rates in the amount of \$480.10 per customer per annum, effective March 30, 1995, payable quarterly in arrears in the amount of \$120.03.

At the hearing, Bedford renewed its request for temporary rates in the amount of \$380 per annum. The issue of temporary versus permanent rates was explored on the record, and Staff and Bedford agreed that permanent rates effective March 30, 1995 would accomplish the same result as temporary rates plus recoupment, but with less confusion. Bedford's Petition for Determination of Temporary Rates is therefore moot. Customers who have been receiving service during the second quarter will be billed in July 1995 either for the full \$120.03 or for a portion pro-rated according to the date they received service.

We find that avoiding the need for separate proceedings for each of the five Phases of the development is an efficient use of our process, and that the accounting developed by Bedford and Staff to match rate base, revenue requirement and revenue received is a reasonable and creative solution. We will rely on the audits performed by the Finance Department of Bedford's annual reports to assure that the proposal accomplishes its objective and does not result in over-earning. Meanwhile, we note that until the houses in the first Phases are sold and customers are being served and charged, the Company will not earn the stipulated revenue requirement.

The issue of the system's structural soundness was explored in DE 94-138 in which we granted Bedford the franchise for the Development. We accept Bedford's offer of proof that all of the permits and requirements of the New Hampshire Department of Environmental Services, which has immediate jurisdiction over this aspect of the Company's operation, have been met and the system is in full compliance with all State laws.

Finally, we recognize the effort of Bedford and Staff to prosecute this filing expeditiously. The resulting limitation on expenses associated with this case made it possible for Bedford to forego recovery of rate case expenses in this instance, and we appreciate its willingness to do so.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement between Bedford and Staff is accepted and that permanent rates in the amount of \$480.10 per customer per annum, effective March 30, 1995, payable quarterly in arrears in the amount of \$120.03 are hereby approved; and it is

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FURTHER ORDERED, that Bedford submit a properly annotated compliance tariff with the Commission on or before August 14, 1995 in accordance with NH Admin. Rules, Puc 1601.01(b).

By order of the Public Utilities Commission of New Hampshire this first day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bedford Three Corners Waste Corp., DE 94-138, Order No. 21,453, 79 NH PUC 674, Dec. 6, 1994.

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NH.PUC\*08/01/95\*[81036]\*80 NH PUC 504\*LDDS Communications, Inc.

[Go to End of 81036]

80 NH PUC 504

**Re LDDS Communications, Inc.**

DR 95-192

Order No. 21,770

New Hampshire Public Utilities Commission

August 1, 1995

ORDER approving an interexchange telephone carrier's plans to reduce peak usage rates for certain residential toll and 800 service packages, to increase the usage rates for "OnLine" residential calling card services, and to waive monthly recurring charges after a minimum usage level is attained.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Residential toll and 800 packages — Reduction in peak usage charges — "OnLine" residential calling card services — Increase in usage charges — Waiver of monthly recurring charges upon minimum usage levels —

Interexchange carrier. p. 504.

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BY THE COMMISSION:

ORDER

[1] On July 12, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LDDS Communications, Inc. (LDDS) requesting authority to revise rates and language waiving certain monthly recurring charges for effect August 11, 1995.

Proposed revisions to rates include a reduction to the peak usage rate for Home Advantage, peak and off-peak usage rates for Homebound 800 and an increase to the peak and off-peak usage rates for OnLine Residential Calling Card service. Additionally, the volume discounts applicable to OnLine Residential Calling Card service are being eliminated.

Under the proposal monthly recurring charges (MRC) will be waived after a minimum usage level is achieved. For Home Advantage customers, off-peak and international monthly usage will count toward the minimum usage level, and the MRC can be waived for Association groups and Alumni programs. For Homebound 800 customers, the MRC can be waived for Association groups and Alumni programs.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LDDS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LDDS' tariff, NHPUC No. 2 are approved for effect as filed:

- 3rd Revised Page 1
- 2nd Revised Page 1.1
- 1st Revised Page 78
- 1st Revised Page 80
- 1st Revised Page 85;

and it is

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

**Page 504**

with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of August, 1995.

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NH.PUC\*08/01/95\*[81037]\*80 NH PUC 505\*Frontier Communications of New England, Inc.

[Go to End of 81037]

80 NH PUC 505

**Re Frontier Communications of New England, Inc.**

DR 95-188  
Order No. 21,771

New Hampshire Public Utilities Commission

August 1, 1995

ORDER authorizing an interexchange telephone carrier to eliminate discounts for evening/night/weekend calling under the "Simplicity 800" service plan, and to increase rates for various "Simplicity" and "Dimension" 800 services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" calling — "Simplicity" and "Dimension" service plans — Increase in rates — Elimination of evening/night/weekend discounts — Interexchange carrier. p. 505.

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BY THE COMMISSION:

ORDER

[1] On July 7, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Frontier Communications of New England, Inc. (Frontier) requesting authority to revise its time of day discount and increase certain rates for effect August 7, 1995.

The revision to the time of day discount removes the evening night/weekend discount for Simplicity 800 calls.

Proposed increases in rates apply to Simplicity switched outbound and 800, Dimension switched outbound and 800 and Dimension dedicated outbound and 800 calls.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Frontier to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No 1 are approved for effect as filed:

1st Revised Page 2  
1st Revised Page 33.3

1st Revised Page 33.5;

and it is

FURTHER ORDERED, that Frontier file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of August, 1995.

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NH.PUC\*08/01/95\*[81038]\*80 NH PUC 506\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81038]

80 NH PUC 506

**Re New Hampshire Electric Cooperative, Inc.**

Additional applicant: Connecticut Valley Electric Company, Inc.

DE 95-035

Order No. 21,772

New Hampshire Public Utilities Commission

August 1, 1995

ORDER approving a proposed franchise boundary amendment, to allow an electric utility to serve two lots located within the service area of an electric cooperative. Because the majority of the lots in the subdivision were already within the utility's franchised territory, and because the utility had closer distribution facilities than did the cooperative, it is deemed in everyone's best interests to authorize the modification in service area.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Service area agreements — Modification of franchise boundaries — Factors affecting approval — Mutual agreement of affected utilities — Proximity of service facilities — Small amount of property being transferred — Electric service. p. 506.

2. FRANCHISES, § 53

[N.H.] Amendment and modification — Change in franchise boundaries — Factors affecting approval — Execution of service area agreement by affected utilities — Proximity of service facilities — Small amount of property being transferred — Electric service. p. 506.

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BY THE COMMISSION:

## ORDER

[1, 2] On February 13, 1995, Connecticut Valley Electric Company, Inc. (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 374:22, 374:26 and 374:28 for permission to serve a certain portion of Orford, New Hampshire, which is currently within the franchised service territory of the New Hampshire Electric Cooperative, Inc.(NHEC). On July 13, 1995, CVEC filed revised maps of the proposed Orford territory adjustment between CVEC and NHEC.

In its original petition, CVEC attached a letter it received from NHEC proposing a revision in the service territory in response to a request by a developer, Robb Thomson, to have CVEC serve two lots (lots 7 and 10) of a subdivision he owns on Archertown Road in Orford. These two unsold lots are located in NHEC's service territory and the remainder of the ten lot subdivision is served by CVEC.

The petition provides detailed drawings which show that the subdivision is along the Norris Road which is adjacent to and connects with the Archertown Road.

The Commission Staff (Staff) conducted an on-site inspection of the ten lot subdivision and surrounding service territory. The Staff's investigation confirmed that the nearest NHEC pole was along Archertown Road approximately 1500 feet north of lots 7 and 10, and that it would be more reasonable for CVEC to extend its proposed pole line on Norris Road by three poles and serve lots 7 and 10. Staff acknowledges that both CVEC and NHEC are in agreement to have CVEC serve the entire subdivision as being in the best interest of all parties involved. Staff notes that no other parties are affected by this order.

The Commission finds that the requested revision of service territory boundaries would be in the public good and, furthermore, the above evidence justifies granting permission without hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED, that authority be, and hereby is, granted, pursuant to RSA 374:22, RSA 374:26, and RSA 374:28 to Connecticut Valley

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Electric Company, Inc. and New Hampshire Electric Cooperative, Inc. to revise the service boundary in the Town of Orford, New Hampshire, as described in the subject petition, such authority to be effective immediately; and it is

FURTHER ORDERED, that each company file two revised Commission Service Territory Maps, in size and scale compatible with those on file, within sixty days from the effective date of this order, reflecting the above change in service territory boundary and specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC order number.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1995.

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NH.PUC\*08/01/95\*[81039]\*80 NH PUC 507\*Northern Utilities Inc.



[Go to End of 81039]

80 NH PUC 507

**Re Northern Utilities Inc.**

DR 95-150

Order No. 21,774

New Hampshire Public Utilities Commission

August 1, 1995

ORDER authorizing a natural gas local distribution company to construct and operate upgraded gas pipeline facilities under the Cocheco River in Dover.

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1. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Undergrounding and submarine siting — Gas pipeline facilities — Placement under a river — Factors — Use of existing right-of-way — Upgrades and replacements — Obtaining of necessary environmental and local governmental permits. p. 507.

2. GAS, § 5

[N.H.] Construction and equipment — Submarine siting — Pipeline facilities — Placement under a river — Factors — Use of existing right-of-way — Upgrades and replacements — Obtaining of necessary environmental and local governmental permits. p. 507.

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BY THE COMMISSION:

ORDER

[1, 2] Northern Utilities Inc. (Northern), filed with the New Hampshire Public Utilities Commission (Commission), on May 30, 1995, a petition under RSA 371:17 to replace an existing 4 inch steel pipeline with approximately 825 feet of 12 inch coated steel pipeline within the Company's existing right of way under the Cocheco River in Dover, New Hampshire, located approximately 2.8 miles upstream from its confluence with the Piscataqua River.

The river crossing is one component of an 18,000 foot main line replacement project extending through the communities of Dover, Rollinsford, Somersworth and Rochester. The pipeline upgrade is being conducted in order to enhance reliability, meet future capacity needs, and to obviate the need for an existing portable Liquefied Natural Gas (LNG) facility, which currently supplies the City of Rochester during periods of peak demand. The facility is licensed by a waiver agreement with the Commission which is due to expire in 1996.

Northern asserts that applications for permits have been filed with the U.S. Department of the Army Corps of Engineers, the N.H. Department of Environmental Services, Water Supply and

Pollution Control Division and Wetlands Board, and the City of Dover. Northern submitted to the Commission the engineering data and proposed construction standards in a document prepared by N.H. Soil Consultants, Inc. in conjunction with Stone & Webster Engineering Corporation.

The Commission's Engineering Staff has reviewed the filing and conducted a site inspection and determined that it meets the definition of public waters in accordance with RSA

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371:17.

The Commission finds, based on the current record, the proposed pipeline crossing is reasonably necessary for the provision of gas service to the public and will not unreasonably affect public safety or public use of the river.

The Commission finds such evidence justifies waiver of a hearing, as provided for in RSA 371:20.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that a license for the construction, operation and maintenance of a pipeline under the Cocheco River is granted, subject to Northern obtaining all applicable permits from the Army Corps of Engineers, N.H. Department of Environmental Services Water Supply and Pollution Control Division, Wetlands Board, and the City of Dover; and it is

FURTHER ORDERED, that construction of the pipeline shall not commence until the aforementioned permits are filed with this Commission; and it is

FURTHER ORDERED, that the pipeline shall be designed, constructed, operated and maintained in accordance with the minimum safety standards set forth by the U.S. Department of Transportation as given in 49 CFR Part 192 and by the NH Code of Administrative Rules, Chapter Puc 500, Rules for Gas Service; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Northern 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 August 15, 1995 and to be documented by affidavit filed with this office on or before August 25, 1995; and it is

FURTHER ORDERED, that Northern notify the City of Dover by serving a copy of this order on the City by first-class mail, said notification to be verified by affidavit filed on or before August 25, 1995; 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 August 25, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 30, 1995, unless a hearing is requested, or unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this first day of August,

1995.

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NH.PUC\*08/01/95\*[81040]\*80 NH PUC 508\*Wilton Telephone Company

[Go to End of 81040]

80 NH PUC 508

**Re Wilton Telephone Company**

DR 95-202

Order No. 21,775

New Hampshire Public Utilities Commission

August 1, 1995

ORDER authorizing a local exchange telephone carrier to reduce its switched access service rate elements.

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1. RATES, § 588

[N.H.] Telephone rate design — Switched access service — Originating carrier common line charge — Originating local switching access charge — Reductions — As means of mitigating excess earnings — Local exchange carrier. p. 508.

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BY THE COMMISSION:

ORDER

[1] On July 24, 1995, the New Hampshire Public Utilities Commission (Commission) received a request from Wilton Telephone (WTC) requesting authority to 1) reduce their Common Line Access Service Originating Rates and Originating and Terminating Local Switched Access Rates for effect on August 20, 1995; 2) request approval to modify their access rates levels as set forth in Section III.B.1.a of

**Page 508**

the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002; and 3) request a waiver of the requirements outlined in PUC 1601.05 (a), Changes in Tariffs and Special Contracts, pertaining to the 30-Day notice requirement.

This filing results in intra-state revenue reductions of \$127,386 on an annualized basis. These reductions and revisions are being filed as a result of staff inquiry regarding the Company's earnings level. Staff analysis indicated that the source of the Company's overearning was its

intra-state access revenues.

The Commission finds the reduction in access rates levels in the public good. Although this change will not directly reduce customers' basic bills, it fosters competition in the New Hampshire intra-state toll market. We will closely monitor the reaction of the intra-state toll providers. We anticipate and expect that the reduction in intrastate access rates shall cause the intra-state toll providers to react accordingly.

Therefore, the Commission will authorize WTC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following pages of WTC's tariff, NHPUC No. 6 are approved for effect as filed:

*Section 17*

2nd Revised Page 1, and

2nd Revised Page 3;

and it is

FURTHER ORDERED, that the Executive Director serve a copy of this order on the parties to DE 90-002; 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 August 16, 1995; and it is

FURTHER ORDERED, that WTC shall file a compliance tariff with the Commission within two weeks from the issuance date of this order, as required by N.H. Admin. Rules, Puc 1601.05 (k); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 21, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

FURTHER ORDERED, that WTC is granted authority to modify their access rates levels set forth in Section III.B.1.a of the Stipulation and Agreement between the Parties dated March 16, 1993, Modified July 29, 1993 in Docket No. DE 90-002.

FURTHER ORDERED, that WTC request of a waiver of the requirements outlined in PUC 1601.05 (a), Changes in Tariffs and Special Contracts is granted.

By order of the Public Utilities Commission of New Hampshire this first day of August, 1995.

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NH.PUC\*08/04/95\*[81041]\*80 NH PUC 509\*Freedom Electric Company

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## Re Freedom Electric Company

DE 94-163

Order No. 21,776

163 PUR4th 223

New Hampshire Public Utilities Commission

August 4, 1995

ORDER denying rehearing of Order No. 21,683 (80 NH PUC 314, *supra*), in which the commission found that (1) electric utility franchises are not exclusive as a matter of law, and (2) that an energy corporation — Freedom Electric Company — proposing to purchase wholesale power for resale to retail customers in the service territory of Public Service Company of New Hampshire would, if it were to operate as represented in its proposal, qualify as a public utility subject to the jurisdiction of the commission.

Commission stresses that the prior order asserts no more than probable jurisdiction over Freedom Electric, explaining that the order establishes that the commission may allow competitive providers of electric service in New Hampshire if it determines such to be in the public good. It adds that any determination with

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regard to incumbent utilities' stranded investment must necessarily be incorporated into that public good determination.

Commission also notes that should it allow competitive entry in the electric industry, Freedom still would be required to establish that it is qualified to provide service under state law governing the grant of utility franchises.

Commission rejects claims that a recently enacted state law that provides for an electric competition pilot program — SB 168, 1995 N.H. Laws Chapter 272, codified at RSA 374:26-a — precludes Freedom Electric from proceeding with its as-filed petition for authorization to provide electric service. However, Freedom Electric is free to amend its petition to become part of the competition pilot program once the parameters of the program are set and a docket to implement to program is opened.

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### 1. PROCEDURE, § 33

[N.H.] Petitions for rehearing — Grounds for denial — Arguments previously and fully considered — No valid basis for reconsideration. p. 512.

### 2. PUBLIC UTILITIES, § 73

[N.H.] Regulatory status — Electric service — Competing provider — Energy corporation providing retail sales — Probable jurisdiction. p. 512.

### 3. CERTIFICATES, § 102

[N.H.] Electric service — Competing provider — Energy corporation providing retail sales — Public good standard — Factors considered — Ability to provide service — Stranded investment. p. 512.

4. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Retail sales — Competing providers — Nontraditional energy corporation. p. 512.

5. MONOPOLY AND COMPETITION, § 23

[N.H.] Monopolistic rights — Retail electric service — Franchise exclusivity — Power to grant competing franchises — Public good analysis. p. 512.

6. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Franchise exclusivity — Retail electric service — Power to grant competing franchises — Public good analysis. p. 512.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition — Franchise exclusivity — Power to grant competing franchises — Public good analysis — Factors considered — Stranded investment. p. 512.

8. MONOPOLY AND COMPETITION, § 11

[N.H.] Commission jurisdiction — To grant authority to compete — Retail competition — No franchise exclusivity. p. 512.

9. FRANCHISES, § 43

[N.H.] Construction and operation — Provisions as to exclusivity — No bar to commission authority to allow competition — Retail competition — Affirmation. p. 512.

10. ELECTRICITY, § 1

[N.H.] Policy — Service by nontraditional energy corporation — Impact of competition — Stranded investment. p. 512.

11. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Retail competition — Electric competition pilot program — State law. p. 512.

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BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 1, 1994 Freedom Electric Company (Freedom) filed a petition with the New

Hampshire Public Utilities Commission (Commission) requesting permission to provide electric service on a limited basis as a public utility in that portion of the State already served by Public Service Company of New Hampshire (PSNH). On November 8, 1994, subsequent to a prehearing conference, the Commission issued Order No. 21,419 requesting memoranda of law from the parties and the Commission Staff (Staff) on certain threshold legal issues and scheduling oral argument on the issues for January 10, 1995.

The legal issues set forth by the Commission for discussion were as follows:

- 1) Whether Freedom, as an out of state corporation may, in fact, be authorized to operate in New Hampshire, given the restrictions of RSA 374:24.
- 2) The extent of the Commission's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.
- 3) The extent of FERC's jurisdiction over the rates, terms and conditions of service of Freedom's retail sales.
- 4) The rights of PSNH, if any, to claims of exclusivity within its franchise territory.
- 5) The extent to which the Energy Policy Act of 1992 (EPAAct) allows access to PSNH's transmission system for Freedom's operations.

Order No. 21,419 (November 8, 1994).

On June 6, 1995 the Commission issued Order No. 21,683 (the Order)<sup>1(59)</sup>. The Order found, in relevant part, that the franchise or permission granted to PSNH to provide electric service to certain discrete geographical regions of the State of New Hampshire by the Commission pursuant to RSAs 374:22 and 26 is not exclusive as a matter of law. The Commission determined that under New Hampshire law the exclusivity of utility franchises is governed by the public interest standard contained in RSA 374:26. The Order also found, in relevant part, that Freedom would constitute a public utility subject to the Commission's jurisdiction if it conducted business as represented because it would own, operate or manage plant or equipment for the manufacture, furnishing, generation, transmission or sale of electricity ultimately sold to the public. RSA 362:2 (Supp. 1994).

On July 6, 1995 PSNH filed a motion for rehearing of the Order pursuant to RSA 541:3 (Supp. 1994). On that same date, Granite State Electric (Granite State) also filed a motion for rehearing of the Order.

On July 10, 1995 Freedom filed an objection to PSNH's and Granite State's motions for rehearing and Granite State's motion for suspension. On July 11, 1995 the Staff filed objections to PSNH's and Granite State's motions for rehearing.

On July 11, 1995 the Campaign for Ratepayers Rights (CRR), with PSNH's concurrence, filed a motion requesting a 60 day extension to respond to the motions. On July 11, 1995 Staff filed an objection to CRR's motion. On July 13, 1995 the Commission denied CRR's motion to continue for 60 days and in the alternative waived N.H. Admin. R., Puc 203.04 (c) allowing CRR until July 14, 1995 to submit a response to the motions.

On July 14, 1995 EnerDev filed a letter with the Commission in opposition to the motions, adopting the positions set forth in Staff's objections. Staff filed a letter clarifying its position on

"stranded costs" and PSNH filed its Supplemental Memorandum in Support of its Motion for Rehearing. CRR did not submit a response.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *PSNH*

In its motion for rehearing, PSNH alleges that three Commission findings in the Order are unreasonable, unlawful or unconstitutional.

Initially, PSNH alleges that the

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Commission violated the "statutory, regulatory, and Due Process rights of PSNH by determining the issue whether [Freedom] is regulable as a public utility" by failing to provide adequate notice that the issue would be addressed, and by failing to develop an evidentiary record to support Freedom's offer of proof as to its method of providing electric service. Motion at ¶ 1.

PSNH also alleges that the Order is "unlawful and unreasonable in declaring that the franchises granted to PSNH are not exclusive as a matter of law" and, therefore, results in the non-consensual taking of property without just compensation in violation of the State and Federal Constitutions. Motion at ¶ 2a and 2b.

Finally, PSNH alleges that the Order's finding that utility franchises are not *per se* exclusive illegally alters and modifies the Rate Agreement approved in RSA 362-C in violation of the State's implied obligation to act in good faith. Motion at ¶ 3.

### B. *Granite State*

Granite State requested that the Commission reverse its opinion on franchise exclusivity or suspend the decision until the Commission has made a determination that Freedom's petition to provide service in competition with PSNH is in the public interest. Granite State further asserts that a determination that Freedom's petition is in the public interest must be conditioned upon the recovery of "stranded costs". Finally, Granite State requests that the Commission suspend Freedom's petition herein and require Freedom to make a request to serve customers as an element of the electric competition pilot program established pursuant to SB 168, 1995 N.H. Laws Chapter 272 codified at RSA 374:26-a.

### C. *Freedom*

Freedom contests each of PSNH's assertions of unlawfulness, unreasonableness and unconstitutionality.

In response to PSNH's assertion that the Commission illegally determined Freedom would be a jurisdictional utility, Freedom referred to those portions of the Order in which the Commission indicated that the remainder of this docket would be devoted to an analysis of Freedom's proposed operations under the public interest standard.

In response to PSNH's assertion of franchise exclusivity, Freedom relies upon the Commission's analysis in the Order to rebut this argument. Freedom further asserts that the



Order can not take away something PSNH never had, and, therefore, does not result in an uncompensated taking of property.

Lastly, Freedom points out that should its petition be granted, it would not violate the Rate Agreement because it would not alter PSNH's rates.

In response to Granite State's motion, Freedom indicated that it had no objection to the consideration of its petition as part of the pilot program.

#### D. Staff

The Commission Staff also contested each of PSNH's assertions and took issue with Granite State's assertion that recovery of stranded costs should be addressed at this time.

### III. COMMISSION ANALYSIS

[1-11] The issue before us is whether the parties who have asked for rehearing have stated good reason pursuant to RSA 541:3 to set aside, or, as Granite State has requested, suspend the Order. *See, Appeal of Gas Service, Inc.*, 121 NH 797, 801 (1981); *O'Loughlin v. N.H. Personnel Commission*, 117 NH 999, 1004 (1977). RSA 541:3 provides in pertinent part that "any party to the action ... may apply for a rehearing in respect to any matter determined in the action ... or covered or included in the order ... ", and that the Commission may grant the motion if, in its opinion, "good reason for the rehearing is stated in the motion". With regard to PSNH's and Granite State's arguments relative to franchise exclusivity, and PSNH's argument regarding RSA 362-C, neither company has stated good reason to set aside the Order. When we issued the Order, we fully considered the arguments that have again

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been raised in the motions for rehearing, and the Order and its dissent reflected that consideration. Thus, we will not grant rehearing of these issues.

PSNH contends that in determining that Freedom is a public utility, the Commission violated PSNH's statutory and regulatory rights and violated its right to due process under the State and Federal Constitutions by failing to provide adequate notice that the issue would be addressed and by failing to develop an evidentiary record regarding Freedom's operations. This argument is flawed for several reasons.

First, we did not make a "fact based" or "evidentiary" finding that Freedom is a public utility subject to our jurisdiction. As we noted in the Order, we concluded that what "Freedom *proposes to undertake* constitutes a business which would qualify it as a public utility subject to the Commission's jurisdiction." (emphasis added) *In re Freedom Electric Company*, Order No. 21,683 at 11 (June 6, 1995). As PSNH itself acknowledged in its memorandum in support of its motion "[t]he Commission may note *probable* jurisdiction under RSA 362:2 over an entity which *proposes to own or operate plant or equipment.*" (emphasis in original) Memorandum at 5. To the extent that PSNH reads the Order as asserting anything other than "probable jurisdiction" it misinterprets the Order and therefore fails to establish a valid basis for reconsideration. The details of Freedom's proposed operations and whether they are in the public interest will be issues addressed in the next phase of this proceeding. *See* RSA 374:22 and 26.

Second, to the extent that PSNH argues it was unconstitutionally deprived of notice of the issue of whether Freedom's proposed operations render it a public utility under our jurisdiction, we find the argument without merit. The transcript of the oral argument reveals that although considerable attention was paid to the issue of whether Freedom would qualify as a public utility subject to our jurisdiction, PSNH never raised the issue of lack of notice regarding that subject. On the contrary, PSNH's counsel expressly acknowledged that the focus of the oral argument "is on legal issues surrounding FEPCO's claim that it should be granted utility status." Transcript at 51-52. Because PSNH's notice argument was not raised at the oral argument it is improperly included in PSNH's motion and therefore does not constitute a valid basis for rehearing under RSA 541:3. *Appeal of Campaign for Ratepayers Rights*, 133 NH 480, 484 (1990).

Lastly, we could not properly address the five issues noticed to all parties without considering the threshold question of whether an operation such as Freedom's would constitute a public utility subject to our jurisdiction. As noted in our Order, there was considerable focus on this issue at oral argument in which PSNH fully participated. Thus it was clear that resolution of the question of Freedom's status as a jurisdictional public utility was not only relevant but a prerequisite for reaching the five "noticed" questions.

In regard to Granite State's motion for rehearing and request to suspend this proceeding we also find it without merit for the reasons set forth above and below.

Granite State requests that we suspend Freedom's petition in light of the passage of RSA 374:26-a. We do not believe RSA 374:26-a precludes Freedom from proceeding with its petition as filed. Freedom is free to amend its petition to become part of the pilot program envisioned in RSA 374:26-a once we have set the parameters of the program and opened a docket to implement the program.

Consideration of the issue of "stranded costs" or "stranded investment", or as PSNH has phrased the issue, "uncompensated taking", is not ripe at this time. The Order establishes that we may allow competitive providers of electric service in New Hampshire if we determine such to be in the public good. We believe that any determination with regard to incumbent utilities' stranded investment must necessarily be incorporated into that public good determination.

Finally, we should also note that should we allow for competitive entry in the electric industry, Freedom must still establish that it is qualified to provide that service pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company

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of New Hampshire's motion for rehearing is denied; and it is

FURTHER ORDERED, that Granite State Electric Company's motion for rehearing or suspension is denied.

By order of the Public Utilities Commission of New Hampshire this fourth day of August, 1995.

Bruce B. Ellsworth, Concurring.

While I continue to believe utility franchises are exclusive under the current statutory regime, I concur with my colleagues' analysis of the motions for rehearing.

Neither of the motions raises any issues that were not fully considered and deliberated on by the Commission.

I also agree that PSNH's argument that it was not provided notice that the Commission would decide whether Freedom's proposed operations would qualify as utility operations without merit.

In regard to stranded costs or stranded investment I agree that it is an issue which is not ripe for consideration at this time.

Bruce B. Ellsworth  
Commissioner

August 4, 1995

#### FOOTNOTES

<sup>1</sup>All references to the Order shall constitute a reference to the majority decision.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Freedom Electric Co., DE 94-163, Order No. 21,683, 80 NH PUC 314, June 6, 1995.

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NH.PUC\*08/07/95\*[81042]\*80 NH PUC 514\*Guidelines for Economic Development and Business Retention Filings

[Go to End of 81042]

80 NH PUC 514

### **Re Guidelines for Economic Development and Business Retention Filings**

DR 95-216  
Order No. 21,777

New Hampshire Public Utilities Commission

August 7, 1995

ORDER soliciting comments on a proposed set of guidelines for governing tariffed rate filings designed to promote economic development and load retention. Acknowledging the state legislature's preference for tariffs versus special rate contracts for attracting and retaining business, the commission offers standards for economic development rates, expecting that such rates will prevent businesses and industrial customers from relocating out-of-state, thereby

preserving local jobs. Comments are due by September 6, 1995.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate proposals — Business retention rate proposals — Preference for uniform tariffs over individual special rate contracts — To assure fair competition and nondiscrimination. p. 515.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Eligibility of customers for — Industrial customers engaged in manufacturing — Establishment of new or expanded load — Utility service costs as significant cost of production. p. 515.

3. RATES, § 166

[N.H.] Factors affecting reasonableness —

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Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Goals and standards — Prevention of large customers relocating out-of-state — Creation or saving of local jobs — Applicability to incremental load for already existing customers — Coordination with conservation and energy-efficiency initiatives — No specific limit on term of years — Rates providing contribution above cost. p. 515.

4. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — In lieu of multiple special rate contracts — Proposed tariff guidelines — As to types of discounts — As to customer eligibility — As to load requirements — As to impact on employment — As to pricing and recovery of costs of service — As to competition and nondiscrimination — As to energy-efficiency objectives — Solicitation of comments. p. 515.

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BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) is required by 1995 N.H. Laws, Chapter 272, section 11, to establish by November 16, 1995, procedures for the review and approval of generally available rate schedules for electric service that foster economic development and support business retention in the State. As a result of the Legislation, and in order to efficiently and expeditiously meet the November 16, 1995 deadline, it is the intention of the Commission to provide in this order our proposed procedures for utility filed economic development and business retention rates and to seek public comment on those procedures and

on related rate issues contained in RSA 378:11-a. Therefore, we will invite written comment on this order be filed by September 6, 1995.

After the Commission receives and reviews the publicly filed comments, we will issue a final order adopting procedures for economic development and business retention filings. Individual utility filings will then be considered in light of the final procedures.

#### PROPOSED PROCEDURES

As noted above, pursuant to RSA 378:11-a, a utility may file an economic development or business retention rate. A tariff filing under this statute shall therefore comply with and be subject to the Commission's rules and filing requirements as set forth in Puc Parts 200 and 1600, except as may be modified herein.

The Legislature has found that a tariff filing for economic development and business retention rates is preferable to the current practice of negotiating numerous special contracts. It has found, additionally, that high electric rates are creating economic dislocations and hardships, including the loss of jobs. In order to enhance economic growth, the Commission proposes expedited treatment of applicable tariff filings. Therefore, within 10 days of an economic development or business retention tariff filing, the Commission will review the filing for completeness and either accept or reject it for consideration.

If a filing is accepted, the Commission will issue an Order of Notice and set a hearing for public comment to be held within 20 days of the Order of Notice. Based on the utility's filing, staff's review of the filing and public comment received, the Commission will issue an order either approving, or approving subject to condition, or denying the proposed tariff no later than 20 days after the hearing.

If a filing is rejected, the Commission will identify in a letter to the utility, issued by the Executive Director, the deficiencies in the filing. The utility, based on the Commission's letter, may revise and refile its petition at any time and initiate a new proceeding.

#### SUBSTANTIVE CONSIDERATIONS

##### [1-4] A utility's economic development

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and business retention tariff filing shall include information which specifically addresses the seven (7) areas that the Commission is required by RSA 378:11-a to consider. The seven areas are: eligibility criteria; the effect on the utility's fixed and variable costs; the amount of new demand and energy involved; the effect on employment within the state; material adverse competitive impact on existing in-state firms; end-user participation in conservation programs; and other economic development enhancement programs established by the state. With respect to these areas of consideration, the Commission establishes the following guidelines.

##### 1. *Eligibility Criteria*

RSA 378:11-a clearly mandates that economic development and business retention rates are for industrial customers. There may be some disagreement over which types of business activities fall within the term industrial, but it is our opinion that only those establishments

whose primary activity is classified by the *Standard Industrial Classification Manual, 1987* as Manufacturing, *SIC Codes 20 - 39*, will be eligible for the tariffed rate discounts.

Because the economic development rates are intended to provide an incentive for industrial companies to locate or expand in the state, and as a way to minimize "free riders",<sup>1(60)</sup> customers who have made commitments to locate or expand in New Hampshire before seeking service under the economic development tariff will not be eligible for the economic development rate. Customers should apply for service under the utility's economic development tariff at least 60 days prior to the date upon which service is to begin.

Utilities offering a business retention rate should ascertain, and the recipient companies should be willing to verify, that a discounted electric rate is an essential component of the decision to remain in New Hampshire.

### *2. The Effect on the Utility's Fixed and Variable Costs*

Service provided under economic development and business retention rates is expected to provide some benefit to all other customers. Assuming the new, expanded or retained load would not materialize absent the discounted rate, other customers benefit when the incremental costs of serving the new or expanded load are below the discounted rates charged for the new or expanded usage. The utility's fixed costs are then spread over more kilowatt-hours which reduces the average rate to all customers.

All utility filings will be expected to demonstrate that the proposed rates are above the utility's incremental costs of capacity and energy for each year the economic development or business retention rates are effective.

We will not specify how long the term of the economic development or business retention rate should be, as it will be dependent upon a number of utility specific factors, including the utility's current capacity situation and purchased power agreements. We will expect support for each utility's filing on how the discounted rates will benefit the different customer classes both in the short-term as well as in the long-term. Effects on fuel or purchased power adjustment clauses should be addressed, including for PSNH the effects on combined system savings. We will also expect an analysis of the effects on base rates. The proposed filings should also indicate how any additional costs for distribution or transmission, if required by the new or expanded industrial load, will be recovered.

### *3. The Amount of New Demand and Energy*

As part of Order No. 20,882, the Commission's Checklist for Economic Development and Business Retention Discounted Rates established a guideline that new or expanded load should be at least 400 kW of billed demand or 200,000 kWh of billed energy per month unless it can be demonstrated that lesser amounts are warranted. The intent was to balance economic development and business retention with the administrative costs associated with numerous small development requests. Additionally, for many small

customers, we were concerned that electricity costs were not a significant cost of their business. Our guidelines were formulated with that balance in mind. Maintaining that balance is

important, but we believe it was the legislative intent that these rates be available regardless of the size of the load or energy usage of the customer. We are also hesitant to set a level so high that small industrial firms that bring diversity and growth potential to the state's economy could be precluded from locating or expanding in New Hampshire.

Nonetheless, it is our opinion that economic development rates for existing customers that are committed to expansion should be based on the incremental amount of usage associated with the expanded load as the economic development effects are related directly to the expanded load. This policy has been approved by the Commission in the past for certain customers expanding in New Hampshire and we believe it is consistent with the legislation and our past practices. Therefore, the economic development rate will apply only to the expanded load of existing manufacturing businesses.

#### *4. The Effect on Employment within the State*

The potential benefits of new, expanded or retained industrial load could be measured in a number of different ways, such as by the additional income or output generated by the industrial customer or by changes in the tax base. However, we will direct the utilities that propose discounted rate tariffs to report annually the number of jobs directly created or retained as a result of their economic development or business retention tariffed schedules. The utility may supplement this reporting requirement with information regarding other direct or indirect effects on employment.

#### *5. Material Adverse Competitive Impact*

The legislation is clear that if a utility offers a business retention rate to a customer, the direct competitor of that customer is also eligible for the retention rate if the competitor qualifies and the Commission finds it is in the public good. We continue to believe that approving a discount to one business but not to others in the same service area who compete directly with that business is not in the public good. While the same rationale could be extended to competitors served by other utilities, we are not inclined at this time to make that extension.

Our primary interest, ensuring that direct competitors of a customer receiving a business retention rate are not harmed financially as a direct result of the discounted rate, is well served by making those potentially affected customers aware that their competition is receiving a business retention rate. We believe it was also the Legislature's intent to afford the same treatment and protection to competitors of firms receiving economic development rates. We will direct any utility offering an economic development rate or business retention rate to make available to the public a list of customers it serves under economic development or business retention rates, the four-digit SIC code of the customer and when service to each industrial customer commenced.

Related to the potential competitive effects of these rates, was our insistence in the Checklist that special contracts for economic development and business retention were "not intended to be a tool to enhance the sponsoring utility's competitive position with respect to another utility's competitive position." We continue to believe that economic development and business retention rates are not meant to be surrogates for competition. Tariffs that "poach" other New Hampshire utility customers through the use of economic development or business retention tariffs will not be approved.



### 6. *End-User Participation in Conservation Programs*

The Commission supports and encourages cost effective conservation and load management programs. We expect that any new or expanded load would conform with the New Hampshire Commercial Energy Code, RSA 155-D. Customers taking service under a tariff for business retention shall pursue and

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undertake all cost effective measures available to them to remain in New Hampshire. The long-term competitive position of New Hampshire's industrial base is enhanced by cost effective energy efficiency; therefore, economic development and business retention customers should be eligible for utility conservation programs.

### 7. *Other State Economic Development Programs*

Economic development or business retention rates could be the significant cost factor for some firms, but for many other firms these rates will be just one of a number of needed options to enable them to locate, expand or remain in New Hampshire. We encourage customers served under discounted tariff rates to avail themselves of whatever applicable programs are offered by other agencies and for the utilities to assist them in that pursuit.

### 8. *Commission Position on Structure of Discounted Rates*

The Commission also believes that potential industrial customers considering locating in New Hampshire need readily available tariff information upon which to base their location decision. Those customers are not well-served by economic development tariffs that contain a broad range of discounted rate choices dependent upon customer specific information. We expect utility filings for economic development to contain rate information so customers will understand clearly the type of economic development rate available as well as the level of discount should they choose to take service from a specific New Hampshire electric utility. We believe the same tariff information is needed for business retention customers.

Based upon the foregoing, it is hereby

ORDERED, that written comment on this order is due by the close of business, September 6, 1995.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 1995.

## FOOTNOTES

<sup>1</sup> A "free rider" is a customer who benefits from the economic development tariff, but for whom the existence of the discounted rate did not affect the customer's business decision to locate or expand.

## 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\*08/07/95\*[81043]\*80 NH PUC 518\*MCI Telecommunications Corporation

[Go to End of 81043]

80 NH PUC 518

**Re MCI Telecommunications Corporation**

DR 95-198

Order No. 21,778

New Hampshire Public Utilities Commission

August 7, 1995

ORDER authorizing an interexchange telephone carrier to introduce "500 personal number" and "University Dial 1" services and to eliminate its discounted "Friends of the Firm" calling circle plan.

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1. RATES, § 589

[N.H.] Telephone rate design — Toll service — Introduction of personal 500 calling program — Implementation of special calling plans for students and faculties at educational institutions — Elimination of commercial calling circle discounts — Interexchange carrier. p. 519.

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BY THE COMMISSION:

ORDER

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[1] On July 20, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation (MCI) requesting authority to introduce 500 Personal Number Service and University Dial 1 Service and eliminate the Friends of the Firm Program for effect August 18, 1995.

500 Personal Number Service allows subscribers to establish a sequence of up to three phone numbers at one or more locations where calls can be received from calling parties who dial the subscriber's 1-500-NXX-XXXX personal number.

University Dial 1 Service is available to students, faculty and administrators of educational institutions. The service provides multiple personal identification numbers (PINs) to subscribers

at the same originating telephone number. PIN numbers are used to invoice customers and each PIN number has a usage restriction of \$150. If the outstanding charges to a PIN exceed \$150, the PIN will be disabled until the customer remits payment to MCI.

MCI is proposing to eliminate the Friends of the Firm Program from Option R (MCI Preferred) which will eliminate the discount program associated with calling circles for MCI Preferred customers.

The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

39th Revised Page 1  
26th Revised Page 3.1  
10th Revised Page 4  
6th Revised Page 59  
1st Revised Page 59.1  
1st revised Page 59.2  
Original Page 59.2.1  
1st Revised Page 59.3  
1st Revised Page 59.4;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 1995.

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NH.PUC\*08/07/95\*[81044]\*80 NH PUC 519\*Generic Investigation into Net Energy Billing/Reverse Metering

[Go to End of 81044]

80 NH PUC 519

## **Re Generic Investigation into Net Energy Billing/Reverse Metering**

DR 95-059

Order No. 21,779

New Hampshire Public Utilities Commission

August 7, 1995

ORDER affirming policy established in Order No. 21,163 (79 NH PUC 163) as to an electric utility's use of net energy billing.

Commission finds that *voluntary* net energy billing (reverse metering) is permissible for individual, residential, renewable projects of less than 25 kilowatts. Given associated pending legislation on the matter, the commission declines to address its authority to *require* net energy billing.

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### 1. COGENERATION, § 16

[N.H.] Operating practices — Net energy billing and reverse metering — Available to self-generating residential customers — Single meter running backwards — Voluntary as opposed to mandatory nature. p. 521.

### 2. PAYMENT, § 17

[N.H.] Metering and billing — Reverse metering and net energy billing — For self-generating residential customers — Single

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meter running backwards — Voluntary as opposed to mandatory nature. p. 521.

### 3. COMMISSIONS, § 30

[N.H.] Jurisdiction over legal matters — As to validity of statutes — As to lawfulness of pending state legislation — Inappropriateness of issuing advisory opinions. p. 521.

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APPEARANCES: Intelligen Energy Systems by Paul W. Gromer, Esq.; Representative Clifton C. Below; Conservation Law Foundation by Jeanne M. Sole, Esq.; Skyline Engineering by Dr. Robert H. Wills; Public Service Company of New Hampshire by Gerald M. Eaton, Esq.; New Hampshire Electric Cooperative, Inc. by Mark W. Dean, Esq. of Broderick and Dean; Connecticut Valley Electric Company, Inc. by Kenneth C. Picton, Esq.; Unitil Service Corp. by Frederick J. Stewart for Concord Electric Company and Exeter and Hampton Electric Company; NH Wind Turbine Owners by Tim Meeh; Granite State Hydropower Association by Richard A. Norman; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

### I. PROCEDURAL HISTORY

On March 16, 1995 the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice requesting comments on whether the Commission and the New Hampshire Legislature are preempted by the Public Utility Regulatory Policies Act of 1978 (PURPA) and the rules promulgated thereunder by the Federal Energy Regulatory Commission (FERC)

(hereinafter both the Act and the rules shall be referred to collectively as PURPA) from approving or requiring reverse metering and net energy billing by electric utilities for certain qualifying facilities (QFs). Reverse metering involves the provision of energy to and receipt of energy from a QF via a single meter which records energy flows to the QF from the utility and from the QF to the utility on a net monthly basis. Net energy billing is the payment scheme which results from reverse metering. Under net energy billing and reverse metering, when a QF consumes more kilowatt hours (kWhs) than it generates within a month, the QF pays for its net consumption at the utility's retail rates. If the QF generates more kWhs than it consumes, it sells the net generation kWhs at the QF avoided cost rate. The instant docket was the result of the following:

1. The Commission's Order No. 21,163 issued on March 16, 1994 approving a proposal by Public Service Company of New Hampshire's (PSNH), which provides for reverse metering to residential, renewable energy projects that are rated at 25 kilowatts or less;
2. House Bill 625 (HB 625), pending legislation that provides for reverse metering to all QFs rated at 30 kilowatts or less; and
3. A recent ruling by FERC that a Connecticut statute requiring Connecticut utilities to purchase the entire output of municipal resource recovery projects above avoided cost was unlawful. *Connecticut Light and Power Company*, 70 FERC ¶61,012 (January 11, 1995).

## II. POSITIONS OF THE COMMENTERS

All of the commenters agreed that neither PSNH nor any other utility is prohibited from voluntarily allowing reverse metering by PURPA, even if the resulting sale of energy to the utility is above the utility's avoided cost.

The commenters disagreed, however, about whether utilities could be required by the General Court or the Commission to make such metering and billing services available to certain QF projects.

*A. Intelligen Energy Systems, Representative Clifton C. Below, Conservation Law Foundation, Skyline Engineering.*

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The above referenced commenters take the position that utilities can be required to provide reverse metering to small scale residential QFs.

Intelligen Energy Services (Intelligen) and the Conservation Law Foundation (CLF) argue initially that the Commission should not address whether HB 625 is preempted by PURPA because the bill has not been enacted into law, and is, therefore not ripe for adjudication.

Substantively, Intelligen, CLF, Representative Below and Skyline Engineering (Skyline) all contend that the FERC has never characterized reverse metering as a sale to, or purchase by, a utility under PURPA. They contend that the energy transferred between a small scale residential project should be viewed by the states as a form of energy banking or storage for use at some

later time by the same residential customer.

They also contend that even if the practice of reverse metering is construed as a sale to the utility, there are a number of factors that the states are free to consider under PURPA in computing a utility's avoided costs from residential sales that would increase the value of such sales to utilities above their semi-annual avoided cost calculation. These factors include reduced metering charges and general administrative efficiencies, increased capacity factors, reduced line losses and reduced transmission and distribution investments, "distributed generation", and environmental externalities.

Representative Below also contends that the sales of energy at issue herein are not subject to the jurisdiction of FERC as the sales are intrastate, rather than interstate commerce.

*B. Public Service Company of New Hampshire, New Hampshire Electric Cooperative, Connecticut Valley Electric Company, Concord Electric Company and Exeter and Hampton Electric Company, NH Wind Turbine Owners, Granite State Hydropower Association.*

The above referenced commenters all contend that PURPA preempts the states from requiring reverse metering because, over time, it results in sales of energy to a utility from a QF above the utility's avoided costs.

The commenters all refer either directly or in principle to 18 CFR §292.304 which provides in pertinent part that required power purchases by utilities shall be at their avoided cost, and under no circumstances shall purchases be required at a rate greater than the utility's avoided cost.

### III. COMMISSION ANALYSIS

There are three issues which we must resolve in this proceeding. The first issue is the lawfulness of current utility practices, accepted by the Commission, of voluntary reverse metering for residential QFs based on renewable energy. The second issue concerns whether it is appropriate or necessary for the Commission to issue a declaratory ruling on legislation that is pending before our Legislature. The third issue is the lawfulness of a proposal to require utilities to reverse meter all residential QFs, including cogenerators, with a capacity of 30 kilowatts or less.

[1, 2] In Order No. 21,163 we endorsed cost-effective renewable energy and approved net energy billing service to individual, residential renewable projects less than 25 kilowatts if mutually agreed to by the utility and the affected QF. In arriving at this conclusion we found that PSNH's proposal could provide valuable information on residential, renewable energy projects with little or no adverse effect on PSNH's rates at the proposed limits on the program size. We do not see any reason, based on *Connecticut Light and Power*, 1995 WL 9931, or on any other authority cited by any of the commenters in this docket, to change the policy we approved in Order No. 21,163 of allowing reverse metering so long as the practice is entered into by the utility voluntarily, subject to our review.

[3] In so far as the request for a declaratory ruling is concerned, we do not believe we should adjudicate an issue that is the subject of proposed legislation. Part II, Article 74 of the New Hampshire Constitution specifically provides that the General Court may request the opinion of the New Hampshire Supreme Court on the lawfulness of any pending legislation. Given this

constitutional provision we do not

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believe it is appropriate for the Commission to issue what is in essence an advisory opinion. We also note that interested commenters or the General Court may seek further guidance from FERC.

We find that the current practice of voluntary reverse metering is lawful. We further find that it would not be appropriate to answer a request for a declaratory ruling on pending litigation. In light of our response to the second question, we will not address the third question.

Based upon the foregoing, it is hereby

ORDERED, that our current policies on reverse metering for renewable, residential qualifying facilities shall remain unchanged; and it is

FURTHER ORDERED, that we decline to issue an opinion on the lawfulness of House Bill 625.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-276, Order No. 21,163, 79 NH PUC 163, Mar. 16, 1994.

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NH.PUC\*08/07/95\*[81045]\*80 NH PUC 522\*Granite State Telephone

[Go to End of 81045]

80 NH PUC 522

### Re Granite State Telephone

DR 95-196

Order No. 21,780

New Hampshire Public Utilities Commission

August 7, 1995

ORDER authorizing a local exchange telephone carrier to introduce call return service as a new feature of its Custom Local Area Signalling Service (CLASS) programs.

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1. RATES, § 553

[N.H.] Telephone rate design — Custom Local Area Signalling Service (CLASS) programs — New "call return" feature — Flat monthly rate or per-activation charge — Factors affecting approval — Blocking options — Local exchange carrier. p. 522.

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BY THE COMMISSION:

### ORDER

[1] On July 13, 1995, 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 to introduce Call Return, a Custom Local Area Signalling Service, for effect August 14, 1995.

GST proposes to offer Call Return for a monthly rate of \$2.25 or on a per activation basis at a charge of \$0.50 per successful activation. The Call Return feature allows a customer to return a call to the last incoming number. If the telephone number of the most recent incoming call is idle, the call completes immediately. If the telephone number is busy, the line of the most recent incoming call is monitored for a maximum of 30 minutes. When the line becomes idle, a distinctive ringing signal alerts the customer that the call can now be completed.

GST assured the Staff that the proposed revisions are consistent with the guidelines for those services established in DR 91-105 for New England Telephone, and that the Call Return feature will not return calls from lines equipped with per line blocking or lines which have activated per call blocking. Following discussions with Staff, GST revised one of its proposed tariff pages to introduce a monthly cap of \$4.50 when customers use Repeat Dialling or Call Return on a per activation basis.

Staff has reviewed the petition and, noting the Company's assertion that the safety and privacy concerns raised in DR 91-105 have been

**Page 522**

adequately addressed, Staff recommended that the Commission approve the petition.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good. Because privacy and safety concerns associated with the Call Return feature were the subject of significant debate during DR 91-105, and consistent with our treatment of other companies that requested approval of this service, we believe the public should be afforded an opportunity to respond in support of, or in opposition to, Call Return.

Based on the foregoing, it is hereby

ORDERED *NI SI*, that the following pages of Granite State Telephone's Tariff PUC No. 6 are approved:

Section 3

First Revised Sheet 9N.1

First Revised Sheet 9N.2

Original Sheet 9N.3

First Revised Sheet 9O.1

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 August 21, 1995 and to be documented by affidavit filed with this office on or before September 1, 1995; and it is

FURTHER ORDERED, that GST 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 August 21, 1995 and shall be documented by affidavit with the Commission on or before September 1, 1995; 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 1, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before August 21, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04 (b).

FURTHER ORDERED, that this Order *Nisi* shall be effective as of September 6, 1995, unless the Commission, on its own motion, orders otherwise.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 1995.

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EXCEPT FOR DISCOVERY FILINGS, AN ORIGINAL & 8 COPIES TO:

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EXEC DIR & SEC  
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03301 5185

PURSUANT TO PUC RULE 204.03(C), DISCOVERY FILINGS SHOULD BE SENT TO THE FOLLOWING STAFF

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NH.PUC\*08/08/95\*[81046]\*80 NH PUC 525\*Interlakes Water and Sewer Company

[Go to End of 81046]

80 NH PUC 525

## Re Interlakes Water and Sewer Company

DE 95-134  
Order No. 21,781

New Hampshire Public Utilities Commission

August 8, 1995

ORDER noting interventions and adopting a procedural schedule for addressing a water system's petition for franchise authority to serve a mobile home park.

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### 1. FRANCHISES, § 1

[N.H.] Application for — By water system — Adoption of procedural schedule — Consideration of interim authority pending decision on merits — Temporary versus conditional franchises — Necessity of investigating the system's technical, financial, and managerial abilities. p. 525.

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edix 81056

BY THE COMMISSION:

### ORDER

[1] On May 11, 1995, Interlakes Water and Sewer Company (Interlakes) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for approval of a franchise and rates for the Interlakes Mobile Home Park (Park). Supporting testimony and exhibits were filed by Interlakes on June 12, 1995 and July 5, 1995.

The filing raises, *inter alia*, issues relating to the financial, managerial and technical competence of Interlakes to operate as a public utility, and the establishment of interim, temporary and permanent rates for the Park.

The Commission held a prehearing conference on June 22, 1995, at which time it was determined that Interlakes had failed to notify its customers in accordance with the Commission Order of Notice dated June 2, 1995. By Order of Notice dated June 27, 1995, the Commission, through its Executive Director and Secretary, rescinded its June 2, 1995 Order of Notice and ordered: Interlakes to file with the Commission and known parties a customer mailing list and letters from the Division of Water Supply and Pollution Control and the Division of Water Resources pursuant to RSA 374:22,0 III; another prehearing conference and technical session to be held July 27, 1995; publication of the order; and Interlakes to serve a summary of its franchise request and proposed rates and a copy of the order on current and known prospective customers. The Order of Notice also established deadlines for intervention and a proposed procedural schedule.

By letter dated July 17, 1995, the Commission's Executive Director and Secretary notified Interlakes that the Commission had reviewed and found inadequate the notice provided to

Interlakes' customers for the prehearing conference and technical session scheduled for July 27, 1995. The letter further directed Interlakes to take specific curative action and stated that Interlakes will not be allowed to charge rates for its service until the Commission has found that granting the franchise is in the public good and that the financial consequences of delays caused by procedural deficiencies will be borne by the company.

A second prehearing conference was held on July 27, 1995. Dr. Crosby Peck appeared on behalf of Interlakes. Commission Staff was represented by Attorney Robert Frank. Also present were Mr. Chris Vekos (an Interlakes customer) and Mr. Donald Greenwood of the Department of Environmental Services.

Ms. Doris Levesque of the Mobile/Manufactured Home Owners and Tenants Association of New Hampshire sought intervention without objection. Cloverleaf Residents Association (Residents Association) sought intervention by letter filed June 12, 1995 but did not appear at the prehearing conference. Although Mr. Vekos requested intervention at the June 22, 1995 prehearing conference he indicated at the July 27, 1995 prehearing

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conference that he merely wished to observe the proceedings.

Dr. Peck objected to the Residents Association's request for intervention because no one appeared on the Association's behalf at either prehearing conference. Ms. Levesque indicated that she is assisting the Residents Association in this matter and is authorized to act on its behalf until such time as it appoints a representative. She also stated that the Residents Association was meeting the evening of July 27, 1995 for the purpose of appointing a representative to participate in this docket.

At the prehearing conference, the Company and staff agreed to the following procedural schedule:

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

Responses to oral data requests propounded at the Technical Session	August 10, 1995
Data Requests by Staff and Intervenors	August 24, 1995
Company Data Responses	September 7, 1995
Technical Session	September 14, 1995
Staff and Intervenors Testimony	September 28, 1995
Technical Session	October 5, 1995
Filing of Settlement Agreement, if any	October 12, 1995
Hearing on Franchise and Rates	October 26, 1995

At the prehearing conference, in accordance with the Order of Notice, the Company stated that its preliminary position is that it intends to charge the same water and sewer rates as those charged by the Town of Meredith. The Company is not presently charging its customers but is metering the customers' usage for the purpose of determining whether the conservation objectives of the metering are being met. The Company also stated its objection to a

questionnaire submitted by staff to the Company's customers.

Staff had no preliminary position on rates but expressed concerns about quality of service issues. The issue of interim rates and conditional franchise were also discussed at the prehearing conference. Staff informed the Commission by letter dated July 28, 1995 that it believed it would be inappropriate to grant a conditional franchise prior to its investigation into the Company's operation.

We will grant the requests for full intervention by the Residents Association and Ms. Levesque on behalf of Mobile/Manufactured Home Owners and Tenants Association of New Hampshire. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

We believe that since the company currently has no franchise it has no authority to serve its customers. *See* RSA 374:26. To eliminate problems associated with this situation, we will have a hearing on September 1, 1995 at 10:00 a.m. on the question of whether the company qualifies for an interim franchise pending our decision on the merits of the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Cloverleaf Residents Association and the Mobile/Manufactured Home Owners and Tenants Association of New Hampshire are granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1995.

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NH.PUC\*08/14/95\*[81047]\*80 NH PUC 526\*Public Service Company of New Hampshire

[Go to End of 81047]

80 NH PUC 526

## Re Public Service Company of New Hampshire

DR 95-149

Order No. 21,782

New Hampshire Public Utilities Commission

August 14, 1995

ORDER approving, on an interim basis, an electric utility's special rate contract with Nashua Foundries, Inc., an economic development and business retention arrangement under which demand charges will be discounted by 70% for incremental consumption above a base

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demand level.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) — Incentives for retaining industrial demand — Special rate contracts — Discounted demand charges for additional incremental demand — Electric utility — Commission preference for tariffs versus special contracts for promoting ED programs. p. 528.

2. RATES, § 333

[N.H.] Electric rate design — Demand charges — Discount of — Via special rate contracts — Relative to additional incremental use beyond base demand levels — Pursuant to economic development and business retention incentives — Factors affecting approval — Continued contribution to margin — Deferral of customer's self-generation abilities — Customer's participation in energy-efficiency programs — Protection of local jobs. p. 528.

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BY THE COMMISSION:

ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on May 30, 1995, a ten year special contract, Special Contract No. NHPUC-115, between PSNH and Nashua Foundries, Inc. (NFI), a New Hampshire corporation. NFI manufactures gray iron castings, such as manhole covers, at its facility located in Nashua, New Hampshire.

This filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts (Checklist). NHPUC-115 would be effective upon Commission approval for a period of ten years. PSNH's filing included, in both redacted and unredacted form, the special contract, testimony and a technical statement supporting a discounted rate for NFI.

PSNH also requested protective treatment for certain information considered confidential in the special contract and technical statement. On July 11, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,737).

PSNH explains that NHPUC-115 is designed to retain electric service to NFI and that in the absence of the contract NFI would not be able to remain a competitive New Hampshire manufacturer. PSNH further asserts that without the discount NFI will not be able to invest in facility upgrades necessary for entry into new markets.

Under the special contract PSNH will render service pursuant to its Large General Service Rate LG (Rate LG) but will apply a 70% discount to demand charges which exceed a defined "Firm Contract Demand". The Firm Contract Demand level, moreover, may be increased in the event NFI does not interrupt service as requested. Based on historical usage this discount feature would save NFI approximately 20% on its annual bill. PSNH notes as well that NFI participated in the Pilot Interruptible Program and contends that the interruptible feature enables PSNH to acquire a valued source of interruptible load for its future capacity needs and New England's

current capacity needs.

With respect to the guidelines set forth in the Checklist, PSNH represents that: electric costs comprise a significant portion of NFI's overall operating expenses; NFI has installed various measures to promote energy efficiency and has commenced a substantial cost reduction effort; NFI met with the Department of Resources and Economic Development in the summer of 1995 and agrees to participate in any programs that are available to and practical for it; there are no direct competitors of NFI located within New Hampshire; the special contract rates exceed the marginal cost of serving the load in every year of the term of the agreement; the rate offering is consistent with the Integrated Least Cost Resource Plan; NFI employs approximately forty in Nashua whose jobs would be protected and that with the

**Page 527**

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opportunities for expansion more jobs may be created; NFI is not required to obtain any permits prior to the effectiveness of the rate; and, NFI satisfies the threshold of at least 400 KW of retained load. Finally, PSNH states that NHPUC-115 will benefit PSNH and PSNH's other customers by retaining contribution toward fixed costs, a portion of which goes to reduce the FPPAC rate.

As for the special contract terms and conditions, there is, however, at least one substantial issue. Article 9 - PSNH as Sole Supplier, requires NFI to take electricity only from PSNH and in addition states:

Nashua Foundries shall not operate a generating facility nor shall it allow a third party to own or operate a generating facility on property it owns, acquires or controls within New Hampshire, for the purpose of selling the power produced by such facility to retail customers of Northeast Utilities' subsidiaries or retail customers of Northeast Utilities' wholesale customers during the term of this Agreement.

Article 9 achieves three objectives for PSNH. First, it preserves NFI as a customer and ensures that PSNH will provide all NFI's electric requirements. Second, the article essentially imposes a non-compete restriction on NFI. Last, the article removes NFI's property in the State from contention as sites for generation affecting retail competition and poses a potential restriction on NFI's right of alienation in that regard.

**[1, 2]** The proliferation of special contracts and the evolution of broader restrictive language on customer actions in those contracts, as set forth above for example, along with the longer term of agreements, has important policy implications both on an individual and cumulative basis. While we are normally disposed to honor obligations freely undertaken by customers, we are simultaneously required to review obligations under a special contract within the larger context of the public interest, which context has arguably been expanded as a result of the Legislature's passage of Senate Bill 168 endorsing the exploration of retail competition in New Hampshire and the explicit examination of Economic Development and Business Retention tariffs.

Given the context of a changing competitive landscape in the electric industry, we must consider whether PSNH's and NFI's agreements in Article 9 may have effects that transcend their mutual arrangement and could undermine both the advent and level of competition in the State. Of obvious and special concern is the clause preventing third parties from developing, on NFI's

property, facilities that would engage in retail competition with Northeast Utilities' subsidiaries. At the same time, the clauses locking up NFI as a full requirements customer and preventing NFI from providing retail services to others, while conceptually unobjectionable in isolation, become problematic when viewed as a piece of a pattern of conduct pursued by PSNH to forestall competition.

Clearly, we are confronted with a set of policy objectives, namely, freedom of contract and the evolution of retail competition, that may be in conflict in this case. Moreover, we have been provided guidance by the Legislature in the form of Senate Bill 168 which suggests that, although special contracts remain a viable alternative, tariffs are the favored mechanism for Economic Development and Business Retention rates. Accordingly, we believe the proper avenue here is to grant interim approval of the parties' agreement until such time as Business Retention and Economic Development tariffs for PSNH may become effective. At that time, we will reconsider the special circumstances of this contract to determine whether they justify departure from the new tariffed rate. Of course, if the parties believe that such interim approval does not capture the benefits of their mutual bargain, they may request a hearing on the matter or, among other things, withdraw or amend their application.

Upon review of the filing and the staff recommendation, the Commission finds that, although Special Contract No. NHPUC-115 substantially meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special

**Page 528**

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Contracts (Order No. 20,882, June 23, 1993), we are troubled by the implications of certain terms of this contract as indicated above and cannot grant unconditional approval. We find instead that interim approval is just and consistent with the public interest. We will also note that as with all special contracts, we retain continuing jurisdiction over Special Contract No. NHPUC-115. 77 NH PUC 4, 6.

We further note that PSNH's reliance on the benefits of the interruptibility feature is not a predicate for our interim approval of this special contract and we are generally skeptical of the value PSNH ascribes to this feature considering NU's current capacity situation and the capacity market in New England presently.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-115 is granted interim approval until such time that the Commission approves Business Retention and Economic Development tariffs for PSNH at which time we will reconsider the special circumstances that justify the contract; and it is

FURTHER ORDERED, that if PSNH does not file tariffs pursuant to RSA 378:11-a, the Commission reserves the right to reconsider its interim approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-115, 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 NFI by our approval today of this special contract; 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 August 24, 1995 and to be documented by affidavit filed with this office on or before September 8, 1995; 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 8, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 13, 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 fourteenth day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*08/14/95\*[81048]\*80 NH PUC 529\*Quarter Call, Inc.

[Go to End of 81048]

80 NH PUC 529

**Re Quarter Call, Inc.**

DE 95-080

Order No. 21,784

New Hampshire Public Utilities Commission

August 14, 1995

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to lack of evidence as to its financial fitness as well as its inability to obtain approval of a plan of reorganization pursuant to bankruptcy.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Financial liabilities — Proposed but as yet unapproved bankruptcy reorganization — Interexchange telephone carrier. p. 530.

## 2. BANKRUPTCY

[N.H.] Proceedings in bankruptcy —

Page 529

Reorganization — No automatic bar to receiving authority to operate — Factors — Proposed versus approved reorganization plan. p. 530.

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BY THE COMMISSION:

## ORDER

On March 28, 1995, Quarter Call, Inc. (Quarter Call), 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.

[1, 2] After reviewing Quarter Call's petition, Staff, on April 19, 1995, notified the petitioner that its filing was deficient primarily in its failure to demonstrate financial competence. Quarter Call submitted a response on May 8, 1995, which relied on its proposed plan of reorganization submitted in its Chapter 11 proceeding under the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland.

Staff replied to Quarter Call on May 15, 1995, and explained that a proposed plan of reorganization was not a sufficient basis for demonstrating financial competence inasmuch as there was no assurance that the plan would be approved. Consequently, Staff suggested that Quarter Call submit an approved plan of reorganization if and when it became available.

On July 17, 1995, Staff advised Quarter Call that it had been more than sixty days since Staff had last asked for financial information and that Staff would recommend to the Commission that Quarter Call's petition be denied if satisfactory financial information was not received by July 31, 1995. Quarter Call failed to respond to Staff's letter.

We agree with Staff's analysis that Quarter Call has not demonstrated the necessary financial competence to conduct business as a telecommunications public utility in the State of New Hampshire. We do note that the fact of a company's declaration of bankruptcy alone is not a basis for denying it authority to conduct business as a reseller of intrastate telecommunications services. However, we cannot rely on a mere proposed plan of reorganization but must see some more evidence that Quarter Call's uncertain financial situation will be resolved.

We agree with the recommendation of our Staff that the public good would not be served by approving the petition before us.

Based on the foregoing, it is hereby

ORDERED, Quarter Call is denied authority to conduct business as a telecommunications public utility in the State of New Hampshire, without prejudice.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of

August, 1995.

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NH.PUC\*08/15/95\*[81049]\*80 NH PUC 530\*LDDS Communications, Inc.

[Go to End of 81049]

80 NH PUC 530

**Re LDDS Communications, Inc.**

Additional applicant: WilTel, Inc.

DE 95-047

Order No. 21,785

New Hampshire Public Utilities Commission

August 15, 1995

ORDER taking note of a change in corporate name of a subsidiary of a telecommunications carrier, from WilTel, Inc., to WorldCom Network Services, Inc.

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1. CORPORATIONS, § 1

[N.H.] Corporate name — Change in name — Telecommunications carrier. p. 531.

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BY THE COMMISSION:

ORDER

**Page 530**

[1] On March 2, 1995, the New Hampshire Public Utilities Commission (Commission) received the joint petition of LDDS Communications, Inc. d/b/a LDDSMETROMEDIA Communications (LDDS) and its wholly-owned subsidiary WilTel, Inc. (WilTel), known collectively as the "Applicant." The Applicant seeks Commission approval to amend the authority granted to WilTel to reflect WilTel's new corporate name: WorldCom Network Services, Inc. d/b/a WilTel Network Services, Inc. (WorldCom).

LDDS is a publicly held Georgia corporation. WilTel is a Delaware corporation. As of January 5, 1995, WilTel and its corporate parent, Williams Telecommunications Group, Inc. (WTG) became wholly-owned subsidiaries of LDDS. WilTel operates in New Hampshire under authority issued in Order No. 20,632, issued October 13, 1992. On January 5, 1995, LDDS consummated a transaction, approved by the Commission in Order No. 21,452, issued December 6, 1994, whereby LDDS acquired WTG and its subsidiaries, including WilTel.

By terms of the acquisition agreement between LDDS, The Williams Companies, and WTG

Holdings, Inc., LDDS received a ten-year license to use the name and mark "WilTel" and various other licensed marks. However the agreement also provides that LDDS will cause WTG and its subsidiaries, including WilTel, to amend their organizational documents so that no corporate name contains the word "Williams" or any derivative thereof. By the joint petition the Applicant seeks to amend its certificate to reflect the required name change.

WorldCom Network Services, Inc. d/b/a WilTel Network Services, Inc. and LDDS are each properly registered with the New Hampshire Secretary of State, and each has filed a Certificate of Authority. The Applicant attests that all management, administration, network functions, billing, customer service, sales, marketing and similar corporate activities remain materially unchanged. The Applicant has previously evidenced technical, managerial and financial competence, as a matter of record.

WorldCom will adopt and operate under the tariff of WilTel as amended to reflect its new corporate name, upon Commission approval.

Based upon the foregoing, it is hereby

ORDERED, that the authority granted to WilTel to provide intrastate telecommunications services, specifically excluding local exchange services, for the service territory for the entire State of New Hampshire, is amended to reflect the change in its corporate name to WorldCom Network Services, Inc. d/b/a WilTel Network Services, Inc.; and it is

FURTHER ORDERED, that the joint petition of LDDS and WilTel to amend the authority granted to WilTel to reflect the change in corporate name to WorldCom Network Service, Inc. d/b/a WilTel Network Services, Inc. is approved; and it is

FURTHER ORDERED, that WorldCom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of August, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re WilTel of New Hampshire, Inc., DE 91-165, Order No. 20,632, 77 NH PUC 649, Oct. 13, 1992. [N.H.] Re WilTel of New Hampshire, Inc., DE 94-202, Order No. 21,452, 79 NH PUC 671, Dec. 6, 1994.

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NH.PUC\*08/15/95\*[81050]\*80 NH PUC 532\*Consumers New Hampshire Water Company, Inc.

[Go to End of 81050]

80 NH PUC 532

### Re Consumers New Hampshire Water Company, Inc.

DR 95-092  
Order No. 21,786

New Hampshire Public Utilities Commission

August 15, 1995

ORDER approving a water utility's proposed application of its general metered service rates to an area of the Town of Londonderry in which the utility has assumed ownership and control of a real estate developer's water system.

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1. RATES, § 595

[N.H.] Water rate design — General metered service rates — Applicability to system newly acquired from real estate development. p. 532.

2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Acquisition of water system by utility from real estate development — Construction by developer to utility's standards — Consent by local government and fire officials — Adequacy of facilities. p. 532.

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BY THE COMMISSION:

ORDER

The Petitioner, Consumers New Hampshire Water Company, Inc. (Consumers), on April 5, 1995, filed with the New Hampshire Public Utilities Commission (Commission) proposed rate schedules and supporting documentation which, if approved, would apply Consumers' currently effective General Metered Service-A (GMS-A) rate to a limited area in the Town of Londonderry known as Harvest Village Development (Development).

Consumers, a duly organized New Hampshire corporation doing business as a public utility company, is providing water service pursuant to a franchise issued by the Commission in the Town of Londonderry which includes the area where the Development is to be built. The Development is expected to have up to fifteen elderly housing units occupied by the end of 1995 and to have a full build-out of forty-five units completed by June, 1996.

[1, 2] Consumers and the developer, Harvest Village of Londonderry, Inc. (Developer), have agreed that Consumers will take ownership of and maintain the community well system serving the Development, which has already been constructed.

Consumers has monitored design and construction of the water system to ensure construction to utility standards and is satisfied that those standards have been met. Consumers is holding the Developer contractually responsible for testing of a second well or drilling of a replacement well, one or both of which may be required to satisfy Department of Environmental Services (DES) requirements.

The Town of Londonderry (Town) supports the transfer of the water system to Consumers,

and in fact made such a transfer a condition of Town approval of the Developer's plans. A Londonderry Fire Department requirement for separate fire lines to each building has also been accommodated by the Developer. DES has approved the suitability and availability of water for the Development as required by RSA 374:22 III.

As there are no other competing water utilities in the vicinity of the Development; information provided by Consumers indicates that the full build-out investment by the company will be less than the average embedded cost per customer; the design and construction meets Consumers system standards; and the Development will be served by the existing base of Consumers personnel and equipment; it is just and reasonable to apply Consumers GMS-A rate to the Development.

After investigation and consideration, the Commission therefore finds service by Consumers at the GMS-A rate to be in the public

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good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Consumers is authorized to provide water service to the Development at the GMS-A rate; and it is

FURTHER ORDERED, that approval to provide service in the above portion of the Town under the GMS-A rate does not constitute approval, for ratemaking purposes, of any capital and/or operating and maintenance costs associated with plant in the provision of water service therein; and it is

FURTHER ORDERED, that Consumers maintain detailed records listing the value of all of the Development's water supply assets and associated depreciation reserves; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall (1) cause an attested copy of this Order *Nisi* to be published no later than August 25, 1995, once in a newspaper having statewide circulation and once in a newspaper having general circulation in the Londonderry area; (2) provide, pursuant to RSA 541-A:22, a copy of this order to the Londonderry Town Clerk by first class mail, and (3) document compliance with these provisions by affidavits, to be filed with the Commission on or before September 11, 1995; 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 11, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before August 29, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 14, 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 fifteenth day of August, 1995.

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NH.PUC\*08/21/95\*[81051]\*80 NH PUC 533\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81051]

80 NH PUC 533

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-069

Order No. 21,789

New Hampshire Public Utilities Commission

August 21, 1995

ORDER clarifying Order No. 21,731 (80 NH PUC 437, *supra*) as to the specific parts of special rate contracts executed by a local exchange telephone carrier that are subject to protective treatment and therefore exempt from public disclosure.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Exceptions for certain information — Customer-specific operational and financial data — As distinguished from usage data — Protection of cost studies — Confidentiality of term of years. p. 534.

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BY THE COMMISSION:

ORDER

By Order No. 21,731 in Docket No. 95-069, dated July 10, 1995, the Commission granted in part and denied in part a motion by Auditel Inc. to remove the confidential treatment granted to certain special contracts filed by New England Telephone and Telegraph Company (NYNEX). In the interest of full compliance with applicable laws, the intent of the legislature in RSA 91-A, and concern for the continued protection of Customer Proprietary Network Information, Order No. 21,731 provided that specifically identified portions of the

**Page 533**

special contracts would be made available to the public while other specifically identified portions would remain confidential.

In accordance with the analysis contained in Order No. 21,731, the Commission issued orders in DR 95-079 (Order No. 21,747), DR-102 (Order No. 21,749), DR 95-125 (Order No. 21,750), DR-140 (Order No. 21, 751), and DR 95-168 (Order No. 21,752).

[1] By motion dated July 28, 1995, NYNEX sought clarification or reconsideration of Order No. 21,731 and of the ensuing orders listed above, regarding portions of the special contract filings which the Commission opened to the public. NYNEX filed redacted copies of the nine special contracts, reflecting NYNEX's understanding of the Commission's orders. NYNEX asserted that the Commission appeared to have inadvertently failed to protect information in some contracts which had been found exempt from disclosure in other contracts. We agree with NYNEX that some additional information should have been protected in accordance with our analysis in Order No. 21,731 and will grant NYNEX's motion, in part. We cannot accept all of NYNEX's proposed changes, however, as we believe NYNEX has been overly broad in interpreting our Order.

We find it appropriate to exempt the following materials from public disclosure, in addition to the materials made confidential in Order No. 21,731:

In DR 95-010, confidential treatment shall be granted to pages 4 and 5 of Appendix B;

In DR 92-105, confidential treatment shall be granted to Section I, pages 1 and 2; Section II beginning at the second paragraph which begins "The Contract is for a ..."; and Appendix B, paragraph (3)(a) on page 3;

In DR 93-054, confidential treatment shall be granted to the Incremental Cost Study section of the filing; and

In DR 94-276, confidential treatment shall be granted to the term of years mentioned in paragraph 2 of the Overview as well as the numbered paragraphs 1,3, and 4 of that section.

Similarly, we find it appropriate to exempt the following materials from public disclosure, in addition to the materials made confidential in Order Nos. 21,747, 21,749, 21,751, and 21,752:

In Order No. 21,747, DR 95-079, confidential treatment shall be granted to the Cost Study Details section;

In Order No. 21,749, DR 95-102, confidential treatment shall be expanded to include the last two full paragraphs on page 1 of Appendix A;

In Order No. 21,751, DR 95-140, confidential treatment shall be granted to the term of years noted on the cover page, Appendix A, paragraphs 1, 5, and 6 on page 1, and pages 2, 3, and 4; and Appendix B, paragraph 1.c.(1)(a) on page 1, and paragraph 1.c.(1)(d) on page 2; and

In Order No. 21,752, DR 95-168, confidential treatment shall be granted to Appendix A, page 1 and to Appendix B, the first two sentences of paragraph 1.c.(4)(a)(i).

No change is necessary in Order No. 21,750, DR 95-125. The title page of the contract filed by NYNEX with the Commission does not contain any notation of the term of years and therefore has no need for confidentiality.

Based on the foregoing, it is hereby

ORDERED, that NYNEX's motion for clarification and/or reconsideration is GRANTED IN



PART, in accordance with our analysis above; 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 Public Utilities Commission of New Hampshire this twenty-first day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-079, Order No. 21,747, 80 NH PUC 467, July 17, 1995.

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NH.PUC\*08/21/95\*[81052]\*80 NH PUC 535\*Lower Village Hydroelectric Associates

[Go to End of 81052]

80 NH PUC 535

**Re Lower Village Hydroelectric Associates**

DE 95-139

Order No. 21,790

New Hampshire Public Utilities Commission

August 21, 1995

ORDER denying summary judgement and affirming the scope of a proceeding addressing a hydro group's petition for condemnation of property belonging to APC Paper Company, Inc.

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1. EMINENT DOMAIN, § 9

[N.H.] Condemnation proceedings — Proposed taking of private mill property by hydro group — Procedure and scope of proceeding — Issues to be addressed — Description of affected water rights — Value of such rights and appropriate damages. p. 535.

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BY THE COMMISSION:

ORDER

Lower Village Hydroelectric Associates (Lower Village), the holder of a minor water power license issued by the Federal Energy Regulatory Commission, has constructed a dam on the Sugar River in Claremont, New Hampshire. Lower Village's dam and impoundment abut property owned by APC Paper Company, Inc. (APC) and the parties have discussed the issue of Lower Village acquiring certain property rights but have been unable to reach agreement. Prior to operation under its license, Lower Village must possess all necessary property rights; therefore, on May 19, 1995, it filed with the Commission a Petition for Condemnation pursuant to RSA 371:1 (Petition) in order to obtain those rights from APC.

Subsequently, on June 14, 1995, the Commission issued an Order of Notice establishing July 11, 1995 as the date for a Prehearing Conference. Prior to the hearing, Lower Village and APC discussed at length their positions and attempted to devise a procedural schedule for the proceeding. On July 19, 1995, we issued our Order Establishing Procedural Schedule and reported the results of the Prehearing Conference. We recognized the parties' contentions as to the proper scope of this proceeding and noted that the crux of the dispute between the parties concerns damages that might occur to APC's paper mill from ice damming. Accordingly, we agreed to receive memoranda on the issue of scope by August 10, 1995 and scheduled argument on the issue, if necessary, for August 17, 1995. Memoranda were timely filed by Lower Village and APC and Connecticut Valley Electric Company Inc. (Connecticut Valley), which will be the purchaser of energy produced by Lower Village, filed separate comments.

On July 26, 1995, however, Lower Village submitted a Motion for Partial Summary Disposition and to Enforce Settlement (Motion). Lower Village contends that APC agreed on the record at the Prehearing Conference as to the description, valuation and necessity for taking of certain property rights. APC agrees in part, in its Response filed August 7, 1995, with assertions in Lower Village's Motion but specifically objects that any agreement was reached on the issue of valuation. Connecticut Valley also submitted comments in reply to the Motion discussing the issue of necessity; as noted above those comments are relevant as well to the issue of scope.

[1] A review of the record of the Prehearing Conference and the filings of the parties indicates some confusion concerning the segregation of the bundle of property rights in question here and suggests that there may be some confusion between the parties as well concerning the breadth of the agreement they may have reached on the date of the Prehearing

**Page 535**

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Conference. It is clear, however, that at a minimum there was and remains a disagreement as to the valuation of the water rights portion of the bundle of property rights. Even assuming the Motion fully and accurately portrays the positions of the parties, which assumption is contested, the pivotal issue of valuation of water rights must be resolved. Accordingly, we find that the process would not be advanced and likely would only be delayed by granting Lower Village's Motion. We therefore deny Lower Village's Motion and expect, furthermore, that the parties will meticulously define their respective areas of agreement and disagreement as we proceed in order to eliminate commitment of Commission resources to uncontested matters.

Finally, with respect to the issue of the proper scope of this proceeding, we have reviewed the parties' memoranda and concluded that the oral argument which was tentatively scheduled

for August 17, 1995 is indeed unnecessary and we will rule based on the papers before us. In light of those papers and the discussion above, we conclude that APC most reasonably describes the proper scope of this proceeding, that is, (1) to determine whether the rights to be acquired are correctly described in Lower Village's original Petition and (2) to determine the value of the property taken as necessary for the operation of the facility.

Based upon the foregoing, it is hereby

ORDERED, that Lower Village's Motion is denied; and it is

FURTHER ORDERED, that the scope of this proceeding is as described above; and it is

FURTHER ORDERED, that the parties will file legal memoranda and/or testimony, if any, as to the issue of the necessity of the taking of the property rights in question and testimony as to the issue of price or valuation of those property rights by August 30, 1995; and it is

FURTHER ORDERED, that all parties will file data requests by September 6, 1995 and that data responses will be due no later than September 20, 1995; and it is

FURTHER ORDERED, that a hearing on the merits will be held at 10:00 a.m. on September 27, 1995.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of August, 1995.

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NH.PUC\*08/22/95\*[81053]\*80 NH PUC 536\*Public Service Company of New Hampshire

[Go to End of 81053]

80 NH PUC 536

**Re Public Service Company of New Hampshire**

DR 95-171, DR 95-173

Order No. 21,791

New Hampshire Public Utilities Commission

August 22, 1995

MOTION by electric utility for protective treatment of special service contracts with two state-supported colleges, Keene State College and the University of New Hampshire; denied as to both customer-specific usage data cited therein and the contract itself. Commission notes that taxpayer interests require disclosure to assure the integrity of state contracting practices. However, protective treatment is granted as to certain associated customer cogeneration studies.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special electric service contracts — Mere assertion of need for confidentiality insufficient — Denial of

protective treatment as to customer-specific usage data relied upon — Denial as to actual contract itself — Customer as state agency as a factor — Taxpayer interests as a factor — Preservation of governmental integrity and open contracting practices. p. 537.

## 2. SERVICE, § 152

[N.H.] Contracts — Special service arrangements — Between electric utility and state-supported college — Disclosure versus protective treatment — Taxpayer interests as a

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factor — Necessity of disclosure. p. 537.

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BY THE COMMISSION:

### ORDER

On June 13, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract No. NHPUC-116 with the University of New Hampshire (UNH) for the provision of electric service, along with a Technical Statement and Supporting Testimony therefor. On the same date PSNH filed with the Commission, pursuant to RSA 378:18, special contract No. NHPUC-117 with Keene State College (Keene State) for the provision of electric service, along with a Technical Statement and Supporting Testimony therefore. Concurrently, PSNH filed Motions for Protective Order of portions of the Technical Statement and Supporting Testimony for each special contract. The portions for which confidential treatment was sought include customer load information and PSNH's Customer Cogeneration Study.

In its motions PSNH stated that the information should be afforded protective treatment, pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08, in that it contains customer specific information gathered and prepared to identify the customer's special circumstances and support the need for a special contract. PSNH further stated that disclosure of this information would harm the parties "by providing other commercial suppliers with whom the parties do business or compete with confidential commercial and financial information that is not general public knowledge and for which measures have been taken to prevent dissemination in the ordinary course of business."

By letter dated July 28, 1995, the Commission directed PSNH to comply with N.H. Admin. Rule Puc 204.08(b)(3), to wit, to provide "[F]acts describing the benefits of non-disclosure to the petitioner, including evidence of harm that would result from disclosure." The Commission issued the letter rather than denying the motion for lack of supporting evidence.

By letter dated August 3, 1995, PSNH provided the required information. PSNH stated that disclosure of the customer load data and the results of the Customer Cogeneration Studies (the Studies) would enable other customers, cogeneration suppliers, other utilities, and consultants to "reverse engineer" the data in order to create a similar computer load model at a cost significantly less than otherwise required. PSNH also provided an affidavit, made by its manager of its Supplemental Energy Sources Department, stating that the PSNH Customer Generation

Computer Model was developed in-house at significant engineering and programming costs, is copyrighted, and the output is based upon customer-sensitive information provided under a confidentiality agreement.

According to PSNH, neither the Commission Staff nor the Office of Consumer Advocate take a position on this motion.

In Docket 95-069, *Re: New England Telephone Company* (hereinafter *Auditel*), Order No. 21,731, dated July 10, 1995, we affirmed that, to determine whether information is entitled to confidential treatment, we apply the standards established pursuant to our case law interpretation of RSA 91-A:5,IV. As codified in N.H. Admin. Rules, Puc 204.07 and 204.08, our standards include a balancing test weighing the benefits of disclosure to the public against the benefits of non-disclosure.

Detailed customer specific information regarding customer usage, costs and terms of service are critical items for review by the Commission and Commission Staff, as required by RSA 378:18. However, we also recognize 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.

[1, 2] In the instant case we are presented with a request to grant confidential treatment to electric load information supporting a special contract with state entities, a university and a college, not a private business. While the electric load information of a private business might reveal patterns from which a competitor of the

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business could deduce business intelligence to obtain a competitive advantage, competitors of a state university would not obtain such an advantage from access to the state university's electric usage information. Thus, the benefits of non-disclosure of electric usage information of the state university appear to be limited to PSNH's interest in protection from competition from potential alternative energy providers.

In *Auditel* we considered a request to remove confidential treatment of nine special contracts for telecommunications service. We singled out one of those contracts, a special contract with the State of New Hampshire, as a situation in which the balancing test would tip in favor of disclosure rather than non-disclosure because of taxpayers' interest in knowing how the state's revenues are spent and because of the fact that a state contract is approved in a public forum by the executive branch. (*Auditel*, at pages 26 and 27.) Similarly, taxpayers have an interest in knowing how a state university's revenues are spent and what the university's energy usage is. Moreover, RSA 91-A:1-a specifically includes the actions of Boards of Trustees of the University System of New Hampshire in the Right-To-Know Law's definition of public proceedings. We find, therefore, that there is a public benefit of disclosing electric usage information of the state university system contained in the contracts. We believe this is supported by RSA 91-A:1-a.

We are also requested by PSNH to grant confidential treatment to its Customer Cogeneration Studies. The Studies, according to PSNH, are produced by a computer program which is proprietary to PSNH, was developed in-house over a period of eight years, and has been

copyrighted and claimed as a trade secret because it required significant engineering and computer programming effort. In addition to the computer program itself, information was provided by PSNH's customers, to be processed by the computer program, under a confidentiality agreement. Release of the customer-provided confidential information would assist competitors of PSNH's customers and would cause PSNH to violate its agreement. It appears that both PSNH and its customers have an interest in protecting the Studies from disclosure. On the other hand, the public's interest in access to the Studies appears to be limited to competitive interests.

After reviewing the facts and circumstances of this request, we find that the benefits of disclosure outweigh the benefits of non-disclosure for the load usage information contained in contracts. Therefore, that information is not exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08. With regard to the Customer Cogeneration Study, however, we find that the benefits of non-disclosure outweigh the benefits of disclosure. Therefore, the Customer Cogeneration Study shall be granted confidential treatment.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order regarding portions of the Technical Statements and supporting Testimony to special contracts numbers NHPUC-116 and NHPUC-117 for the provision of electric service is DENIED IN PART and GRANTED IN PART in accordance with our analysis above; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission Staff or any party raised 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 Public Utilities Commission of New Hampshire this twenty-second day of August, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*08/22/95\*[81054]\*80 NH PUC 539\*Frontier Communications International Inc.

[Go to End of 81054]

80 NH PUC 539

### **Re Frontier Communications International Inc.**

DR 95-200  
Order No. 21,792

## New Hampshire Public Utilities Commission

August 22, 1995

ORDER authorizing an interexchange telephone carrier to introduce several new service plans, including (1) residential service with outbound toll and inbound 800 calling at the same price per minute; (2) business service with outbound toll, inbound 800, and calling card service at a flat per-minute rate that is neither time- nor distance-sensitive; and (3) credit card service with carrier-associated Visa cardholders getting rebates on usage.

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## 1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "800" calling — Inbound and outbound toll calling — Residential and business subscribers — Flat rate options — Credit card rebate programs — Interexchange carrier. p. 539.

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BY THE COMMISSION:

## ORDER

[1] On July 24, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Frontier Communications International Inc. (Frontier) requesting authority to introduce Integrated Residential Service and Product 1, add a Discount to Frontrunner, and add an option to Plan X, for effect August 24, 1995.

Integrated Residential Service is a product that offers outbound toll and inbound 800 service for the same price per minute as well as calling card service to residential customers.

Product 1 is a customized product for business customers that offers switched or dedicated outbound toll, inbound 800 and calling card service for a flat per minute rate that is not distance or time of day sensitive. Term options are available with various monthly commitment levels and additional discounts apply for 2 or 3 year commitments. This service is only available in conjunction with Frontier's Product 1 interstate service.

Frontrunner and Frontrunner OMNI Card subscribers who hold a Frontier VISA card will receive a retroactive discount of 5 percent on all usage up to a maximum discount amount of \$500. The discount will be awarded annually to all Frontier VISA card holders in good standing.

The proposed Plan X calling card option will allow subscribers to originate calls via a carrier provided 800 number for \$.35 per minute.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Frontier to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No. 1 are approved for

effect as filed:

- 5th Revised Page 2
- 3rd Revised Page 4
- 2nd Revised Page 22
- 2nd Revised Page 24
- 3rd Revised Page 31
- Original Page 31.a
- Original Page 31.b
- Original Page 31.c
- 2nd Revised Page 39
- 1st Revised Page 45.a in lieu of Original
- 1st Revised Page 56.c
- Original Page 56.d
- Original Page 56.e;

and it is

FURTHER ORDERED, that Frontier file

**Page 539**

properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1995.

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NH.PUC\*08/22/95\*[81055]\*80 NH PUC 540\*Corporate Telemanagement Group, Inc.

[Go to End of 81055]

80 NH PUC 540

**Re Corporate Telemanagement Group, Inc.**

Additional applicant: LCI International, Inc.

DE 95-164

Order No. 21,793

New Hampshire Public Utilities Commission

August 22, 1995

ORDER authorizing a large telecommunications parent company, LCI International, Inc., to acquire control of Corporate Telemanagement Group, Inc.

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## 1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Factors affecting approval — Anticipation of economic and marketing efficiencies — Technical, financial, and managerial abilities of purchasing utility — Compliance with standard of no net harm — Telecommunications carriers. p. 540.

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BY THE COMMISSION:

ORDER

On June 5, 1995, LCI International, Inc. (LCII), LCI International Telecom Corp. (LCI Telecom), LCI Telemanagement Corp. (LCI Telemanagement), and Corporate Telemanagement Group, Inc. (CTG), (collectively, the Petitioners), filed with the New Hampshire Public Utilities Commission (Commission) a petition (Petition) for approval of a transaction whereby LCII will take control of CTG, by acquiring the stock of CTG. Specifically, the Petitioners seek authority to transfer control of CTG to LCII, to merge CTG into LCI Telemanagement, and to transfer CTG's existing authority to provide service to LCI Telemanagement.

CTG is a privately-held South Carolina corporation. CTG was granted authority to conduct business as a telecommunications public utility in New Hampshire in docket DE 92-061, by Order No. 20,574 (Aug. 18, 1992).

LCII is a publicly-held Delaware corporation. LCII's operating subsidiaries provide service on a resale basis and/or over the fiber optic transmission network owned by LCII's subsidiary, LCI International Management Services, Inc. (LCIM).

LCI Telecom is a Delaware corporation. LCI Telecom is the operating subsidiary which provides service in New Hampshire, pursuant to docket DE 94-290, by Order No. 21,463 (Dec 14, 1994). LCI Telemanagement is a corporation formed for the purpose of facilitating the CTG acquisition. LCI Telemanagement is a Delaware corporation, and received a Certificate of Authority from the New Hampshire Secretary of State, on July 28, 1995.

LCI Telemanagement would provide services to the former customers of CTG. CTG customers will continue to be able to purchase the same services from LCI Telemanagement that they currently receive from CTG at the same rates, and under the same terms and conditions for an interim period.

The Petitioners request that LCI Telemanagement be permitted to adopt CTG's existing tariff. The Petitioners represent that LCI Telemanagement will be led by a team of well-qualified managers comprised of CTG and LCI personnel.

[1] The Petitioners evidenced their technical, managerial, and financial competence in the record of the above dockets. Staff has reviewed updated financial information filed with this

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Petition and believes the Petitioners remain financially qualified. The Petitioners represent that the transfer of control will be essentially transparent to customers. The Petitioners anticipate achieving economic and marketing efficiencies from the transfer.

We find that the transfer of control of CTG to LCII, the merger of CTG into LCI Telemanagement, and the transfer of CTG's Authority to Transact Business as a Telecommunications Public Utility in the State of New Hampshire will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of control may in fact produce net benefits to CTG's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval of a transaction whereby LCII will acquire control of CTG, and merge it into LCI Telemanagement, and for the transfer of control of existing authority to provide service from CTG to LCI Telemanagement is GRANTED; and it is

FURTHER ORDERED that LCII shall adopt the currently effective tariff of CTG; and it is

FURTHER ORDERED that LCII file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Code Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-second day of August, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[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 LCI International of New Hampshire, Inc., DE 94-290, Order No. 21,463, 79 NH PUC 687, Dec. 14, 1994.

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NH.PUC\*08/22/95\*[81056]\*80 NH PUC 541\*Westinghouse Electric Corporation dba Westinghouse Communications

[Go to End of 81056]

80 NH PUC 541

### **Re Westinghouse Electric Corporation dba Westinghouse Communications**

DR 95-207

Order No. 21,794

New Hampshire Public Utilities Commission

August 22, 1995

ORDER approving various tariff revisions proposed by an interexchange telephone carrier, to allow introduction of audioconferencing and prepaid calling card services, to increase rates for directory assistance, and to clarify definitions of on-net and off-net services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Proposed tariff revisions — Availability of audioconferencing and prepaid calling card services — On-net and off-net services — Increase in directory assistance charges — Interexchange carrier. p. 541.

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BY THE COMMISSION:

ORDER

[1] On July 21, 1995, the New Hampshire Public Utilities Commission, (Commission) received a petition from Westinghouse Electric Corporation d/b/a Westinghouse Communications (Westinghouse) requesting authority to make several changes to its tariff, NHPUC No. 1, for effect August 21, 1995.

The proposed revisions include introduction of Westinghouse's Audioconferencing service, and Prepaid Calling Card services. The directory assistance rate is being increased to \$.85. Definitions for Off Net-Off Net, Off Net-On Net, On Net-Off Net, and On Net-On Net

**Page 541**

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are being added for Virtual Network Service which is being introduced. Rules and regulations are being added for resellers of Westinghouse service. Language is being added to the Limitations on Service, Limitation of Liability and Obligations of the Customer sections.

The proposed revisions require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), require "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed." Therefore, Westinghouse will be required to file a completely new tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Westinghouse to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Westinghouse's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 2  
 1st Revised Page 3  
 1st Revised Page 4  
 1st Revised Page 5  
 Original Page 5.1  
 1st Revised Page 6  
 1st Revised Page 9

1st Revised Page 10  
Original Page 10.1  
1st Revised Page 11  
1st Revised Page 14  
Original Page 15.1  
1st Revised Page 16  
Original Page 16.1  
1st Revised Page 17  
Original Page 19.1  
1st Revised Page 20  
1st Revised Page 29  
1st Revised Page 34  
Original Page 34.1  
1st Revised Page 39  
1st Revised Page 41  
1st Revised Page 42  
1st Revised Page 43  
1st Revised Page 44  
1st Revised Page 45  
1st Revised Page 48  
Original Page 52.1  
Original Page 52.2  
Original Page 52.3  
Original Page 52.4  
Original Page 52.5  
Original Page 52.6  
Original Page 52.7  
Original Page 52.8  
Original Page 52.9  
Original Page 52.10  
1st Revised Page 53  
1st Revised Page 56  
1st Revised Page 61  
1st Revised Page 64  
1st Revised Page 66  
1st Revised Page 67  
1st Revised Page 68  
1st Revised Page 69  
1st Revised Page 76  
1st Revised Page 78  
1st Revised Page 80  
1st Revised Page 81  
Original Page 83.1  
Original Page 83.2

Original Page 83.3  
Original Page 83.4  
Original Page 83.5  
Original Page 83.6  
Original Page 83.7  
Original Page 83.8  
Original Page 84;

and it is

FURTHER ORDERED, that Westinghouse file a complete new tariff, Westinghouse NHPUC No. 2, incorporating the changes approved above with the existing approved pages in Westinghouse's NHPUC No. 1, in compliance with Puc 1601.05(b) (2), and properly annotated as required by N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order.

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

**Page 542**

of August, 1995.

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NH.PUC\*08/22/95\*[81057]\*80 NH PUC 543\*Gilford Village Water System

[Go to End of 81057]

80 NH PUC 543

**Re Gilford Village Water System**

DE 93-244

Order No. 21,795

New Hampshire Public Utilities Commission

August 22, 1995

ORDER rescinding Order No. 21,684 (80 NH PUC 332, *supra*) for the applicant's failure to comply with a notice and publication requirement contained therein, but reinstating the authorities that otherwise had been granted therein (with a new publication deadline), whereby a water utility was authorized to take over the operations of a water system that had been formed and managed as a water district.

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1. CERTIFICATES, § 67

[N.H.] Factors affecting grant — Local consents — Sale of water district by town council — Dissolution of district format — Financial abilities and experience of acquiring utility — System improvements. p. 543.

## 2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for approval — Dissolution of water district by town council — Council support for sale of district system to public utility — Financial abilities and experience of acquiring utility — Final transfer contingent on system improvements. p. 543.

## 3. RATES, § 595

[N.H.] Water rate design — Acquisition of water district by public utility — Retention of existing rate structure — Fixed quarterly charge plus volumetric rates — Flat fees for turn on/turn off service and for meter testing. p. 543.

## 4. ORDERS, § 9

[N.H.] Abrogation — Factors — Failure to meet notice and publication deadlines — Formal order of rescission — But subsequent reinstatement of previously granted authorities. p. 544.

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BY THE COMMISSION:

### ORDER

[1-3] Gilford Village Water System (Company or Petitioner), a division of Tioga River Water Company, Inc. (Tioga), filed with the New Hampshire Public Utilities Commission (Commission) on November 22, 1993 a petition to operate as a public utility in the area previously served by the Gilford Village District in the Town of Gilford (Town). The Village District was dissolved by unanimous vote of its membership, effective June 1, 1991, at which time ownership of the water system reverted to the Town. The Town subsequently offered the system for sale, with the Petitioner submitting the high bid. A letter dated September 3, 1992 from the Town Administrator stated that the Board of Selectmen had authorized sale of the system to the Petitioner conditioned upon approval by this Commission.

A Warrant Article was passed at the 1992 Town Meeting authorizing the above sale for \$15,000, and authorizing a subsequent expenditure of "\$10,000 from the proceeds of said sale to purchase capital improvements for the system prior to transfer." A letter from David R. Caron, Town Administrator, to Staff, dated February 3, 1995, stated the following:

The Board of Selectmen, at the time it decided to sell the Gilford Village Water District, acknowledged that the sale of the utility may result in District customers absorbing the purchase price within their water rates.

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Recognizing that the Town's main goal was to remove itself from the operation, management and ownership of a water utility and not realize any profits, the Board decided to reinvest the sale proceeds back into the system, thus possibly avoiding future rate increases caused by the new owners paying for these improvements.

The improvements planned for implementation include curing the deficiencies as noted in the 1992 sanitary survey, some repiping and the addition of one booster pump at

the wellhouse and installation of backflow preventers for utility customers.

The water system serves 36 customers comprised of 63 units. The original system, dating from the 1940s, was reportedly given to the Town by a resident prior to creation of the village district. Significant upgrades were made in 1975, and a new well was installed in 1986. RSA 374:22 III, requiring Department of Environmental Services approval of "the suitability and availability of water for the applicant's proposed water utility," has been satisfied by letters from that agency. The Town states that it has no outstanding debt on the system.

Tioga currently operates as a regulated water utility under this Commission in the Town of Belmont. Norman Harris, Jr., the owner of Tioga, is also the owner of Gilford Well Company, Inc., which operates several other water systems in the Lakes Region, and which has been operating the Gilford Village system for approximately twenty years. Service personnel are on call on a 24 hour standby basis seven days a week.

The Petitioner proposes to charge the same rates that the Town currently charges, i.e., a \$14.25 fixed charge per quarter and a volumetric rate of \$ 1.35/100 cubic feet after the first 500 cubic feet each quarter. Based on a typical statewide usage of 180 gallons per day per customer, this would result in an annual per customer billing of \$ 148.80.

Also included in the petition were certain proposed fees which are not currently being charged by the Town. The Company agreed, following consultation with Staff, to certain reductions, resulting in the following fees:

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

Meter testing:	\$40
Turn-on during regular hours:	\$40
Turn-on after hours:	\$80
No charge for turn-off even when customer-requested.	

Both the Company and Town have provided information to Commission Staff through various submittals over the period of time since the original petition. A review of that data indicated that the above rates and fees are just and reasonable "interim" rates, pending a more detailed review associated with filing of any future rate case. Mr. Harris' history in the water business, his long experience with this particular system and the circumstances surrounding the proposed transfer led us to conclude that that the transfer of the system to the Petitioner is in the public good.

[4] By Order *Nisi*, dated June 7, 1995, the Commission granted to Gilford Village Water System authority to operate as a public water utility, and imposed certain rate and accounting requirements. It also stipulated that the actual transfer of ownership would not take place until the anticipated system improvements had been completed by the Town, and those improvements certified to the Commission. The Order directed the Company to mail a copy of the order by first class mail to each customer and to the Gilford Town Clerk by June 22, 1995, to be documented by affidavit filed with the Commission on or before July 6, 1995.

When the Company failed to file the affidavit with the Commission, Staff contacted the Company on August 10, 1995; the Company informed Staff that it had failed to notify its customers as ordered by the Commission.

We will therefore rescind our June 7, 1995 Order, and issue a new order for this proceeding.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that authority is granted to Gilford Village Water System to operate as a public water utility in an area of the Town of Gilford as shown on the map on file with the Commission; and it is

FURTHER ORDERED, that the actual transfer of ownership shall not take place until the anticipated system improvements have been

Page 544

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completed by the Town, and written certification of same has been received; and it is

FURTHER ORDERED, that the above fees are approved; and it is

FURTHER ORDERED, that the Company will otherwise charge the same rates currently charged by the Town; and it is

FURTHER ORDERED, that the Petitioner shall maintain records in accordance with the Commission's chart of accounts, separate from those kept for Tioga River Water Company's system in Belmont; and it is

FURTHER ORDERED, that within 30 days of actual transfer of ownership of the system from the Town to the Petitioner, the Petitioner submit proposed entries to be used to establish the accounting values for the assets, liabilities and capitalization of the purchase the system; and it is

FURTHER ORDERED, that any future rate case involving either the Gilford or Belmont water system shall address rates in both; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall mail a copy of this Order *Nisi* by first classmail to each customer and to the Gilford Town Clerk by September 5, 1995, to be documented by affidavit filed with this office on or before September 20, 1995; 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 20, 1995; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before October 16, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 25, 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 twenty-second day of August, 1995.

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NH.PUC\*08/28/95\*[81058]\*80 NH PUC 545\*Consumers New Hampshire Water Company

[Go to End of 81058]



80 NH PUC 545

**Re Consumers New Hampshire Water Company**

DR 95-124  
Order No. 21,796

New Hampshire Public Utilities Commission

August 28, 1995

ORDER noting interventions, ruling on the scope of proceedings, and revising the procedural schedule accordingly in a water utility's general rate case.

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1. PARTIES, § 18

[N.H.] Intervenors — Municipals and individuals — Factors affecting standing — Incomplete representation by Office of Consumer Advocate. p. 546.

2. RATES, § 645

[N.H.] Procedure — Scope of proceedings — Issues to be addressed — Both rate design and revenue requirement — Allocation methods — Rate base and used and useful status of property — Excess capacity — Water utility rate case. p. 547.

3. PROCEDURE, § 8

[N.H.] Joinder or consolidation — Proposal to merge water rate case and generic least-cost planning dockets — Factors affecting denial — Necessity of utility-specific considerations — Unnecessary broadening of proceeding — No holding of rate case in abeyance pending ruling in generic case. p. 547.

**Page 545**

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4. EXPENSES, § 89

[N.H.] Rate case expense — Necessity of filing estimates and projections — Justification for attorney assignments — Water utility. p. 547.

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APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. and Harry T. Judd, Esq. for Consumers New Hampshire Water Company, Inc.; Donahue, McCaffrey, Tucker and Ciandella by Robert D. Ciandella, Esq. for The Town of Hudson, New Hampshire; Leonard A. Smith, *pro se*; Representative Donald White, *pro se* (limited intervenor); Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission

BY THE COMMISSION:

## ORDER

## I. PROCEDURAL HISTORY

Consumers New Hampshire Water Company, Inc. (Consumers) filed on June 20, 1995 a petition for an overall 23.1% rate increase (Petition). The Commission, pursuant to an order of notice, set a prehearing conference for August 4, 1995. The Office of Consumer Advocate (OCA) filed on July 19, 1995 a Motion to Dismiss Petition to Increase Rates or, In the Alternative, to Hold Further Proceedings in Abeyance (Motion), to which Consumers objected on July 27, 1995. Staff responded to OCA's Motion on July 31, 1995 to which Consumers objected on August 31, 1995. We will summarize and rule upon the six disputed matters addressed at the prehearing conference.

## II. INTERVENTION REQUESTS

The Town of Hudson, New Hampshire (Hudson), which is served by Consumers, sought full intervention, to which Consumers objected. Mr. Leonard A. Smith, a resident of Hudson and former State Representative also sought full intervention, which similarly was opposed by Consumers. Representative Donald White of Hudson sought limited intervention, which was not opposed. The Office of Consumer Advocate (OCA) appeared as a statutorily authorized intervenor.

Hudson argues it should be granted full intervention status due to the financial impact on both residential and commercial ratepayers within Hudson. Hudson contends that given Consumers' rate design, Hudson customers bear a disproportionate burden of the costs of service. In Hudson's view, OCA does not represent its commercial interests and cannot adequately represent its residential ratepayers because the interests of Hudson's ratepayers are different from those of other Consumers' residential customers.

Consumers opposed Hudson's intervention on the following grounds: Hudson was in error as to the rate impact on Hudson; those customers affected are already represented by OCA; Hudson misused the rate case process in DR 89-224, Consumers' last rate case (under its then corporate name Southern New Hampshire Water Company); and Hudson has failed to demonstrate its contribution to the Commission's review in this docket and is attempting to relitigate issues which were resolved in DR 89-224. Consumers, however, did not oppose limited intervention status for Hudson.

Consumers opposed the intervention of Mr. Smith on similar grounds, asserting that Mr. Smith was adequately represented by OCA. Consumers did not object to Mr. Smith being granted limited intervenor status. Mr. Smith stated that OCA could not adequately represent him given the conflict of interest between Hudson and other Consumers' ratepayers' interests.

OCA took no position on the intervention requests, other than to agree with Mr. Smith that it would be difficult to represent Hudson ratepayers as well as other Consumers' ratepayers, given Consumers' rate design. Commission Staff (Staff) did not object to either request for full intervention.

[1] We find that both Hudson and Mr. Smith have established a basis for full

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intervention, pursuant to N.H. Admin. Rules, Puc 203.02, and will grant both requests. We will also grant Representative White limited intervenor status. We urge all Parties and Staff, however, to make every effort to keep discovery requests and presentation of evidence as concise as possible and avoid duplication of efforts.

### III. SCOPE OF DOCKET, RATE DESIGN

Consumers argued that participants in this docket should not be allowed to relitigate issues of rate design and rate allocation which had been addressed in DR 89-224. Hudson, OCA and Staff opposed this limitation on the issues, arguing that the Commission should be provided with evidence of the consequences of its DR 89-224 order as well as the impact of Consumers' further modifications to its rate allocation.

[2] We will not preclude matters of rate design and rate allocation from this docket. Our initial review of Consumers' filing indicates that it has sought certain modifications of its rate design; to preclude Parties and Staff from responding to the rate design portion of Consumers' proposal would be patently unfair. We will entertain testimony regarding Consumers' rate design, proposals for modification to that rate design and/or alternative rate allocation methodologies if any Party or Staff wishes to present such evidence, subject of course to our standard limitations for relevance and efficient and orderly completion of the docket.

### IV. SCOPE OF DOCKET, USED AND USEFUL ANALYSIS

Consumers argued at the hearing that those items included in rate base in DR 89-224 on which there has not yet been a finding of "used and useful" or prudence should be allowed to remain in rate base pending completion of the generic analysis of excess capacity. OCA and Staff argued that the statutory requirement of RSA 378:28 compelled a finding of used and useful and prudence for inclusion in rate base. Staff suggested that either Consumers could remove those items from rate base until the generic proceeding is complete, or that we could address those items as part of this docket.

We believe the items in rate base which have not previously been found to be used and useful and prudently incurred must face that scrutiny as part of this docket, pursuant to RSA 378:28.

### V. SCOPE OF DOCKET, LEAST COST PLANNING

OCA's Motion arises in part due to the Commission's failure to conclude its inquiry into generic standards for excess capacity and other integrated least cost planning issues for water utilities. The Commission docket on this issue, DR 93-029, was commenced in early 1993 in response to the mandate of the Supreme Court to proceed with its docket to "establish standards for determining appropriate levels of excess capacity to be included in rate base". Supreme Court Docket # 91-463, unpublished Order (October 21, 1992). DR 93-029, after initial discovery, has not been completed.

OCA argues that Consumers' rate case should be dismissed or held in abeyance until completion of the generic least cost planning docket. Consumers argued that the rate case should proceed independent of the generic docket. Staff argued that one could address the excess capacity issues specific to Consumers as part of this docket while still proceeding with other

resource planning issues for all water utilities in DR 93-029.

[3] We will not merge the two dockets, hold this Petition in abeyance until completion of the generic docket or transform this filing into a least cost planning docket of Consumers. Rather, we will instruct our Executive Director to develop a proposed schedule for the generic least cost planning docket, DR 93-029. In addition, we will order the Parties and Staff to include in the scope of this docket those questions of excess capacity mandated by the Supreme Court as they relate specifically to Consumers.

#### VI. RATE CASE EXPENSES

[4] At the prehearing conference, the

Page 547

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Commission asked Consumers for an estimate of its rate case expenses. Consumers stated it could not yet predict the level of expenses to be incurred in the case.

We are concerned about the level of rate case expenses incurred in rate cases generally, and are engaged in the adoption of rules to control allowable rate case expenses. We are particularly concerned about the presence of two attorneys representing Consumers at the prehearing conference, and at the prospect that they will be assigned throughout the case. We will require, therefore, an estimate by Consumers of its anticipated rate case expenses. Consumers shall explain whether it intends to assign two attorneys to every aspect of the case, and if so, why it believes that is necessary. We want to be absolutely clear from the beginning that the expenses in this case will be scrutinized and are at risk of disallowance if they have been unreasonably incurred.

#### VII. PROCEDURAL SCHEDULE

The Parties and Staff proposed a procedural schedule for the completion of this case which was predicated on a less expansive scope of the docket. Given our rulings on issues to be addressed, we think it unlikely that the proposed schedule can be met. We direct the Parties and Staff to discuss the schedule and, if necessary, propose modification. If it is necessary to call the participants together at another prehearing conference to resolve a schedule, we will do so. We recognize that further testimony from Consumers may be needed in light of our ruling today and will entertain a schedule which includes additional company testimony at the outset.

We also urge the Parties and Staff to propose, either now or as we approach the date for hearing on the merits, an agreed upon plan of presentation of witnesses and issues. We await correspondence from Staff regarding these procedural issues.

#### VIII. INITIAL POSITIONS OF THE PARTIES AND STAFF

As has been our practice in recent months, the Order of Notice requires each participant to present its initial position on the filing. Those positions are briefly noted below.

##### A. *Consumers*

Consumers stated that the company has been reorganized and improved from the organization that participated in DR 89-224, with changes in management and significant reductions in labor. Its rates of return from 1992 through 1995 have fallen well below its allowed

return. Though it believes a cost of equity of 11.88% is justified, it is willing to accept a cost of equity of 10.25%, based upon its calculations using Staff's methodology. It also seeks a rate increase of 5.39% in a second step for effect in January 1997, in addition to the 23.1% increase in this filing.

*B. Town of Hudson*

Hudson stated that its primary focus would be on rate design, specifically the degree to which Hudson ratepayers may be subsidizing other ratepayers. It was also concerned about fees paid to Consumers' parent company, its cost of equity and possibly its cost of service study.

*C. Mr. Smith*

Mr. Smith stated that he was particularly concerned about the level of rates, as he believes some customers' water rates are higher than their electric rates. He is also concerned about Consumers' rate design which he believes imposes too great a burden on Hudson ratepayers.

*D. OCA*

OCA stated that the significant issues will be Consumers' depreciation study, particularly the negative salvage values assigned to some items, its capital structure, rate design (including whether a "lifeline" rate should be created for low income customers), whether certain plant investments were prudently incurred and are used and useful, whether conservation

**Page 548**

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efforts would be appropriate, and the level of rate case expenses in this docket. It anticipated calling no more than three witnesses.

*E. Commission Staff*

Staff concurred with the issues identified by other Parties, particularly rate design (and whether Consumers' filing exacerbates the concerns of Hudson ratepayers regarding rate allocation), the depreciation study, the cost of service study, results of Consumers' audit, its capital structure, whether Construction Work in Progress has been included in rate base, rate case expenses, cost of equity and the relationship between the initial rate increase and the second rate increase requested for January of 1997. Staff committed to accelerating its testimony on the issue of its cost of equity on August 29, 1995. Staff anticipated calling four witnesses, plus those necessary to address the excess capacity issue.

Based upon the foregoing, it is hereby

ORDERED, the Town of Hudson and Leonard Smith are granted full intervention and Representative White is granted limited intervention; and it is

FURTHER ORDERED, that the scope of the docket shall include an analysis, pursuant to RSA 378:28, of those items in rate base which have not previously been found to be used and useful and prudently incurred; and it is

FURTHER ORDERED, that the scope of this docket shall include those issues of excess capacity as they relate to Consumers; and it is

FURTHER ORDERED, that OCA's Motion is DENIED, consistent with the terms of this

order; and it is

FURTHER ORDERED, that Consumers submit no later than September 11, 1995 its estimate of rate case expenses in this docket in accordance with the terms of this order; and it is

FURTHER ORDERED, that, given the date of this order, Staff's testimony regarding the cost of equity shall be filed no later than September 5, 1995; and it is

FURTHER ORDERED, that the procedural schedule proposed at the prehearing conference is held in abeyance pending further communication from the Staff after consultation with the Parties.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 1995.

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NH.PUC\*08/28/95\*[81059]\*80 NH PUC 549\*Connecticut Valley Electric Company

[Go to End of 81059]

80 NH PUC 549

## Re Connecticut Valley Electric Company

DR 95-210

Order No. 21,797

New Hampshire Public Utilities Commission

August 28, 1995

ORDER approving an electric utility's special rate contract with Claremont Foundry, Inc., an economic development arrangement under which usually separate transmission, production, and capacity charges have been converted into a single per-kilowatt-hour rate while the new business gets up and running.

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### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) — Incentives for new business — Special rate contracts — Conversion of separate transmission and capacity charges into single per-kilowatt-hour rate — Electric utility — Commission preference for tariffs versus special contracts for promoting ED programs. p. 550.

### 2. RATES, § 345

[N.H.] Electric rate design — Industrial and large power customers — Incentives for new business development — Via special rate contracts — Conversion of separate transmission and capacity charges into single per-kilowatt-hour rate — General economic development standards — Contribution to margin — No prohibition on cogeneration by customer —

Creation of new jobs. p. 550.

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BY THE COMMISSION:

ORDER

Connecticut Valley Electric Company, Inc. (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) on August 2, 1995, supporting testimony and exhibits of a special contract, Contract No. 8, between CVEC and Claremont Foundry, Inc. (CFI). On August 25, 1995, Contract No. 8, which had been inadvertently omitted from the August 2, 1995 packet, was filed by CVEC. The contract, effective August 1, 1995 or upon Commission approval, is for a three-year period, after which electric service to CFI reverts back to standard tariff Rate T. The contract's provisions regarding supplemental service can be cancelled with no penalty by either party on twelve months notice. There are no provisions precluding cogeneration.

CFI is a new corporation located in Claremont, New Hampshire that was formed to own and operate a precision metal castings foundry previously owned and operated by Joy Technologies (Joy). Joy once employed 150 in Claremont, but closed its Claremont operations in March, 1995. CFI thus qualifies as new load. CFI expects to employ 28 people by the end of 1995, and as the business expands, anticipates employing up to 150 by the end of the third year of the contract.

The filing by CVEC was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts (Checklist). Because of the recent purchase of the facility by CFI, the energy intensive nature of the operation (more than 10% of operating costs) and CFI's intention to commence melting operations in early September, CVEC requests expedited review of the proposed contract.

CVEC states that the CFI special contract is intended to provide CFI with reduced electricity costs, and competitive output on a cost per pound basis, as CFI develops its market. Due to the expected initial poor load factor of CFI, CVEC has limited the impact of Kw charges by proposing an "hours-use" rate structure similar to the one CVEC had with Joy. As shown in Attachment A of the special contract, the on-peak and off-peak transmission and production capacity have been converted to a per Kwh rate dependent upon the expected usage during each year of the three year contract. Additionally, the special contract has a provision that allows CFI to receive amounts of supplemental pre-scheduled capacity and energy from CVEC during on-peak periods at off-peak Kwh prices up to a maximum of 100 hours per month. The supply of pre-scheduled additional service will occur only when it will not cause CVEC or Central Vermont Public Service Company, CVEC's primary supplier of power, to experience a monthly and/or annual peak on its system that is in excess of the peak absent such service. If CVEC requests and CFI fails to discontinue pre-scheduled service, CVEC may, at its sole discretion, terminate the Contract No. 8 upon one (1) day prior written notice.

CVEC also requests that CVEC file in compliance a revised Page 15 of its tariff to modify the Base Capacity Charge calculation to reflect the necessary changes to its purchased power



clause. The change is needed because Contract No. 8 does not contain kW charges until the fourth year of the contract while the PPCA base capacity charges are kW unitized measures. The cost and revenue of the CFI load will need to be converted to base capacity charges on a per kWh basis as proposed in Exhibit WJD-2.

[1, 2] We believe Contract No. 8 should enhance CFI's ability to expand its business and create jobs in an area of the State that has been, historically, economically troubled. Upon review of the filing and the staff recommendation, the Commission finds that Contract No. 8 between CVEC and CFI meets the criteria we outlined in DR 91-172, the Generic Discounted Rates docket (Report and Order No. 20,633) as well as the Commission's Supplemental Order Approving the Final Checklist for Economic Development and Business Retention Special Contracts (Order No. 20,882, June 23, 1993).

Page 550

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We find this special contract is just and consistent with the public interest. We will expect, however, that CVEC notify the Commission if CFI fails to interrupt its supplemental service after a request by CVEC.

Both CVEC and CFI should note that under the Mobile-Sierra doctrine the Commission continues to retain jurisdiction over all special contracts. *See, Re: Town of Derry, 77 NH PUC 4, 6 (1992)*. In Senate Bill 168 the Legislature has indicated that, although special contracts remain a viable alternative, tariffs are the favored mechanism for fostering economic development. Accordingly, should CVEC file a economic development rate pursuant to the guidelines we are in the process of adopting, we will reconsider the special circumstances of this contract to determine whether they justify departure from CVEC's new tariffed rate.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Contract No. 8 between CVEC and Claremont Foundry, Inc. is approved effective September 18, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that should CVEC file a economic development rate, the Commission will reconsider the special circumstances of this contract to determine whether they justify departure from CVEC's new tariffed rate; and it is

FURTHER ORDERED, that CVEC file a revised Page 15 of its tariff to modify the Base Capacity Charge calculation to reflect the necessary changes to its purchased power clause as proposed in Exhibit WJD-2; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than September 5, 1995 and to be documented by affidavit filed with this office on or before September 15, 1995; 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 15, 1995.



By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Discounted Rates Docket, DR 91-172, Order No. 20,633, 77 NH PUC 650, Oct. 19, 1992. [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\*08/28/95\*[81060]\*80 NH PUC 551\*Matrix Telecom of New Hampshire, Inc.

[Go to End of 81060]

80 NH PUC 551

**Re Matrix Telecom of New Hampshire, Inc.**

Additional applicant: Matrix Telecom, Inc.

DE 94-303

Order No. 21,798

New Hampshire Public Utilities Commission

August 28, 1995

ORDER authorizing a telecommunications carrier to reorganize by collapsing its domestic corporation and transferring its operating authority from Matrix Telecom of New Hampshire, Inc., to Matrix Telecom, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 24.1

[N.H.] Factors affecting approval — Intercorporate transfer — Integration — Elimination of unnecessary corporate layers — After satisfaction of domestic incorporation requirements — No change in rates or services from customers' standpoint — Compliance with standard of no net harm — Telecommunications carriers. p. 552.

**Page 551**

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2. CORPORATIONS, § 11

[N.H.] Incorporation — Domestic incorporation requirements — Formation of special company to meet requirements — Subsequent dissolution — To eliminate corporate layers necessary for incorporation but unnecessary for actual operations — Telecommunications carriers. p. 552.

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BY THE COMMISSION:

ORDER

The Petitioners, Matrix Telecom of New Hampshire, Inc. (MTNH) and Matrix Telecom, Inc. (Matrix), jointly filed with the New Hampshire Public Utilities Commission (Commission) on December 19, 1994, a petition (Petition) to transfer the assets and the authority to operate as a telecommunications utility held by MTNH to Matrix.

MTNH, a New Hampshire corporation, was granted authority in docket No. DE 92-245, by Order No. 20,985 (Oct 5, 1993). MTNH was owned by Matrix Telecom, a Texas General Partnership, who through a series of tax-driven transactions ultimately became Matrix Telecom, Inc., the Texas corporation which is one of the joint petitioners.

All rates and services are to remain the same as Matrix proposes to adopt the tariff of MTNH. The Petitioners anticipate no degradation in financial, management, or technical competence.

[1, 2] The petitioner seeks to collapse the domestic corporation that was created to comply with the domestic incorporation requirements in effect at the time of the Petitioner's original application for authority in DE 92-245. Those telecommunications utilities that are fully registered with the New Hampshire Secretary of State are exempt from the domestic incorporation requirement. Matrix Telecom, Inc. has filed its Certificate of Authority issued by the New Hampshire Secretary of State. After the transfer of control, the Petitioners anticipate that their competitive capabilities will be enhanced by reduced expenses.

We find that the transfer from MTNH to Matrix of authority to transact business as a telecommunications public utility in the State of New Hampshire will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of control may in fact produce net benefits to MTNH's customers and ratepayers. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to transfer control of MTNH to Matrix is granted; and it is

FURTHER ORDERED, that Matrix shall adopt the currently effective tariff of MTNH; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission within 30 days of this order, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] *Re Matrix Telecom of New Hampshire, Inc.*, DE 92-245, Order No. 20,985, 78 NH PUC

560, Oct. 5, 1993.

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NH.PUC\*08/28/95\*[81061]\*80 NH PUC 552\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81061]

80 NH PUC 552

**Re New England Telephone and Telegraph Company dba NYNEX**

Additional applicant: Bretton Woods Telephone Company

DE 95-143

Order No. 21,799

New Hampshire Public Utilities Commission

August 28, 1995

ORDER approving a joint proposal by two local

**Page 552**

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exchange telephone carriers as to an exchange and transfer of assets and six customers, resulting in modification of their respective service territory boundaries.

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1. MONOPOLY AND COMPETITION, § 29

[N.H.] Territorial agreements — Modification of boundaries by mutual agreement — Pursuant to transfer of assets and customers — Factors affecting approval — Reasonable consideration — Consistency with natural and municipal boundaries — No net harm to customers — Local exchange telephone carriers. p. 554.

2. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Transfer of assets and customers — Associated changes in service area boundaries — Factors affecting approval — Efficiency of service and maintenance — Consistency with geographical and municipal boundaries — Reasonableness of consideration — No net harm to customers — Local exchange telephone carriers. p. 554.

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BY THE COMMISSION:

ORDER

On May 25, 1995, New England Telephone and Telegraph Company (NYNEX) and Bretton Woods Telephone Company (BWTC) filed a joint petition to transfer assets and modify service territory boundaries for effect June 24, 1995.

The petition was suspended by Order No. 21,697, dated June 20, 1995, pending further investigation.

The petition requests approval of a Purchase and Sale Agreement between NYNEX and BWTC under which NYNEX is selling some of its assets in the Twin Mountain exchange and transferring its basic exchange franchise in the service area to BWTC for \$28,679. NYNEX will discontinue basic exchange service in the area. BWTC is assuming NYNEX's obligation to provide basic exchange service to the six residential and business customers in the area.

The six affected customers have signed a Document of Understanding which identifies the changes that will occur with the transfer. Each customer has concurred and will become a customer of BWTC upon Commission approval of the petition.

For a period of at least two years all calls placed to the former NYNEX telephone numbers of the affected customers will be call-forwarded to their new telephone numbers at no charge. In addition, the customers will maintain the local calling area of the NYNEX Twin Mountain exchange for a period of at least two years. If BWTC continues to offer any of these customers call forwarding or Twin Mountain extended area service beyond two years, the companies will appropriately compensate each other and BWTC will account below the line for any lost revenue and expense involved.

Some of the six customers are presently paying NYNEX a basic exchange rate that is lower than the BWTC rate. No customers will pay a higher basic exchange rate as a result of this transfer. Where BWTC has made agreements with certain customers to maintain a lower monthly rate than is currently tariffed by BWTC, BWTC will account for the foregone revenue below the line.

There are two areas presently unserved which are located between the Bretton Woods exchange and the portion of the Twin Mountain exchange which will be transferred to Bretton Woods. These unfranchised areas, Chandler's Purchase and a portion of Bean's Grant, will be included in the Bretton Woods exchange in order to make the Bretton Woods exchange continuous.

Included in the petition was a proposed tariff page which indicated a large map outlining the franchise boundary of BWTC was maintained at the Business Office of the Company. At Staff's request, BWTC will rather include in the tariff a full size topographic map which

**Page 553**

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outlines the franchise boundary.

[1, 2] We find the petition to be in the public good. Transfer of the assets and modification of the exchange boundaries between the Bretton Woods and Twin Mountain exchanges is in the public good because 1) the price to be paid for the assets is reasonable; 2) the boundary modification will result in boundaries more consistent with geographic and municipal boundaries; 3) it will facilitate efficiency of service and maintenance; and 4) the six affected customers will not be harmed by the transfer.

Based upon the foregoing, it is hereby

ORDERED, that the joint petition of NYNEX and BWTC to transfer assets from the Twin Mountain exchange to the Bretton Woods exchange and modify the exchange boundary is approved; and it is

FURTHER ORDERED, that BWTC tariff page NHPUC No. 3, Part II Section 2, 2nd Revised Page 1 in lieu of 1st Revision, is approved for effect as filed; and it is

FURTHER ORDERED, that BWTC file a map of the approved franchise territory outlined on a USGS topographic map as NHPUC No. 3, Part II Section 2, Original Page 2; and it is

FURTHER ORDERED, that NYNEX's tariff page NHPUC No. 75 Part A Section 5, 3rd Revised Page 76, is approved for effect as filed; and it is

FURTHER ORDERED, that NYNEX and BWTC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of August, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DE 95-143, Order No. 21,697, 80 NH PUC 359, June 20, 1995.

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NH.PUC\*08/29/95\*[81062]\*80 NH PUC 554\*Enhanced 911 Surcharge

[Go to End of 81062]

80 NH PUC 554

### **Re Enhanced 911 Surcharge**

DR 95-232

Order No. 21,800

New Hampshire Public Utilities Commission

August 29, 1995

ORDER increasing, from 39 cents per telephone line to 42 cents per line, the monthly surcharge associated with financing of the state's enhanced 911 emergency telephone service.

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#### 1. RATES, § 260

[N.H.] Surcharges — For funding of special services — Enhanced 911 emergency telephone service — Increase in monthly per-line charge. p. 554.

## 2. RATES, § 553

[N.H.] Telephone rate design — Special services — Enhanced 911 emergency calling — Increase in monthly per-line surcharge. p. 554.

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BY THE COMMISSION:

ORDER

[1, 2] On August 18, 1995 the New Hampshire Enhanced 9-1-1 Commission informed the New Hampshire Public Utilities Commission (Commission) that on August 11, 1995 it had reviewed the FY96 budget and non-lapsed funds for the Bureau of Emergency Communications (Bureau) and concluded that a surcharge of 42¢ was necessary to meet the FY96 obligations of the Enhanced 9-1-1 (E911) program.

The Commission by Order No. 20,850 on May 27, 1993 instructed the local exchange telephone companies (LECs) to initiate changes to their administrative and operational support

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systems in preparation for billing an E911 surcharge, and, based on the Bureau's FY94 budget, by Order No. 20,909 on July 19, 1993, fixed the surcharge at 39¢, per telephone exchange line, per month, to be levied upon telephone exchange lines. The rate remained unchanged for FY95.

Based upon the foregoing, it is hereby

ORDERED, that each LEC bill the E911 surcharge at 42¢ per line per month, beginning with bills dated on or after October 1, 1995, until further notice by the Commission; and it is

FURTHER ORDERED, that the LECs file properly annotated tariff pages in compliance with this order no later than 30 days from the issuance date of this order as required by N.H. Admin. rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Enhanced 911 Access Line Surcharge, DR 93-095, Order No. 20,850, 78 NH PUC 269, May 25, 1993. [N.H.] Re Enhanced 911 Access Line Surcharge, DR 93-095, Order No. 20,909, 78 NH PUC 359, July 19, 1993.

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NH.PUC\*08/29/95\*[81063]\*80 NH PUC 555\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81063]

80 NH PUC 555

**Re New Hampshire Electric Cooperative, Inc.**

DF 95-186  
Order No. 21,801

New Hampshire Public Utilities Commission

August 29, 1995

PETITION by electric cooperative for authority to issue promissory notes, so as to prepay certain indebtedness owed the Rural Utilities Service and to refinance other debt; granted.

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1. SECURITY ISSUES, § 98

[N.H.] Kinds and proportions — Promissory notes — New issuances — To prepay and refinance existing debt — To take advantage of lower interest rates — Electric cooperative. p. 557.

2. RETURN, § 85.3

[N.H.] Electric cooperative — Capital structure — All debt — Traditional for cooperative associations — Impact of bankruptcy filing. p. 557.

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APPEARANCES: Mark W. Dean, Esquire, for New Hampshire Electric Cooperative, Inc.; Kenneth Traum for the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers; and Eugene F. Sullivan Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 6, 1995, the New Hampshire Electric Cooperative, Inc. (NHEC), filed with the New Hampshire Public Utilities Commission (the Commission) a petition for permission to issue debt instruments associated with refinancing, and a motion to consolidate the instant petition with its petition filed April 7, 1995 relative to the financing of its 1995/96 Two-Year Construction Work Plan which had been docketed as DF 95-096. NHEC had not filed supporting testimony or exhibits in DF 95-096 during the three months since filing its petition while it negotiated the prepayment and refinancing of all of its secured debt issued by the United States of America. The Commission, therefore, closed DF 95-096 for lack of prosecution on July 17, 1995, thus rendering moot the motion to consolidate.

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This proceeding involves a request by NHEC for Commission authorization, pursuant to RSA 369, to prepay NHEC's outstanding indebtedness to the Rural Utilities Service (RUS), and to issue promissory notes, mortgages and other debt instruments necessary to refinance NHEC's existing RUS debt through the National Rural Cooperative Finance Corporation (CFC). NHEC also seeks Commission approval, pursuant to RSA Chapter 369, to issue debt instruments in association with a \$19.7 million long-term construction loan from CFC.

On July 11, 1995, the Commission issued an order of notice scheduling a prehearing conference for July 28, 1995, establishing a deadline for interventions of July 18, 1995, and requiring that NHEC file direct testimony and exhibits in support of its petition on or before July 21, 1995.

On July 21, 1995, NHEC filed direct testimony of Frederick C. Anderson, General Manager/CEO, and Roland Von Ohlsen, Director of Finance and Administration, with accompanying exhibits, in support of NHEC's petition.

On July 28, 1995, a duly noticed prehearing conference was conducted. NHEC, the Staff of the Commission (Staff) and the Office of the Consumer Advocate (OCA) participated in the prehearing conference and in a technical session which convened immediately following the prehearing conference. No other parties have participated in this docket, and no petitions to intervene have been filed by other potential parties.

On August 1, 1995, the Commission approved the procedural schedule in Order No. 21,773.

On August 15, 1995, NHEC, Staff and OCA filed a Stipulation of Settlement for the purpose of resolving all issues in this proceeding. A hearing was held on the Stipulation of Settlement and the merits of NHEC's petition on August 21, 1995.

On August 23, 1995, NHEC filed an Assented-To Motion to amend its request for finding of fact and ruling of law No. 2. NHEC amended the petition to reflect a change in the mechanism which will effectuate the refinancing of its 2% and 5% RUS indebtedness through CFC. RUS requires that NHEC's existing 2% and 5% notes be discharged at the initial August 30, 1995 closing, and that substitute 2% and 5% notes be issued to evidence the debt will remain outstanding through the January 1996, and January 1997 closings. This amendment is a ministerial act, that does not change the costs or financial impact of NHEC's financing or the scope, or terms and conditions of any of the mortgage or other obligations assumed by NHEC in connection with the proposed financing. The only differences between the existing and substitute 2% and 5% notes are those changes necessary to reflect the outstanding balances of the debt on the day of closing, including recognition of NHEC's prepayment of approximately 50% of the 5% debt, and the adjustment in the term of each note to reflect its repayment in January of 1996 and January 1997, respectively. Debt service on the notes will be unchanged.

## II. SETTLEMENT AGREEMENT

As described in the Stipulation of Settlement, NHEC's current debt structure results from its reorganization pursuant to Chapter 11 of the United States Bankruptcy Code. NHEC's restructured debt was approved by the Commission in DR 92-009. *See*, 77 NH PUC 586, 596, 601; 77 NH PUC 719, 721-22.

NHEC's restructured debt included a \$41.6 million secured contingent note, which accrued



interest at the rate of 9.3%, but which required debt service payment only under certain limited circumstances. \$151 million of the RUS, non-contingent debt also carried the interest rate of 9.3%, \$12,262,000 carried an interest rate of 2%, and \$59,053,000 carried an interest rate of 5%.

During the two-year period between the time when NHEC restructured its debt to include the 9.3% interest rate, and NHEC's final emergence from bankruptcy in December of 1993, the long-term debt market had changed so that substantial financial benefits could be gained if the 9.3% debt could be refinanced at then-existing rates. During the period both prior to and subsequent to NHEC's emergence from

**Page 556**

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bankruptcy, the Staff, OCA and Commission have each urged NHEC to take advantage of existing lower interest rates, to the extent possible, under its agreements with its secured creditors. During various Commission proceedings over the last three years, NHEC has provided Staff, OCA, and the Commission with updates concerning its ongoing efforts to reach agreements with its secured creditors which would allow for the refinancing of the 9.3% debt.

In June and July of 1995, NHEC reached agreements with both RUS and CFC which will permit the refinancing of NHEC's RUS debt. Under the terms of the agreement, NHEC will prepay all non-contingent debt owed to RUS. NHEC will receive a discount on the prepayment of the 2% and 5% debt. The contingent note will be eliminated.

The refinancing will take place in three steps. The 9.3% debt and a portion of the 5% debt will be prepaid on August 30, 1995. The remaining portion of the 5% debt will be discharged and substituted with a new 5% note which will remain outstanding until January 31, 1996. The 2% debt will be discharged and substituted with a new 2% note which will remain outstanding until January 31, 1997. NHEC will pay RUS a one-time \$1.5 million payment at the initial closing. The contingent note will be eliminated at the initial closing.

CFC has agreed to loan NHEC funds sufficient to prepay all RUS debt as described above. NHEC projects that, in light of currently available interest rates through CFC, the prepayment and refinancing will result in a reduction in NHEC's total secured debt and a reduction in interest expense associated with that debt. The refinancing will also limit and, as of the final closing, eliminate, RUS controls relative to the NHEC's operations.

At interest rates available at the time NHEC filed its testimony, NHEC projected that the refinancing will reduce NHEC's total secured debt by approximately \$8 million. NHEC projects net interest expenses and power cost savings of \$11.5 million through the year 2005. NHEC projects that the refinancing will reduce PSNH's purchase power costs under the Seabrook Contract (Sellback) by \$8.8 million between September 1995 and July 2000. NHEC believes these savings will be passed through to PSNH ratepayers through FPPAC.

As a rural electric cooperative, NHEC has historically been 100% debt-financed. Prior to NHEC's bankruptcy reorganization, its primary source of construction financing was the Rural Electrification Administration of the United States Department of Agriculture (now RUS). As part of its bankruptcy reorganization, future construction financing from RUS became unavailable to NHEC. CFC, however, committed to make future construction financing available to NHEC pursuant to the Work Plan Loan Agreement and Approval Agreement approved by the

Commission in DR 92-009. *See*, 77 NH PUC 586; 77 NH PUC 719, 722. Under the terms of the Work Plan Loan Agreement, CFC has agreed to provide construction financing to NHEC to meet its construction needs as defined by NHEC's two-year work plans which are prepared by NHEC and periodically submitted to NHEC's secured creditors and the Commission. The Commission approved NHEC's first request for construction financing pursuant to the Work Plan Loan Agreement in DF 92-230. *See*, 78 NH PUC 256.

NHEC seeks Commission approval of \$19,703,400 in construction financing for the 1995-1996 construction work plan.

### III. COMMISSION ANALYSIS

[1, 2] NHEC's proposed prepayment and refinancing of its RUS debt lower NHEC's debt, decreases NHEC's interest expenses, eliminates the contingent note and provides NHEC with greater operational flexibility through limitations on and eventual elimination of certain RUS "controls" in existing debt instruments. The reduced interest expense associated with the refinancing will also cause a reduction in PSNH purchase power expenses through its Seabrook Contract with NHEC. The reduced purchase power expenses will also benefit PSNH ratepayers by lowering its purchased power expense in relation to the Seabrook Sellback Agreement.

The settlement agreement in this case provides that the refinancing should carry a

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condition that the proposed borrowings would be authorized so long as the weighted average interest rate available through CFC at the initial closing equals or is less than 8.25%. The projected cost included in the settlement is 7.55%. That rate is favorable when compared to the present rate of 9.3% on the current notes. NHEC testified that there would be financial benefits as long as all of the debt were to be financed at no more than 8.25%.

We find that the proposed prepayment and refinancing is in the public interest. We also find NHEC's proposed issuance of debt instruments in connection with the Work Plan Construction Loan to be in the public interest. The use of the proceeds from the issuance of these securities is required in order that NHEC may make improvements to its system in order to increase reliability and to provide adequate and reliable service.

The Commission finds, pursuant to RSA 369:1-4, that NHEC's issuance to CFC and RUS of promissory notes of the type, in the amount and upon the terms as requested by NHEC for the purpose of refinancing NHEC's outstanding indebtedness to RUS, through CFC, is consistent with the public good and is hereby approved.

After the August 28, 1995 public deliberations on this matter at which we approved the refinancing request, the Commission received a letter filed on August 29, 1995 by NHEC with concurrence of the OCA and Staff. The letter noted that in recent days the bond market has provided for more favorable rates. NHEC, OCA and Staff recommend that NHEC should be granted some flexibility in the terms upon which NHEC closes on the refinancing now scheduled for August 30, 1995 in order to take advantage of these lower rates. We agree that lower rates are clearly in the public good and will approve the August 29, 1995 letter request to amend the Stipulation regarding the terms upon which NHEC closes on the refinancing to allow it

flexibility to take advantage of these lower rates.

NHEC may take all or any amount of the refinancing debt issued by CFC at CFC's adjustable rate for a period not to exceed fourteen (14) days subsequent to the initial closing. No later than fourteen (14) days after the initial closing NHEC's debt structure will be established in form substantially similar to that set forth in Exhibit A to the Stipulation of Settlement.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's petition for Authority to Issue Debt Instruments and the Stipulation of Settlement in support thereof are hereby approved; and it is

FURTHER ORDERED, that the Joint Request for Findings of Fact and Conclusion of Law 1, and 3-7 set forth in the Stipulation of Settlement are hereby granted; and it is

FURTHER ORDERED, that the assented-to Motion to Amend Joint Request for Finding of Fact and Ruling of Law No. 2 is hereby granted; and it is

FURTHER ORDERED, that NHEC shall submit a compliance filing to the Commission within 30 days after the initial closing, detailing the actual note structure and interest rates reflected in the closing documents; 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 twenty-ninth day of August, 1995.

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NH.PUC\*08/29/95\*[81064]\*80 NH PUC 559\*Computer Telephone Corporation

[Go to End of 81064]

80 NH PUC 559

**Re Computer Telephone Corporation**

DR 95-199

Order No. 21,802

New Hampshire Public Utilities Commission

August 29, 1995

ORDER authorizing an interexchange telephone carrier to discontinue its switched and dedicated inbound/outbound services, due to a lack of subscribers.

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1. SERVICE, § 275

[N.H.] Discontinuance — By interexchange telephone carrier — Of particular service —

Switched and dedicated inbound/outbound services — Factors — No present or anticipated customers — No impact on other debit or travel card services. p. 559.

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BY THE COMMISSION:

ORDER

[1] On July 31, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Computer Telephone Corporation (CTC) requesting authority to discontinue switched and dedicated outbound and inbound services for effect August 30, 1995.

The petition states there are no customers using or signed up to use the services proposed to be discontinued. CTC will continue to offer debit card and travel card services.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize CTC to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of CTC's tariff, NHPUC No. 1 are approved for effect as filed:

- 1st Revised Page 1
- 1st Revised Page 8
- 1st Revised Page 20
- 1st Revised Page 21
- 1st Revised Page 28;

and it is

FURTHER ORDERED, that CTC file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of August, 1995.

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NH.PUC\*08/29/95\*[81065]\*80 NH PUC 559\*Allnet Communication Services, Inc.

[Go to End of 81065]

80 NH PUC 559

**Re Allnet Communication Services, Inc.**

DR 95-208  
Order No. 21,803

New Hampshire Public Utilities Commission

August 29, 1995

ORDER authorizing an interexchange telephone carrier to revise its outbound toll/inbound 800 service plans, to offer more special features, including dedicated access options.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Outbound toll/inbound 800 service plans — New features — Dedicated access

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options — Interexchange carrier. p. 560.

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BY THE COMMISSION:

ORDER

[1] On July 31, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Allnet Communication Services, Inc. (Allnet) requesting authority to revise its Allnet Product One Service, for effect September 1, 1995.

Allnet Product One is a combined outbound toll and inbound 800 product. The proposed revisions introduce additional Allnet Product One term plan options, and dedicated access options.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Allnet to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Allnet's tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Page 1  
3rd Revised Page 2  
1st Revised Page 46.6  
Original Page 46.6.1  
1st Revised Page 66.1;

and it is

FURTHER ORDERED, that Allnet file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of August, 1995.

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NH.PUC\*08/29/95\*[81066]\*80 NH PUC 560\*Northern Utilities, Inc.

[Go to End of 81066]

80 NH PUC 560

**Re Northern Utilities, Inc.**

DF 95-195

Order No. 21,804

New Hampshire Public Utilities Commission

August 29, 1995

PETITION by natural gas local distribution company for authority to issue up to \$15 million in unsecured notes, so as to repay short-term debt and refinance a portion of a balance associated with a revolving credit agreement; granted.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes — Of issuance of unsecured notes — Refunding and conversion — Repayment of short-term debt — Refinancing of revolving credit agreement balances — Gas local distribution company. p. 560.

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BY THE COMMISSION:

**ORDER**

[1] The Petitioner, Northern Utilities Inc. (Northern), filed with the New Hampshire Public Utilities Commission (Commission), on July 14, 1995, a petition under RSA 369:1 and 4 to issue and sell at par value two series of unsecured notes in an aggregate principal amount not to exceed \$15,000,000. The proceeds of the financing will be used to repay outstanding short term debt and to refinance a portion of the balance outstanding under its existing Revolving Credit Agreement with First National Bank of Boston which provided the funding for capital expenditures.

Northern's Revolving Credit Agreement

**Page 560**

provides up to \$20 million of funds over a four year term and was authorized by the Commission on February 22, 1993 in Order 20,758. As of May 31, 1995, Northern had used all

\$20 million available and had two remaining years in the term. During fiscal years 1996 and 1997, Northern's utility related capital expenditures are expected to total \$10.3 million and \$10.9 million, respectively and will require the facilities of the Revolving Credit Agreement and Short Term Debt.

Northern proposes to issue and sell \$10,000,000 of Series A Notes at an interest rate of 6.93% with a final maturity of fifteen years, and \$5,000,000 of Series B Notes at an interest rate of 6.30% with a final maturity of three years. MONY Capital Management, an institutional investor, has committed to purchasing \$10 million of Series A Notes Due 2010 and \$5 million of Series B Notes Due 1998 subject to the approval of this Commission and the Maine Public Utilities Commission.

The Series A Notes will be callable at par plus a 3.465% premium beginning in 1999. The call premium will decline to zero by 2005. The Series A Notes have a "sinking fund" schedule which requires 10% of the notes redeemed each year beginning in 1999. The Series B Notes will neither be callable nor have a mandatory payment schedule. Warranties, representations, affirmative and negative covenants are similar to Northern's existing agreement for \$13 million 9.70% Notes approved by the Commission in DF 91-134.

As of May 31, 1995, Northern had 200 authorized shares of Common Stock, \$10 par value, of which 100 shares were issued and outstanding, and a common equity balance of \$42,848,600. After completion of the refinancing, Northern expects its capital structure to be composed of 56% Common Equity and 44% Long Term Debt. Issuance costs are estimated to range from \$83,750 to \$88,750.

Having reviewed Northern's request to issue securities and the terms of the notes, we find the request to be consistent with the public good and will approve it as filed.

Based upon the foregoing, it is hereby

ORDERED, that Northern is hereby authorized to issue and sell \$10,000,000 of Series A Notes at an interest rate of 6.93% with a final maturity of fifteen years, and \$5 million of Series B Notes at an interest rate of 6.30% with final maturity of three years, such notes to be sold to MONY Capital Management, and upon the terms and conditions set forth in Northern's filing; and it is

FURTHER ORDERED, that the proceeds from the sale of said Notes are to be used solely to pay down the \$1 million of Short Term Debt and \$14 million of the balance outstanding under the Revolving Credit Agreement; and it is

FURTHER ORDERED, that Northern is authorized to recover the costs associated with the issue and sale of notes, Series A, 6.93% and Series B, 6.30%; and it is

FURTHER ORDERED, that on January 1 and July 1 of each year, the Northern shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of the notes until the accounting is complete; and it is

FURTHER ORDERED, that Northern shall file a copy of the notes upon completion of the transaction.

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

August, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MCI Telecommunications Corp., DE 93-002, Order No. 20,758, 78 NH PUC 96, Feb. 9, 1993.

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NH.PUC\*08/30/95\*[81067]\*80 NH PUC 562\*Western Union Communications, Inc.

[Go to End of 81067]

80 NH PUC 562

**Re Western Union Communications, Inc.**

DR 95-212

Order No. 21,805

New Hampshire Public Utilities Commission

August 30, 1995

ORDER authorizing an interexchange telephone carrier to introduce prepaid calling card service as well as special single-use calling cards.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Prepaid calling card service — Special single-use sample calling cards — Interexchange carrier. p. 562.

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BY THE COMMISSION:

ORDER

[1] On August 2, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Western Union Communications, Inc. (Western Union) requesting authority to introduce new prepaid calling card options and promotional language, and make minor text revisions.

The proposed new prepaid calling card options include Collectible Cards and Sample Cards. Collectible Cards may be printed with designs intended for collectors. Sample Cards permit the user to make one call per card.

The proposed promotional language explains that the company may from time to time offer special promotional offerings for a limited period of time. The special promotional offerings will



not exceed the rates contained in the tariff. We will require the company to provide the Commission with written notice seven days before it intends to begin a promotional offering. The notice must explain the terms, conditions and rates each time a promotional offering is made.

The proposed revisions require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), requires "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed." Therefore, Western Union will be required to file a completely new tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Western Union to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Western Union's tariff, NHPUC No. 1 are approved for e

- 1st Revised Page 2
- 1st Revised Page 3
- 1st Revised Page 4
- 1st Revised Page 10
- 1st Revised Page 11
- 1st Revised Page 12
- 1st Revised Page 13
- 1st Revised Page 14
- Original Page 15
- Original Page 16;

and it is

FURTHER ORDERED, that Western Union file a complete new tariff, Western Union NHPUC No. 2, incorporating the changes approved above with the existing approved pages in Western Union's NHPUC No. 1, in compliance with Puc 1601.05(b) (2), and properly annotated as required by N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order; and it is

FURTHER ORDERED, that Western Union submit a letter to the Commission each time it intends to begin a promotional offering,

**Page 562**

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seven days before the promotion begins, which explains the terms, conditions and rates of the promotion.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1995.

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NH.PUC\*08/30/95\*[81068]\*80 NH PUC 563\*MFS Intelenet, Inc.

[Go to End of 81068]

80 NH PUC 563

**Re MFS Intelenet, Inc.**

DR 95-213

Order No. 21,806

New Hampshire Public Utilities Commission

August 30, 1995

ORDER authorizing an interexchange telephone carrier to revise its tariffed service regulations as to carrier versus customer obligations, payment arrangements, interruptions in service, termination of service, and liability for unauthorized usage.

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1. SERVICE, § 165

[N.H.] Rules and regulations — Of interexchange telephone carrier — Tariff revisions — Matters covered — Customer versus carrier duties — Payment processes and options — Service interruptions — Termination of service — Liability for unauthorized use. p. 563.

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BY THE COMMISSION:

**ORDER**

[1] On August 2, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet, Inc., (MFS) requesting authority to revise the Regulations section of its tariff, for effect September 2, 1995.

The proposed revisions change the regulations governing the undertaking of the company, obligations of the company, obligations of the customer, payment arrangements, allowances for interruptions in service, cancellation of service, termination liability, and customer liability of unauthorized use of the network. The revised regulations are much more specific than those in the currently effective tariff. We will require MFS to notify its customers of the revised regulations.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MFS to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as

filed:

5th Revised Page 1 in lieu of  
4th Revision  
1st Revised Page 9  
1st Revised Page 10  
Original Page 10.1  
Original Page 10.2  
1st Revised Page 11  
1st Revised Page 13  
Original Page 13.1  
1st Revised Page 16  
Original Page 16.1  
1st Revised Page 17  
1st Revised Page 17.1 in lieu  
of Original  
2nd Revised Page 18 in lieu  
of 1st Revision  
Original Page 18.1  
1st Revised Page 19  
Original Page 19.1  
Original Page 19.2  
Original Page 19.3  
Original Page 19.4  
Original Page 19.5  
Original Page 19.6  
Original Page 19.7  
1st Revised Page 20  
1st Revised Page 21  
2nd Revised Page 22;

Page 563

and it is

FURTHER ORDERED, that MFS notify all existing New Hampshire customers of the changes in regulations resulting from these tariff revisions; and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of August, 1995.

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NH.PUC\*08/30/95\*[81069]\*80 NH PUC 564\*Calls for Less, Inc.

[Go to End of 81069]

80 NH PUC 564

**Re Calls for Less, Inc.**

DE 95-109

Order No. 21,807

New Hampshire Public Utilities Commission

August 30, 1995

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

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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 services. p. 564.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 564.

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BY THE COMMISSION:

ORDER

[1, 2] On April 21, 1995, Calls for Less, Inc. (Calls for Less), a Nebraska 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.

Calls for Less 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 Calls for Less 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. Calls for Less 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, Calls for Less shall notify the Commission of the change.
5. Calls for Less is exempted from NH Admin Rules, Puc 406.03 Accounting Records;

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Puc 407 Forms Required of All Telephone Utilities; and Puc 409 Uniform System of Accounts for Telecommunications Companies.

6. Calls for Less shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Calls for Less 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. Calls for Less 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. Calls for Less 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. Calls for Less shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Calls for Less 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 Calls for Less 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 Calls for Less to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Calls for Less shall publish an attested copy of the Notice of

**Page 565**

Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than Sept. 11, 1995, and an affidavit proving publication shall be filed with the Commission on or before September 27, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Calls for Less 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 Calls for Less shall file a compliance tariff with the Commission on or before September 13, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective Sept. 29, 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 thirtieth day of August, 1995.

Notice of Conditional Approval of  
Calls for Less, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On April 21, 1995, Calls for Less, Inc. (Calls for Less), a Nebraska 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. 21,807, issued in Docket No. DE 95-109, the Commission granted Calls for Less conditional approval to operate as of September 29, 1995, subject to the right of the public and interested parties to comment on Calls for Less 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 Calls for Less' petition to do business in the State should submit written comments no later than September 27, 1995, 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\*09/05/95\*[81070]\*80 NH PUC 566\*Relay New Hampshire

[Go to End of 81070]

80 NH PUC 566

## Re Relay New Hampshire

DE 95-222

Order No. 21,811

New Hampshire Public Utilities Commission

September 5, 1995

ORDER authorizing the New Hampshire Telecommunications Relay Service Advisory Board to expand current relay services to include both voice carry over (VCO)-to-VCO service and VCO-to-text telephone service.

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### 1. SERVICE, § 467.1

[N.H.] Telephone — Programs for the deaf and hearing-impaired — Telecommunications relay services — Expansion of service offerings — Incorporation of voice carry over-to-voice

Page 566

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carry over service and voice carry over-to-text telephone service. p. 567.

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BY THE COMMISSION:

### ORDER

[1] On August 9, 1995, the New Hampshire Public Utilities Commission (Commission) received a request from the New Hampshire Telecommunications Relay Service (TRS) Advisory Board (Advisory Board) to expand relay services to include voice carry over (VCO) to VCO and VCO to text telephone (TTY).

VCO to VCO will allow persons who are hard of hearing to communicate with each other using TRS and a telephone with a display unit and no keyboard. VCO to TTY will allow persons who are hard of hearing and deaf to communicate with each other using TRS. Neither of these services are currently available through TRS.

Sprint Communications Company of New Hampshire Inc. (Sprint) is the authorized New Hampshire TRS provider. Sprint will implement VCO to VCO and VCO to TTY for NH TRS for \$64,796. In addition, Sprint will provide intrastate directory assistance through NH TRS and will waive the implementation fee, the monthly recurring fee, and the charge to relay users when requesting phone numbers within the state from the Relay New Hampshire service.

The NH TRS Trust Fund balance was approximately \$907,000 on August 17, 1995. The balance is being reduced by approximately \$15,500 per month due to the Commission ordered rate reduction as required by Order No. 21,324, (August 16, 1994). At this rate, the excess would be eliminated approximately July 2000. Implementation of VCO to VCO and VCO to TTY will



eliminate the excess approximately four months sooner, that is, by March 2000. Thus, implementing these two new features will not significantly affect the date by which the excess will be eliminated.

The President of Self Help for the Hard of Hearing in New Hampshire (SHHH) submitted a letter to the Commission in support of the Advisory Board's request.

We find the request to be in the public good. Our order in *Re Dual Party Relay Service-Telecommunications Relay Service (TRS)* which established the Advisory Board, mandated that the Advisory Board shall advise the Commission on necessary improvements to the New Hampshire TRS (76 NH PUC 596). We believe the addition of VCO to VCO and VCO to TTY will make NH TRS more accessible to a greater number of people in New Hampshire and therefore will approve the Advisory Board's request.

Based upon the foregoing, it is hereby

ORDERED, that the New Hampshire TRS Advisory Board's request to expand TRS service to include VCO to VCO and VCO to TTY is approved; and it is

FURTHER ORDERED, that Sprint implement VCO to VCO, VCO to TTY and intrastate directory assistance for \$64,796; and it is

FURTHER ORDERED, that Sprint notify the Commission of the soonest implementation date possible for these new features.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] *Re Relay New Hampshire*, DR 94-180, Order No. 21,324, 79 NH PUC 451, Aug. 16, 1994.

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NH.PUC\*09/06/95\*[81071]\*80 NH PUC 568\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81071]

80 NH PUC 568

**Re New Hampshire Electric Cooperative, Inc.**

DR 94-258 et al.  
Order No. 21,812

New Hampshire Public Utilities Commission

September 6, 1995

ORDER approving an electric cooperative's proposed special contracts with four ski resorts having viable self-generation capabilities, where the contracts would provide for a rate discount

of approximately 21%. The contracts all contain interruptible service provisions and rates high enough to provide a positive contribution to fixed costs but low enough to dissuade bypass.

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## 1. RATES, § 360

[N.H.] Electric rate design — Seasonal customers — Ski resorts — Service via special rate contracts — Factors — Viable self-generation capabilities — Benefits of retaining load — Necessity of preventing bypass — Terms of contract — Agreement to periodic service interruptions — Positive contribution to cost — Electric cooperative. p. 570.

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APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Reduced Energy Specialists by Bruce N.J. Hotz, P.E. for Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, Inc. and Waterville Company, Inc.; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On November 1, 1994, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) testimony and exhibits supporting approval of special contracts with four of its member ski areas: Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, Inc. and Waterville Company, Inc. The special contracts between NHEC and the 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 the Interruptible Service Agreement filing, PSNH filed with FERC amendments to its Partial Requirements Resale Service Agreement between PSNH and NHEC providing, *inter alia*, reduced rates to NHEC for the four ski area loads. On August 30, 1994, PSNH filed an amendment to the Interruptible Service Agreement and modifications to the amended Partial Requirements Agreement. PSNH's amendment to the Interruptible Service Agreement and the modifications to the amended Partial Requirements Agreement were accepted by FERC on October 18, 1994.

On November 23, 1994, the Commission approved the ski area contracts on an interim basis for a one year period in order to give the Commission a full opportunity to review the filing. *See* Order No. 21,436.

PSNH and Reduced Energy Specialists, Inc. (RES) requested and were granted full intervention. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. *See* Order No. 21,492 (January 9, 1995).

On June 1, 1995, the Commission heard evidence on the filing at a duly noticed hearing. No

testimony was filed by PSNH, RES, OCA or Staff.

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## II. POSITIONS OF THE PARTIES AND STAFF

### A. NHEC

Teresa L. Muzzey, NHEC's Manager of Rates and Financial Analysis, testified that NHEC is seeking approval of the special contracts with four of its five largest ski areas in order to retain the load of those ski areas. Absent approval of these four special contracts, NHEC believes the four member ski areas will install their own generation because it would be less costly than buying power from NHEC. The four ski areas purchase 24 million kilowatt-hours (kWh) per year, approximately, from NHEC. Total annual revenue from the 4 ski areas under tariff rates would be \$3.265 million, approximately.

Ms. Muzzey stated NHEC could not reduce its retail rates to the ski areas in order to compete with the ski area's generation alternative without amending the existing wholesale power contract with PSNH, NHEC's primary power supplier. NHEC reached agreement with PSNH to amend the wholesale power contract, FERC Rate Schedule 142, for wholesale power used to serve NHEC ski area load requirements. NHEC refers to the new interruptible power contract with PSNH as the Interruptible Power Supply Service Agreement (Interruptible Service Agreement). Under the Interruptible Service Agreement, the average rates NHEC will pay PSNH in the first year will be approximately 38% lower than what the rates would have been had NHEC continued to serve the ski area load under the existing Amended Partial Power Requirements Agreement (APPRA).

Ms. Muzzey, in her pre-filed testimony, estimated that the ski area special contracts were expected to provide the ski areas with an average rate of 8.0¢ per kWh, a decrease of approximately 21% from the standard tariff rates. Ex. 1 at 5, Tr. at 43. The special contract price is slightly higher than the 7.65¢ per kWh NHEC believes it would cost the ski areas to generate electricity on their own. At the hearing, Ms. Muzzey testified that the projected savings, based on 5 months of actual data and 7 months of 1994 billing data, indicated ski area savings of 28%. Ex. 2, Tr. at 44.

Ms. Muzzey testified that prior to the interim approval of the ski area special contracts, the margin received by NHEC for sales to the ski areas had been a negative 2.25¢ per kWh for the twelve months ending October 1994. The margin had also been negative for the two preceding years. Tr. at 28. Ex. 2. Ms. Muzzey estimates that the margins from Commission approval of the special contracts will be \$130,000, approximately, in the first year. The total increased contribution to NHEC's fixed costs equals \$360,000, which compares favorably to the \$230,000 that NHEC would have saved by not serving the ski areas had they pursued their self-generation alternative. Ex. 2.

### B. PSNH

Based on a request by OCA to clarify the effects of the ski area special contracts on PSNH customers as well as the analysis PSNH provided to NHEC concerning ski area self-generation, Stephen P. Hall, Rates and Regulatory Services Manager, testified on behalf of the ski area

special contracts. Mr. Hall stated that the special contracts will result in reduced rates to both PSNH's retail and wholesale customers. Tr. at 76. Mr. Hall pointed out that the pricing arrangement with NHEC for the ski area load is at or above the total costs in PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC), which includes some fixed costs. Therefore, retaining sales to NHEC related to the ski areas, which Mr. Hall is convinced would vanish absent these special contracts, will result in spreading the fixed costs in FPPAC over more kilowatt-hours, thereby lowering the overall rates to all customers. Tr. at 80. Mr. Hall estimated that the benefits to all retail and wholesale customers by retaining the ski area load will be approximately \$750,000. Tr. at 85 and 86.

Mr. Hall testified that the self-generation study used by NHEC was performed by PSNH and that it was the same analysis PSNH undertook when it evaluated the viability of self-generation to PSNH served ski areas.

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#### C. RES

RES, who had worked on behalf of the ski areas to evaluate the feasibility of self-generation, and negotiated on behalf of the ski areas with NHEC and PSNH, supported the expeditious approval of the ski area contracts.

#### D. Staff

Staff neither supported nor opposed the ski area special contracts. In its questioning of NHEC and PSNH witnesses, Staff was concerned about the actual pricing mechanism, the level of the savings to NHEC's other customers, and the effects on PSNH and its customers.

#### E. OCA

After consideration of the effects on PSNH's customers, OCA believes that the ski area special contracts are, on balance, beneficial and supports Commission approval of them. Tr. at 88. OCA had concerns about the viability of the self-generation options of the ski areas, the expected level of savings to both NHEC's customers and PSNH's customers and the effect of the ski areas on NHEC's power cost adjustment mechanism. OCA was particularly concerned about the effects of the ski area load on the ratchet provision in PSNH's wholesale FPPAC and the ski area contribution to the under-recovery of NHEC's Power Cost Adjustment.<sup>1(61)</sup>

### III. COMMISSION ANALYSIS

[1] We have reviewed the ski area special contracts, the testimony, and the exhibits in this proceeding and believe that these four special contracts will provide benefits to the ski areas, NHEC's other members and PSNH and its customers. We will, therefore, approve them as filed.

Because of the wholesale relationship between NHEC and PSNH, and the current rate design of NHEC which did not capture the ratchet effect of these four ski areas, NHEC's other customers have been incurring higher costs through the Power Cost Adjustment factor. The OCA has indicated its concern about the power cost effects of the ski areas to NHEC. As Exhibit 2 indicates, simply by removing the ski area load and allowing them to self-generate, NHEC would be better off by \$230,000. However, based on the wholesale pricing contained in these

special contracts and the margin retained by NHEC, these special contracts will result in savings to NHEC's other customers of \$107,942 more during the first year than the alternative of allowing the ski areas to pursue their self-generation option. Ex. 2. Additional benefits will be provided to PSNH and its customers by our approval of these contracts as described in Mr. Hall's testimony.

We are persuaded, and nothing in the record supports otherwise, that the ski areas have a viable self-generation option. Our approval of these discounted rates will afford these four ski areas which are located in NHEC's service territory with benefits similar to those ski areas which have special contracts with PSNH. We note, however, that the savings are larger for NHEC's ski areas and the average price per kWh is lower. *See* Order No. 21,384, October 13, 1994.

We commend NHEC for the actions it has taken on behalf of its members to lower costs by working with PSNH and RES on these ski area special contracts. The needed cooperation of both PSNH and RES is evident. To effectuate the savings in these special contracts, PSNH and NHEC have amended the Partial Power Requirements Agreement. The new Interruptible Power Supply Service Agreement, which was approved conditionally by FERC on October 18, 1994, provides that the wholesale rates NHEC pays PSNH are equal to the rates in the retail special contracts less a margin for NHEC's other customers. In 1995, the margin is 11.5% and escalates to 21% in 1997 and remains at 21% for the remaining years of the contracts. Our approval of these special contracts and our prior approval of Rate SGDS in docket no. DR 95-031 (Order No. 21,733, July 11, 1995) should fulfill any remaining conditions to the FERC proceeding regarding the wholesale agreement between PSNH and NHEC.

We will decline to assess any costs to the ski areas for their contribution to the under-recovery in NHEC's PCA factor. We note here that it is clear that the ski areas did cause higher

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power costs to NHEC that were recovered from other NHEC customers due to the seasonal nature of their load and NHEC's rate design which incorporates no provisions for the ratchet or seasonality of usage. However disconcerting it may be that those past costs are recovered from customers who did not contribute to them, it is not Commission practice to reconcile past revenues and costs as customers move from one rate to another. It is inappropriate at this time, in this proceeding, to reach back and try to rectify the unknown costs of a past rate design problem. Further, we expect many of those deficiencies to be resolved in NHEC's rate design filing, although we recognize that it may not be possible to cure all deficiencies given the nature of the wholesale power agreement with PSNH.

Based upon the foregoing, it is hereby

ORDERED, that the special contracts between New Hampshire Electric Cooperative and Mt. Attitash Lift Corp., Loon Mountain Recreation Corp., Mt. Cranmore, Inc. and Waterville Company, Inc. are approved as filed; and it is

FURTHER ORDERED, that NHEC file on June 1 of each year a report on the number of times the ski areas were asked to interrupt service under the contracts, their compliance level, and the level of savings NHEC is receiving from the special contracts based on actual ski area

load data.

By order of the Public Utilities Commission of New Hampshire this sixth day of September, 1995.

#### FOOTNOTES

<sup>1</sup>At the hearing, Ms. Muzzey testified that the effect of the ski area's contribution to the under-recovery of power costs could be addressed in docket no. DR 95-153, NHEC's Power Cost Adjustment proceeding. In that proceeding, OCA supported a \$74,952 charge to NHEC's ski areas. OCA based its recommendation on NHEC Exhibit 3 which indicated that of NHEC's \$1,395,767 under-recovery, \$74,952 was contributable to the ski areas, but from whom the costs would not be recoverable because of the new interruptible power agreement. The Commission found in DR 95-193 that the ski areas had caused significant increases to NHEC's power costs which would be recovered largely from other NHEC customers, but that a fuel and purchased power adjustment clause is not the proper proceeding to address what are essentially rate design problems. *See* Order No. 21,727, June 13, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 94-258 et al., Order No. 21,436, 79 NH PUC 648, Nov. 23, 1994. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-153, Order No. 21,727, 80 NH PUC 428, June 30, 1995. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-031, Order No. 21,733, 80 NH PUC 449, July 11, 1995. [N.H.] Re Public Service Co. of New Hampshire, DR 94-193 et al., Order No. 21,384, 79 NH PUC 562, Oct. 13, 1994.

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NH.PUC\*09/06/95\*[81072]\*80 NH PUC 571\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81072]

80 NH PUC 571

### **Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-125  
Order No. 21,815

New Hampshire Public Utilities Commission

September 6, 1995

ORDER finding that certain parts of a special rate contract executed by a local exchange telephone carrier and Healthsource, Inc., for fiber distributed data interface service should be subject to protective treatment in that such information pertains to the customer's operations and finances. The contract itself is deemed reasonable, since it provides for a positive contribution to cost and covers an untariffed service.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection —

Page 571

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Protective treatment — Relative to special rate contracts — Policy favoring public disclosure — Exceptions for certain information — Customer-specific operational and financial data — Protection of customer-specific network design plans — Untariffed services as a factor — Benefits of nondisclosure outweighing those of disclosure. p. 572.

2. RATES, § 211

[N.H.] Special rate contracts — When appropriate — For untariffed but requested service — When pricing provides contribution above cost — Telephone carrier and business customer — Fiber distributed data interface service. p. 572.

3. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Effect of untariffed service — Use of special service contracts. p. 572.

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BY THE COMMISSION:

ORDER

On May 2, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) petitioned the New Hampshire Public Utilities Commission (Commission) for approval of a special contract to provide Healthsource, Inc. (Healthsource) with Fiber Distributed Data Interface (FDDI) service, a standard for fiber optical Local Area Networks (LANs). Also on May 2, 1995, NYNEX filed a Motion for Protective Order. Order No. 21,750 issued July 17, 1995, granted in part and denied in part NYNEX's motion.

On August 28, 1995, NYNEX filed with the Commission a Motion for Confidentiality concurrent with filing a Network Design Plan (NDP). The NDP was submitted in response to a request by the Commission Staff (Staff).

I. Confidentiality of the NDP

[1] Staff review of the NDP is critical to its review of the special contract, as required by RSA 378:18. We agree that the NDP contains customer specific information which falls within the exceptions to public disclosure in RSA 91-A:5:IV. Applying the standards for confidentiality, as governed by RSA 91 and codified in our rule Puc 204, we find that the benefits of non-disclosure of the NDP outweigh the benefits of disclosure.

II. Consideration of the Special Contract

[2, 3] FDDI service is a 100 Mbps broadband data transport service which is not tariffed in



the state. This contract represents the third offering of FDDI service in New Hampshire.

Staff has reviewed the contract and cost information filed in support of the petition. The information supplied by the Company demonstrates that the proposed contract price exceeds the relevant costs and provides contribution. Based on its review, Staff recommended the Commission approve the contract.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Confidentiality is granted; and it is

FURTHER ORDERED *NISI*, that NYNEX's Special Contract 95-04 with Healthsource, Inc. is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; 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 statewide newspaper having general circulation, such publication to be no later than September 20, 1995 and it is to be documented by affidavit filed with this office on or before October 3, 1995; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter

**Page 572**

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no later than October 3, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1995 unless the Commission provides otherwise in a supplemental order prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this sixth day of September, 1995.

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NH.PUC\*09/06/95\*[81073]\*80 NH PUC 573\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81073]

80 NH PUC 573

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-039

Order No. 21,816

New Hampshire Public Utilities Commission

September 6, 1995



ORDER approving a special rate contract executed by a local exchange telephone carrier and Cabletron Systems, Inc., for fiber distributed data interface service.

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1. RATES, § 211

[N.H.] Special rate contracts — When appropriate — For nontariffed service — When pricing provides contribution above cost — Telephone carrier and business customer — Fiber distributed data interface service. p. 573.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Effect of nontariffed service — Use of special service contracts. p. 573.

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BY THE COMMISSION:

ORDER

[1, 2] On February 17, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) petitioned the New Hampshire Public Utilities Commission (Commission) for approval of a special contract to provide Cabletron Systems, Inc. (Cabletron) with Fiber Distributed Data Interface (FDDI) service, a standard for fiber optical Local Area Networks (LANs). NYNEX requested that the Commission review and approve the contract the day it was filed.

Although the contract filed with the Commission included billing and service details, NYNEX filed no supporting cost information. In its transmittal letter, NYNEX explained that this special contract resulted from Cabletron's desire to expedite the installation of one segment of a larger FDDI special contract that was under negotiation. At the time, NYNEX asserted that it was Cabletron's position that without this FDDI segment in place, "R&D development at the identified facilities will come to a halt".

Commission Staff responded to NYNEX's request to expedite the review of this special contract and, noting specific concerns, recommended the contract be approved on an interim basis. Following this recommendation, the Commission issued Order No. 21,541 approving on an interim basis the special contract with Cabletron.

On March 14, 1995, NYNEX filed information demonstrating the costs and revenues associated with this contract. Staff has reviewed the contract and the material filed in support of the contract. Staff stated that the prices appear to cover the relevant costs and recommended that the Commission grant final approval of the contract.

We have reviewed the Petition and the Staff's recommendation and find that the proposed petition is in the public interest.

Based on the foregoing, it is hereby

ORDERED *NI*, that NYNEX's special contract 95-1 for FDDI service with Cabletron

Systems, Inc. is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

Page 573

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 September 20, 1995 and to be documented by affidavit filed with this office on or before October 3, 1995; 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 3, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 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 sixth day of September, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-039, Order No. 21,541, 80 NH PUC 84, Feb. 17, 1995.

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NH.PUC\*09/06/95\*[81074]\*80 NH PUC 574\*Public Service Company of New Hampshire

[Go to End of 81074]

80 NH PUC 574

**Re Public Service Company of New Hampshire**

DE 94-272

Order No. 21,817

New Hampshire Public Utilities Commission

September 6, 1995

ORDER granting licenses to an electric utility for the maintenance and operation of transmission lines over various bodies of public water, which sites had not heretofore been officially authorized.

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## 1. ELECTRICITY, § 7

[N.H.] Wires and cables — Aerial transmission lines — After-the-fact authorization of inadvertently unlicensed lines — Crossing of public waters as a factor — Multiple sites. p. 574.

## 2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Aerial electric transmission lines — Multiple locations — After-the-fact authorization of inadvertently unlicensed lines — Crossing of public waters as a factor. p. 574.

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BY THE COMMISSION:

## ORDER

[1, 2] The Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission), on November 15, 1994 a petition under RSA 371:17, to maintain electric lines over and across public waters in the State of New Hampshire. The petition specifically identifies twenty existing electric transmission line crossings at thirteen locations specified in the petition, all of which had not been previously licensed by the Commission. On August 10, 1995, PSNH filed revised information updating its petition.

In order to meet the requirements of service to the public, PSNH must maintain electric transmission lines over and across 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.

The twenty crossings at thirteen sites were identified when PSNH performed an internal review of its electrical transmission system.

**Page 574**

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This review disclosed instances where crossings have not been licensed. Details of the location, construction and design of the crossings PSNH now seeks to license are listed in the petition.

The crossing of the 334 line tap, as identified in Appendix 1 of the petition and on drawings D-7649-267/Exhibit 1 and D-7649-267/Exhibit 2, is over the Merrimack River in Bow and Pembroke, NH.

The two crossings of the F-162 line, as identified in Appendix 2 of the petition and on drawings D-7649-383/Exhibit 1, D-7649-383/Exhibit 2, D-7694-384/Exhibit 1, and D-7694-384/Exhibit 2, are over the North Branch of the Piscataquog River in New Boston, NH.

The crossing of the T-198 line, as identified in Appendix 3 of the petition and on drawings D-7649-385/Exhibit 1 and D-7649-385/Exhibit 2, is over the Ashuelot River in Swanzey, NH.

The crossing of the N-186 line, as identified in Appendix 4 of the petition and on drawings

D-7649-386/Exhibit 1 and D-7649-386/Exhibit 2, is over the Ashuelot River in Winchester, NH.

The crossing of the L-163 line, as identified in Appendix 5 of the petition and on drawings D-7649-387/Exhibit 1 and D-7649-387/Exhibit 2, is over the Ashuelot River in Keene, NH.

The crossing of the 343 line, as identified in Appendix 6 of the petition and on drawings D-7649-388/Exhibit 1 and D-7649-388/Exhibit 2 is over the Baker River in Rumney, NH.

The crossing of the 332 line, as identified in Appendix 7 of the petition and on drawings D-7649-389/Exhibit 1 and D-7649-389/Exhibit 2, is over the Merrimack River in Hooksett, NH.

The crossing of the 338 line, as identified in Appendix 8 of the petition and on drawings D-7649-390/Exhibit 1 and D-7649-390/Exhibit 2, is over Wickwas Lake in Meredith, NH.

The crossing of the 318 line, as identified in Appendix 9 of the petition and on drawings D-7649-392/Exhibit 1 and D-7649-392/Exhibit 2, is over Turtle Pond in Concord, NH.

The crossing of the P-145 line, as identified in Appendix 9 of the petition and on drawings D-7649-393/Exhibit 1 and D-7649-393/Exhibit 2, is over Turtle Pond in Concord, NH.

The three crossings of the V-182 line, as identified in Appendix 9 of the petition and on drawings D-7649-394/Exhibit 1, D-7649-394/Exhibit 2, D-7649-395/Exhibit 1, and D-7649-395/Exhibit 2, are over Turtle Pond in Concord, NH.

These crossings are summarized on the attachment.

PSNH stated that the crossings meet the minimum clearances required under the 1993 National Electrical Safety Code. Upon review of the filed documentation, Staff has verified that all of these clearances meet the requirements of the 1993 National Electrical Safety Code.

The Commission finds such crossings necessary for PSNH 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 upon the foregoing, it is hereby

ORDERED *NISI*, that authority be, and is hereby granted, pursuant to RSA 371:17 *et seq.*, to PSNH, to maintain, and operate transmission lines over and across public waters of the State of New Hampshire at the locations described in this order that presently meet the clearance requirements of the 1993 National Electrical Safety Code 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; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, PSNH 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 September 20, 1995 and to be documented by affidavit filed with this office on or before October 3, 1995; and it is

FURTHER ORDERED, that Public Service of New Hampshire notify the Cities of

Concord, and Keene and the Towns of Bow, Hooksett, Meredith, New Boston, Pembroke, Rumney, Swanzey, and Winchester by serving a copy of this order on the City or Town by first-class mail, said notification to be verified by affidavit filed on or before September 20, 1995; 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 3, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 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 sixth day of September, 1995.

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

Attachment Summary of PSNH Crossings					
Petition Drawing No.	Line Town	No.	Structure		
			Voltage	From	To
D-7649-267/Exhibit 1 D-7649-267/Exhibit 2	Bow, Pembroke	344	34.5 kV	T2	T1
D-7649-383/Exhibit 1 D-7649-383/Exhibit 2	New Boston	F-162	115 kV	60	61
D-7649-384/Exhibit 1 D-7649-384/Exhibit 2	New Boston	F-162	115 kV	58	59
D-7649-385/Exhibit 1 D-7649-385/Exhibit 2	Swanzey	T-198	115 kV	130	131
D-7649-386/Exhibit 1 D-7649-386/Exhibit 2	Winchester	N-186	115 kV	150	151
D-7649-387/Exhibit 1 D-7649-387/Exhibit 2	Keene	L-163	115 kV	272	273
D-7649-388/Exhibit 1 D-7649-388/Exhibit 2	Rumney	343	34.5 kV	133	134
D-7649-389/Exhibit 1 D-7649-389/Exhibit 2	Hooksett	332	34.5 kV	2	1 Hooksett 1 Hydro
D-7649-390/Exhibit 1 D-7649-390/Exhibit 2	Meredith	338	33 kV	142 143 144	143 144 145
D-7649-392/Exhibit 1 D-7649-392/Exhibit 2	Concord	318	34.5 kV	124 125 126	125 126 127

<i>D-7649-393/Exhibit 1 Concord</i>	<i>P-145</i>	<i>115 kV</i>	<i>131</i>	<i>132</i>
<i>D-7649-393/Exhibit 2</i>		<i>132</i>	<i>133</i>	
<i>D-7649-395/Exhibit 1 Concord</i>	<i>V-182</i>	<i>115 kV</i>	<i>77</i>	<i>78</i>
<i>D-7649-395/Exhibit 2</i>			<i>78</i>	<i>79</i>
<i>D-7649-394/Exhibit 1 Concord</i>	<i>V-182</i>	<i>115 kV</i>	<i>81</i>	<i>82</i>
<i>D-7649-394/Exhibit 2</i>				

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NH.PUC\*09/11/95\*[81075]\*80 NH PUC 577\*Tilton Northfield Aqueduct Company, Inc.

[Go to End of 81075]

80 NH PUC 577

**Re Tilton Northfield Aqueduct Company, Inc.**

DF 95-185

Order No. 21,818

New Hampshire Public Utilities Commission

September 11, 1995

ORDER adopting a procedural schedule for considering a water utility's proposed borrowing of \$3.192 million so as to convert from a surface water system to a ground water system, in conformance with the Safe Drinking Water Act.

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1. SECURITY ISSUES, § 131

[N.H.] Procedure — Setting of schedule — Public hearings and settlement conferences — Necessity of notice — Proposed borrowing by water utility. p. 577.

2. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Conversion from surface water system to ground water system — To comply with Safe Drinking Water Act requirements — Proposed borrowing as means of financing — Procedural schedule for addressing. p. 577.

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APPEARANCES: Jay Boynton, Esquire on behalf of Tilton Northfield Aqueduct Company, Inc.; Thomas Lyle on behalf of the Office of Consumer Advocate and Eugene F. Sullivan, III, Esquire on behalf of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1, 2] On June 20, 1995, Tilton Northfield Aqueduct Company, Inc. (Tilton Northfield) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for authority to issue securities in the amount of approximately \$3,192,400 and to set rates in order to comply with the requirements of the Safe Drinking Water Act.

By Order of Notice dated July 18, 1995, the Commission, through its Executive Director and Secretary, set a prehearing conference for September 6, 1995, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

**Page 577**

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No intervention requests were filed with the Commission.

At the prehearing conference Tilton Northfield, the Office of Consumer Advocate (OCA), which is a statutorily authorized intervenor, and Staff agreed to the following procedural schedule:

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

Data Requests to the Company	September 11, 1995
Data Responses from the Company	September 14 , 1995
Testimony by Staff and OCA	September 20, 1995
Rolling Data Requests	September 20-22, 1995
Public Hearing, 7 p.m.	September 21, 1995
Settlement Conference	September 22, 1995
File Settlement Agreement, if any	September 25, 1995
Hearing on merits, 10 a.m.	September 29, 1995

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

At the prehearing conference the parties agreed that the informational public hearing originally scheduled for October 11, 1995 at Winnisquam Regional High School should instead be held September 21, 1995 at 7 p.m. at the Northfield, New Hampshire Town Hall. Because the Order of Notice published by Tilton Northfield indicated that the public hearing would be held on October 11, 1995, it is necessary for Tilton Northfield to publish a corrected notice. At the prehearing conference, Tilton Northfield was directed by Commissioner Geiger to consult with Staff and to publish the notice of the public hearing in a display advertisement rather than in the legal notice section of a newspaper of general circulation. Representations were made by Staff at the prehearing conference that such publication would occur on September 9, 1995.

Also at the prehearing conference, in accordance with the Order of Notice, Tilton Northfield summarized its position by stating that the petition seeks approval of a borrowing that is necessary for compliance with Safe Drinking Water Act (SDWA) requirements. The proceeds of the financing will be used to convert from a surface water to ground water treatment facility. The deadline for Tilton Northfield's SDWA compliance is June 30, 1996. Tilton Northfield

represented that it has been working with Staff on the issues presented in its petition and that the Department of Environmental Services has granted approval of well test procedures.

OCA stated that it currently could take no position on the filing, but is concerned about large rate increases.

Staff stated that it particularly intended to review: 1) whether the intended use of the proceeds from the proposed financing is in the public good, and more specifically, whether the shift from a surface water to a ground water treatment facility is the least cost alternative and consistent with good utility practice; 2) the actual terms and conditions of the financing; and 3) the proposal's effect upon rates and any step increases.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that Tilton Northfield publish no later than September 12, 1995 in a newspaper of general circulation in that portion of the state in which operations are conducted, a display advertisement containing the date, time and place of the informational public hearing and brief statement concerning the nature of the hearing, *i.e.*, that it is for the purpose of receiving comments from the public concerning Tilton Northfield's petition for authority to issue securities and to increase rates. Said publication shall be documented by affidavit filed with the Commission on or before September 19, 1995.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1995.

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NH.PUC\*09/11/95\*[81076]\*80 NH PUC 579\*LCI International Telecom Corporation

[Go to End of 81076]

80 NH PUC 579

**Re LCI International Telecom Corporation**

DR 95-224

Order No. 21,819

New Hampshire Public Utilities Commission

September 11, 1995

ORDER authorizing an interexchange telephone carrier to introduce two new service plans: (1) frame relay service, providing public, fast-packet data network offerings; and (2) business voice and data service, providing inbound, outbound, calling card, and private line services at flat rates.

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1. RATES, § 582



[N.H.] Telephone rate design — Toll service — Business customers — Frame relay and voice and data services — Flat-rate inbound/outbound/calling card/private line service packages — Interexchange carrier. p. 579.

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BY THE COMMISSION:

### ORDER

[1] On August 14, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI International Telecom Corporation (LCI) requesting authority to introduce Simply Guaranteed and FramePlus.

Simply Guaranteed is a voice and data service, offering flat rated inbound, outbound, calling card, private line and frame relay products. It is designed for new businesses with monthly usage revenue between \$200 and \$25,000. It is available on a monthly basis or as a term contract for one or two years.

FramePlus frame relay service is a public, fast-packet data network offering. Customers access FramePlus at LCI's closest point of presence (POP). Within the POP, LCI designs and installs network node connections on the FramePlus network.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Simply Guaranteed and FramePlus.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 2 are approved for effect as filed:

*Title Page*

4th Revised Page 1

3rd Revised Page 2

3rd Revised Page 3

2nd Revised Page 5

*Section 1*

1st Revised Page 1

1st Revised Page 2

1st Revised Page 4

1st Revised Page 7

1st Revised Page 8

*Section 2*

Original Page 19

Original Page 20

Original Page 21

Original Page 22

Section 3  
Original Page 23  
Original Page 24;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this eleventh day of

**Page 579**

September, 1995.

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NH.PUC\*09/11/95\*[81077]\*80 NH PUC 580\*Western Union Communications, Inc.

[Go to End of 81077]

80 NH PUC 580

**Re Western Union Communications, Inc.**

Additional applicant: First Data Corporation

DE 95-201

Order No. 21,820

New Hampshire Public Utilities Commission

September 11, 1995

ORDER approving a multi-step corporate reorganization under which a large holding company, First Data Corporation, ultimately will acquire control of a distant interexchange carrier subsidiary, Western Union Communications, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 24.1

[N.H.] Factors affecting approval — Integration — Elimination of unnecessary, multiple corporate layers — No change in service or management — Compliance with standard of no net harm — Telecommunications carriers. p. 580.

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BY THE COMMISSION:

ORDER

[1] On July 24, 1995, Western Union Communications, Inc. (Western Union), Western

Union Financial Services, Inc. (WUFSI), First Financial Management Corporation (First Financial) and First Data Corporation (First Data), (collectively, the Petitioners), filed with the New Hampshire Public Utilities Commission (Commission) a petition (Petition) for approval to transfer control of Western Union to First Data.

The transfer of control is part of a larger transaction wherein FDC Merger Corp. (FD Sub), a wholly-owned special purpose subsidiary of First Data, will merge with and into First Financial. The result is that First Financial will become a wholly-owned subsidiary of First Data.

Western Union is a Delaware corporation. Western Union is a wholly-owned subsidiary of WUFSI, which in turn is a wholly-owned subsidiary of First Financial. Western Union was granted Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire on June 21, 1995, in Docket No. DE 95-120, through Order No. 21,707 (June 21, 1995).

First Financial is a publicly traded Georgia corporation. First Data, a publicly held Delaware corporation, is in the business of credit card transaction and mutual fund processing, payment instruments, and receivables management services.

The Petitioners seek Commission approval to transfer control of Western Union to First Data. Western Union's present ultimate corporate parent is First Financial. On June 12, 1995, First Financial entered into a merger agreement with First Data and FD Sub. The contemplated merger places First Data in control of First Financial including its subsidiary Western Union.

FD Sub will merge into First Financial leaving First Financial as the surviving entity. Thereafter, FD Sub will cease to exist separately and First Financial will become a wholly-owned subsidiary of First Data. WUFSI will remain a wholly-owned subsidiary of First Financial; Western Union ultimately will be owned and controlled by First Data, rather than First Financial.

The Petitioners' business plans call for the completion of this transaction by the end of October. Accordingly, Petitioners request approval of the petition before October 31, 1995.

The transfer will be undertaken in a seamless fashion that will not affect the provision of intrastate telecommunications services and will

Page 580

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have no adverse effect on the operations and services provided in New Hampshire. Customers will continue to be able to purchase the same services from Western Union under the same rates, terms and conditions as currently available. Western Union will continue to offer service pursuant to its existing tariff. Western Union will continue to be managed by the existing personnel.

Western Union evidenced its technical, managerial, and financial competence in the record of DE 95-120. Staff has reviewed updated financial information filed with this Petition and believes the Petitioners remain financially qualified. The Petitioners represent that the transfer of control will have no appreciable effect on customers.

We find that the transfer of control of Western Union, from First Financial to First Data, will

result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval to transfer control of Western Union to First Data is GRANTED; and it is

FURTHER ORDERED that Western Union shall continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this eleventh day of September, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Western Union Communications, Inc., DE 95-120, Order No. 21,707, 80 NH PUC 376, June 21, 1995.

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NH.PUC\*09/18/95\*[81078]\*80 NH PUC 581\*ACC Corporation

[Go to End of 81078]

80 NH PUC 581

### Re ACC Corporation

Additional applicant: ACC Long Distance of New Hampshire Corporation

DF 95-228

Order No. 21,822

New Hampshire Public Utilities Commission

September 18, 1995

ORDER approving a series of revolving credit agreements to be executed by an interexchange telephone carrier's parent company, with a pledge of its stock in the carrier as collateral.

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#### 1. SECURITY ISSUES, § 86

[N.H.] Purposes — Of revolving credit agreements — Funding of working capital allowances — Other capital expenditures — Pledge of stock as collateral — Risk attendant on shareholders — Interexchange telephone carrier and its parent company. p. 582.

#### 2. SECURITY ISSUES, § 38

[N.H.] Necessity of commission approval — As to entering revolving credit agreements — Factors — Pledge of assets — Mortgaging of either tangible or intangible property —

Competition and nondominance of applicant notwithstanding. p. 582.

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BY THE COMMISSION:

### ORDER

On August 18, 1995, ACC Corp. and its New Hampshire-certificated operating subsidiary ACC-NH (collectively ACC) filed an Application for Approval of Incurring Debt Obligations pursuant to RSA 369:1-7, or, in the

**Page 581**

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alternative, for issuance of an order waiving Commission requirements.

ACC Corp. is the parent corporation of a number of non-dominant carrier subsidiaries, including ACC-NH, that provide resold domestic intrastate, interstate and international long distance services. Its annual revenues are approximately \$125 million.

[1] ACC requests Commission approval of the participation of ACC Corp. and ACC-NH in a \$35 million revolving credit agreement, dated July 21, 1995 with First Union National Bank of North Carolina and Shawmut Bank Connecticut, N.A. (Facility). The participation of ACC-NH and its affiliates in the Facility will be unconditionally guaranteed by ACC Corp. In addition, ACC Corp. will pledge its ACC-NH stock pursuant to a Pledge Agreement. The Facility involves two four year reducing revolving credit facilities, with the aggregate amount of the commitment reduced on a mandatory basis according to a schedule set forth in the Agreement. The reduction is \$2.45 million per quarter from July 1, 1997 through October 1, 1998, and \$2.905 million per quarter from January 1, 1999 through April 1, 2000. The final reduction of \$2.87 million on July 1, 2000 terminates the Facility. At the election of the borrower, loans denominated in dollars shall bear interest at either a Base Rate plus a margin of 0% to 1.5% or the LIBOR Rate plus 1.5% to 2.95%. The Base Rate is the higher of the Prime Rate or the Federal Funds Rate plus 0.5%. The margin depends on the leverage ratio of the borrower.

The Facility may be used for working capital, drawing down existing bank debt or other capital expenditures.

ACC contends that the proposed transactions will serve the public interest in promoting competition among telecommunications carriers by providing ACC with the opportunity to strengthen its competitive position with greater financial resources.

[2] ACC has asked the Commission, in the alternative, to waive its requirements regarding this transaction. In DF 95-112, Re MFS Communications Company, Inc., Order No. 21,671 (June 1, 1995) we found that an application to participate in a revolving credit facility falls within the requirements of RSA Chapter 369 in that the New Hampshire corporations intended to pledge their assets in order to secure their obligations under the revolving credit facilities. We found there that this type of arrangement falls within the provisions of RSA Chapter 369:2 regarding mortgaging of tangible and intangible property. That analysis is relevant here as well, and therefore we cannot waive the statutory requirement that such an arrangement requires our approval.

We are persuaded that the participation of ACC Corp. and ACC-NH in the revolving credit facilities will strengthen their competitive position by enhancing their financial resources, and therefore find that the required pledge of stock is in the public good. We do note that, 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 not harm the public interest. Rather, such failure will be the burden of the company's stockholders, here ACC Corp. as the legal and beneficial owner of the shares of ACC-NH stock which it will be pledging.

Based upon the foregoing, it is hereby

ORDERED, that ACC's request that the Commission waive the requirements mandated by RSA Chapter 369 is denied; and it is

FURTHER ORDERED, that the participation of ACC Corp. and ACC-NH in the revolving credit facility and the execution of its Pledge Agreement is approved.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of September, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re MFS Communications Co., Inc., DF 95-112, Order No. 21,671, 80 NH PUC 298, June 1, 1995.

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NH.PUC\*09/19/95\*[81079]\*80 NH PUC 583\*Excel Telecommunications, Inc.

[Go to End of 81079]

80 NH PUC 583

**Re Excel Telecommunications, Inc.**

DR 95-233

Order No. 21,823

New Hampshire Public Utilities Commission

September 19, 1995

ORDER approving various tariff revisions proposed by an interexchange telephone carrier, to allow introduction of directory assistance service and an inbound 800 service utilizing local carrier access facilities, and to implement an overall rate increase of 5%, as offset by additional discounts.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Proposed tariff revisions — Introduction of directory assistance and new inbound 800 services — Increase in basic rates — Offsets through additional new discounts — Interexchange carrier. p. 583.

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BY THE COMMISSION:

### ORDER

[1] On August 22, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Excel Telecommunications, Inc., (Excel) requesting authority to substantially revise its tariff and issue a new tariff, Excel NHPUC No. 2, superseding Excel NHPUC No. 1, for effect September 22, 1995.

The proposed revisions include changes to Excel's product lines and incorporate textual and formatting changes to maintain consistency among its tariffs nationally, where possible. Three new services are being introduced: ExcelPLUS II, Premier 800 and Directory Assistance.

ExcelPLUS II service is a toll product that uses local exchange carrier access facilities to originate and terminate calls. Premier 800 service is an inbound 800 product that allows customers to receive calls via local exchange carrier access facilities. Directory Assistance is provided to Excel's customers by Excel's underlying carrier. Excel will bill its customers for directory assistance usage.

Other proposed changes include an overall average rate increase of 5 percent plus the addition of new discounts. According to Excel, the 5 percent increase combined with the discounts will yield an average 26 percent decrease for ExcelPLUS services. Additionally, the new tariff includes monthly recurring charges for some services, a returned check charge and a reconnection fee.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Excel to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that Excel's tariff, NHPUC No. 2 is approved for effect as originally filed except for pages 13, 14 and 20 which contained language contrary to the N.H. Admin. Rules and page 1, the check sheet; and it is

FURTHER ORDERED, that the following pages of Excel's NHPUC No. 2 are approved for effect as revised:

1st Revised Page 1 in lieu of Original  
 1st Revised Page 13 in lieu of Original  
 1st Revised Page 14 in lieu of Original  
 1st Revised Page 20 in lieu of Original;

and it is

FURTHER ORDERED, that Excel file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

Page 583

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 1995.

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NH.PUC\*09/19/95\*[81080]\*80 NH PUC 584\*Touch 1 Communications, Inc.

[Go to End of 81080]

80 NH PUC 584

**Re Touch 1 Communications, Inc.**

DE 95-151

Order No. 21,824

New Hampshire Public Utilities Commission

September 19, 1995

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

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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 services. p. 584.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 584.

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BY THE COMMISSION:

ORDER

[1, 2] On May 31, 1995, Touch 1 Communications, Inc. (Touch 1), an Alabama 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.



Touch 1 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 Touch 1 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 until the Commission orders otherwise.
3. Touch 1 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, Touch 1 shall notify the Commission of the change.
5. Touch 1 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. Touch 1 shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Touch 1 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

Page 584

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names, mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

8. Touch 1 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. Touch 1 shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Touch 1 pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow Touch 1 to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that Touch 1 shall publish an attested copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before October 16, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Touch 1 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 Touch 1 shall file a compliance tariff with the Commission on or before October 3, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, this Order *Nisi* shall be effective October 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 nineteenth day of September, 1995.

Notice of Conditional Approval of  
Touch 1 Communications, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On May 31, 1995, Touch 1 Communications, Inc. (Touch 1), an Alabama 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. 21,824, issued in Docket No. DE 95-151, the Commission granted Touch 1 conditional approval to operate as of October 19, 1995, subject to the right of the public and interested parties to comment on Touch 1 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 Touch 1's petition to do business in the State should submit written comments no later than October 16, 1995, 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\*09/21/95\*[81081]\*80 NH PUC 586\*Public Service Company of New Hampshire

[Go to End of 81081]

80 NH PUC 586

**Public Service Company of New Hampshire**

DR 94-172

Order No. 21,825

New Hampshire Public Utilities Commission

September 21, 1995

PETITION by electric utility for approval of a "mitigation fund" mechanism, by which financial rewards would be offered the owners and operators of the Seabrook nuclear generating units for extraordinary performance and savings associated with the use of parts from canceled Unit II in operating Unit I; denied, but commission does initiate a proceeding to clarify both accounting and rate-making treatment for the Unit II parts.

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1. ELECTRICITY, § 4

[N.H.] Generating stations — Operating practices — Seabrook nuclear units — "Preserve and protect" measures — Use of parts from canceled unit in plant still operating — Proposal for special "mitigation fund" to track associated cost savings — Rejection — Factors — Unclear accounting practices — Prior rate base recovery of such values. p. 588.

2. EXPENSES, § 106

[N.H.] Savings in operation — Seabrook nuclear generating facilities — "Preserve and protect" measures — Use of parts from canceled unit in other unit still operating — Rejection of proposed "mitigation fund" to track associated cost savings — Alternative accounting methods for tracking such. p. 588.

3. ACCOUNTING, § 48

[N.H.] Electric utility — Operation of Seabrook nuclear generating facilities — Use of parts from canceled unit in another unit still operating — Tracking of associated cost savings — Determination of proper accounting treatment for transfer of parts between units — Expensing versus capitalization. p. 588.

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APPEARANCES: Gerald M. Eaton, Esq. and Day, Berry and Howard by Robert P.

Knickerbocker, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

The issue addressed in this phase of Docket DR 94-172 is whether the New Hampshire Public Utilities Commission (Commission) should approve a proposed mechanism by which operator North Atlantic Energy Service Corporation (NAESC) and joint owner North Atlantic Energy Corporation (NAEC) are provided financial rewards for extraordinary performance at Seabrook Station through a mitigation fund established in consideration of the use of cancelled Unit II parts at Unit I. Consideration of this issue began in 1993 with Public Service Company of New Hampshire's (PSNH) FPPAC filing for June 1, 1993 through November 30, 1993, docketed as DR 93-023.<sup>1(62)</sup>

In that case, PSNH, supported by Commission Staff (Staff), proposed to reduce by 50% any disallowances for management imprudence in light of extraordinarily good operations at Seabrook Station and the use of Unit II parts at Unit I. By Order No. 20,929 (August 16, 1993), the Commission rejected PSNH's proposal, finding no basis in the record for a 50% reduction in management imprudence disallowances. The Commission stated a willingness to consider an alternate proposal in the future, while

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reminding PSNH that it would not entertain any mechanism that rewarded the company simply for good management practice which should be the norm for any utility.

On August 8, 1994 PSNH filed its proposed FPPAC for the period December 1, 1994 through May 31, 1995 and included a proposal for recognition of extraordinary measures in response to Order No. 20,929. In its pre-filed testimony, PSNH submitted a proposed mechanism to offset imprudence at Seabrook Station and all other PSNH nuclear entitlements.

In response to this testimony, the Commission's Engineering Department (Engineering) objected to the PSNH proposal, and instead proposed an alternative mechanism to recognize extraordinary operations at Seabrook Station. The alternative proposal involved the use of an imprudence mitigation fund financed from hypothetical savings accruing to PSNH ratepayers because of the use of Unit II parts at Unit I. In subsequent testimony filed by PSNH, it abandoned its original proposal and adopted the proposal of Engineering.

By agreement of PSNH, the Office of Consumer Advocate (OCA) and Staff, the Commission separated this issue from the other FPPAC issues, for consideration in a later phase of the docket. Order No. 21,446 (December 1, 1994) established the FPPAC rate for the period in question.

On January 20, 1995, OCA filed direct testimony of Kenneth E. Traum and Samuel H. Hobbs, Jr., both of whom opposed the extraordinary measures proposal. Also on that date Staff filed direct testimony of Chief Engineer Michael D. Cannata, Jr. in support of the proposal and

Finance Director Eugene F. Sullivan, Jr. in opposition to the proposal.

PSNH, on January 23, 1995, filed direct testimony of Robert A. Baumann and Anthony M. Callendrello, both of whom supported the proposal.

Mr. Cannata filed rebuttal testimony on February 28, 1995, as did Mr. Baumann and Mr. Callendrello for PSNH and Mr. Traum and Mr. Hobbs for OCA.

The Commission heard evidence on March 22 and 31, 1995. PSNH, OCA and Staff filed briefs on May 5, 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Public Service Company of New Hampshire and the Commission Engineering Staff*

The imprudence mitigation fund proposed by Engineering, and subsequently endorsed by NAEC and PSNH, is based on the savings achieved and costs incurred by NAEC through its "protection and preservation" (maintenance) of certain parts at cancelled Seabrook Unit II for use in Seabrook Unit I. The proposal calculated the net savings achieved since 1990 to establish a Mitigation Fund which would recognize NAEC's extraordinary measures or performance in operating Seabrook Station and could be used to offset any imprudence that results, among other things, in purchases of more expensive replacement power.

The Mitigation Fund is based on the following underlying premises: 1) abandoned Unit II parts have saved New Hampshire ratepayers significant sums of money by reducing the time of Unit I outages, thereby negating the need to purchase expensive replacement power; 2) the use of Unit II parts has in some instances saved PSNH ratepayers the cost of manufacturing the parts or purchasing the parts from sister plants in a limited market where the value of the part is driven by the need to immediately replace the part; 3) Unit II parts are not in the normal inventory of any nuclear generating station, and thus do not reduce the inventory requirements at Unit I; 4) NAEC shareholders may not and have not recovered the cost of maintaining these parts from PSNH ratepayers until the part has been placed into service in Unit I; 5) NAEC can, and has, sold some of these parts to sister plants and retained the revenues from these sales as shareholder revenues; 6) New Hampshire ratepayers benefit from the preservation, retention and use of these parts in Unit I, and thus, NAEC should be provided an incentive to retain the parts for use in Seabrook Unit I; and 7) NAEC also benefits from the use of these parts by decreasing the cost of power to its sister corporation, PSNH, which has relatively high rates.

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PSNH and Engineering maintain that the creation of the mitigation fund is a matter of fundamental fairness and equity, and a form of incentive ratemaking that will benefit both shareholders and ratepayers.

### B. *Office of Consumer Advocate*

The OCA opposed the creation of the imprudence Mitigation Fund on a number of grounds. The OCA's main objection to the mitigation fund was based on its belief that the price paid for PSNH assets by Northeast Utilities at the time of the merger in 1990 included Unit II parts.

The OCA also contends that an imprudence mitigation fund is not the type of "performance

standard" which the Commission has indicated a willingness to entertain. The OCA contends a performance standard would involve not only incentives for extraordinary performance but would also contain disincentives for decisions that, while not imprudent, may result in higher costs to ratepayers.

The OCA also notes that the Rate Agreement does not provide for an incentive program at Seabrook Station and in fact limits PSNH to the recovery of prudently incurred costs under the cost of service provisions of the Seabrook Power Contract. Furthermore, even if such a program could be allowed under the Rate Agreement, the OCA contends it does not follow Nuclear Regulatory Commission guidelines for such a program.

Finally, the OCA contends that the mitigation fund would violate RSA 378:28 which limits utilities' cost recovery to prudently incurred costs.

### *C. Commission Finance Department (Finance)*

Finance opposed the imprudence Mitigation Fund proposal. Finance based its position on its reading of the Rate Agreement which placed a value of \$700 million on all of the assets at Seabrook, including Unit II. Finance argued that whatever value there was in Unit II parts had already been recognized when PSNH's share of Seabrook Station (both Units I and II) was acquired by Northeast Utilities in 1990 and placed in rate base at \$700 million as part of the Seabrook Contract. The Mitigation Fund, according to Finance, would result in payment to shareholders for parts which have already been included in rates.

Finance also objected to the creation of the fund because it might send inappropriate signals to the management of NAEC leading to less than efficient management of Seabrook's operations. Finance also noted that Seabrook employees already receive incentive bonuses for efficient operation at Seabrook and that these bonus costs are currently passed on to PSNH ratepayers.

### III. COMMISSION ANALYSIS

[1-3] The burden of proving that the instant proposal is in the public good lies with the proponent. RSA 378:8. In this case the proponents, PSNH and NAEC, have failed to meet their burden. That is, we are not convinced that this is an appropriate means to recognize extraordinary efforts on the part of Seabrook Station management. Furthermore, the Companies did not present a concise means or standard to measure extraordinary performance.

We recognize the availability of spare parts from Unit II is a great benefit to NAEC, the other joint owners of Seabrook Station, and through the Seabrook Power Contract ultimately to PSNH ratepayers. Precious time does not have to be spent locating, shipping or manufacturing parts from elsewhere in the country, thereby saving replacement power costs which are passed on to ratepayers. Given the current national trend to restructure the electric industry to make it more competitive, the availability and use of Unit II parts by the joint owners allows them to stabilize some portion of their relatively high power costs.

We must express some frustration that we were presented with conflicting positions in the briefs and testimony over the current accounting and rate treatment of protect and preserve costs for Unit II and assets transferred from Unit II to Unit I. The exact accounting and ratemaking treatment, therefore, is not clear.

We believe PSNH and other joint owners

should be encouraged to maintain Unit II parts so that they are in sound working order, available for use at short notice. It is appropriate, therefore, that the allocable portion of preserve and protect costs incurred in maintaining those parts be capitalized or expensed, as required by our chart of accounts, at the time of the transfer of a Unit II part to Unit I. Although the record was not clear on the treatment of the value of Unit II parts, our preliminary review also leads us to believe it is appropriate that NAEC be paid for the original or historic book cost of a Unit II part at the time of transfer to Unit I. In the case of a component of a part, NAEC would be paid an estimate of value based on a percentage of the historic book cost of the part.

In order to clarify accounting and ratemaking treatment of Unit II parts, we will instruct Staff to meet with PSNH to clarify the past and current treatment of preserve and protect costs for Unit II and ratemaking treatment of Unit II parts that are transferred from Unit II to Unit I.

Although we have not accepted the imprudence mitigation fund as proposed, we do not intend to close the door on such incentive based programs in the future. Again, any such incentive program must be readily measurable and capable of some objective quantification. Furthermore, the program should not be applied on a retroactive basis; it must assess current performance and should be applicable during the current FPPAC period.

Based upon the foregoing, it is hereby

ORDERED, that the proposed imprudence Mitigation Fund is rejected; and it is

FURTHER ORDERED, that Staff meet with NAEC and PSNH to review the past practice on Unit II parts, including the accounting and ratemaking treatment applied to protect and preserve costs when parts are transferred to Unit I or sold on the open market and valuation of the underlying assets, and report back to the Commission in 60 days with a clarification of the past accounting practice.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of September, 1995.

#### FOOTNOTES

<sup>1</sup>Under the Seabrook Power Contract, PSNH reimburses NAEC its share of all costs incurred by operator NAESC (formerly NH Yankee), regardless of Commission findings of imprudence. Disallowances for imprudence by NAESC and NAEC are therefore absorbed by PSNH.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 93-023, Order No. 20,929, 78 NH PUC 434, Aug. 16, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 94-172, Order No. 21,446, 79 NH PUC 660, Dec. 1, 1994.

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NH.PUC\*09/25/95\*[81082]\*80 NH PUC 589\*XIEX Telecommunications, Inc.

[Go to End of 81082]

80 NH PUC 589

**Re XIEX Telecommunications, Inc.**

DE 94-297

Order No. 21,827

New Hampshire Public Utilities Commission

September 25, 1995

ORDER denying an interexchange telephone carrier authority to offer intrastate long-distance services, due to its repeated failures to submit proposed tariffs that conformed with commission rules and standards.

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1. CERTIFICATES, § 76

[N.H.] Denial of — Factors — Deficient tariff proposals — Failure to comply with commission standards — Repeated failures to conform — Interexchange telephone carrier. p. 590.

**Page 589**

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BY THE COMMISSION:

ORDER

On December 9, 1994, XIEX Telecommunications, Inc. (XIEX), 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.

After reviewing XIEX's petition, Staff, on February 24, 1995, notified the petitioner that its filing was deficient and XIEX submitted a response on April 25, 1995. Staff replied to XIEX on May 22, 1995, and explained that its draft tariff remained deficient in certain respects. Subsequently, on July 24, 1995, Staff advised XIEX that it had been more than sixty days since Staff had last asked that tariff corrections be made and that Staff would recommend to the Commission that XIEX's petition be denied if a satisfactory draft tariff was not received by August 10, 1995.

[1] XIEX filed a revised draft on August 3, 1995. Staff found it unsuitable inasmuch as: it did not comply with Commission rules; there were numerous grammatical and typographical errors;



the document was internally inconsistent; cross references were in error; and the tariff failed to recognize that there is only a single LATA in New Hampshire. In late August, Staff notified XIEX by phone of the numerous problem areas which still required correction. On September 11, 1995, XIEX filed yet another draft tariff. Staff again found that XIEX failed to adequately comply with the Commission's tariff filing rules.

We find, based on our review of Staff's investigation, that XIEX has been allowed more than sufficient time to conform its filing to our rules. We agree with the recommendation of our Staff that the public good would not be served by approving the petition before us.

Based upon the foregoing, it is hereby

ORDERED, that XIEX's petition for authority to conduct business as a telecommunications public utility in the State of New Hampshire is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

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NH.PUC\*09/25/95\*[81083]\*80 NH PUC 590\*Lower Village Hydroelectric Associates

[Go to End of 81083]

80 NH PUC 590

**Re Lower Village Hydroelectric Associates**

DE 95-139

Order No. 21,828

New Hampshire Public Utilities Commission

September 25, 1995

ORDER again clarifying the scope of a proceeding addressing a hydro group's petition for condemnation of property belonging to APC Paper Company, Inc. Commission affirms that no issues of necessity for the taking will be addressed, and that only matters of property valuation will be considered.

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1. EMINENT DOMAIN, § 9

[N.H.] Condemnation proceedings — Proposed taking of private mill property by hydro group — Procedure and scope of proceeding — Issues to be addressed — Valuation of water rights being taken and associated damages — No review of issues of necessity of taking. p. 591.

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BY THE COMMISSION:

ORDER

Lower Village Hydroelectric Associates (Lower Village) filed, on May 19, 1995, a Petition for Condemnation pursuant to RSA 371:1 with respect to the hydroelectric dam it has constructed on the Sugar River in Claremont, New Hampshire. The Petition was opposed by APC Paper Company, Inc. (APC) and after a

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prehearing conference the Commission, on August 21, 1995, issued Order No. 21,790 which, among other things, found that the filing of APC Paper Company, Inc. (APC) "most reasonably describes the proper scope of this proceeding." Subsequently, on September 11, 1995, Lower Village filed a Request for Clarification and, in the Alternative, Petition for Rehearing. Responses to Lower Village's Request were filed by APC and Connecticut Valley Electric Company, Inc. (Connecticut Valley) on September 12, 1995.

As noted by Lower Village, the adoption of APC's description of the scope of this proceeding, namely, "(1) to determine whether the rights to be acquired are correctly described in Lower Village's original Petition and (2) to determine the value of the property taken as necessary for the operation of the facility," has created some confusion with respect to the Commission's role concerning the issue of the necessity of the taking. A review of the record in this case also suggests some fluctuation in the parties' breadth of agreement on the issue of necessity as well.

Lower Village has been granted a minor power license by the Federal Energy Regulatory Commission (FERC) authorizing it to construct and operate a hydroelectric dam and granting it, when necessary, rights of eminent domain or condemnation under 16 U.S.C.A. 814 which it may exercise in state court or, in the case of New Hampshire, before the Public Utilities Commission. The operative statutory provision in New Hampshire is RSA 371:1 which specifically directs a utility, when it cannot agree with a property owner as to the *necessity* or *price* to be paid for property, to petition the Commission "for permission to take such lands or rights as may be needed."

[1] Inasmuch as FERC has already granted Lower Village permission to construct and operate its facility, the issue of necessity is resolved. The Commission will not, here, interfere with the federal determination as to the need for this project or the necessity of the lands and project works identified by FERC required for the construction, operation and maintenance of the project. To the extent that APC must exceed the permission granted by FERC, it may proceed to that forum for relief. The sole issue before this Commission is the value of the property which FERC has permitted to be taken and the price to be paid therefor and only evidence in this regard will be entertained at the hearing set for September 27, 1995.

Based upon the foregoing, it is hereby

ORDERED, that the scope of this proceeding is as described above; and it is

FURTHER ORDERED, that Lower Village's Request for Clarification is correspondingly granted while its alternative Petition for Rehearing is moot.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Lower Village Hydroelectric Associates, DE 95-139, Order No. 21,790, 80 NH PUC 535, Aug. 21, 1995.

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NH.PUC\*09/25/95\*[81084]\*80 NH PUC 591\*Lakes Region Water Company, Inc.

[Go to End of 81084]

80 NH PUC 591

**Re Lakes Region Water Company, Inc.**

DR 93-067

Order No. 21,829

New Hampshire Public Utilities Commission

September 25, 1995

ORDER acknowledging a water utility's completion of a project converting all customers from a flat-rate to a metered-rate system. Accordingly, the utility is allowed to change from semi-annual to quarterly billing of all customers.

**Page 591**

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1. SERVICE, § 310

[N.H.] Metering — By water utility — Completion of conversion project — Installation of meters for all customers — Concomitant change in payment schedules. p. 592.

2. PAYMENT, § 20

[N.H.] Metering and billing — Billing periods — Change from semi-annual to quarterly basis — Concomitant with completion of meter installation project — Water utility. p. 592.

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BY THE COMMISSION:

ORDER

On February 23, 1994 by Order No. 21,134, the New Hampshire Public Utilities Commission (Commission) approved rates for water service for the seven divisions of Lakes Region Water Company, Inc. (Lakes Region or Company) in accordance with the Rate Case Settlement Agreement executed by the Company and the Staff. In its order the Commission directed Lakes

Region to complete the installation of meters at its three remaining unmetered systems, Deer Run, Woodland Grove and Echo Lake Woods within two years from the date of the Order.

[1, 2] On September 18, 1995, in compliance with Order No. 21,134, Lakes Region filed a letter informing the Commission that it had completed installation of the meters at the three systems and enclosing tariff pages effective October 1, 1995, with the Company's calculations of new rates. Lakes Region also requests approval to change the billing frequency of the systems from semi-annual to quarterly billing, to be consistent with the billing frequency of its other systems. The Company will notify its customers with the September 30, 1995 billing that the fourth quarter 1995 (October, November, December) will be charged according to the metered rates.

The metered usage rate for each system is \$3.00 per 100 cubic feet. The minimum charge per quarter is \$29.34 for Deer Run, \$40.40 for Woodland Grove, and \$47.17 for Echo Lake Woods. Staff has reviewed the Company's calculations and believes that they are reasonable estimates of a revenue neutral equivalent of the existing flat rates. The calculations reflect certain assumptions regarding system leakage between the master meter which measures production and the points of consumption.

Upon review of the filing and the staff recommendation, we find that Lakes Region's proposal complies with our Order No. 21,134 and is in the public good. We will, however, require the Company to file a report of usage as recorded on the master meter and as aggregated from the individual consumption meters for a period of one year from the commencement of the metered rate. At that time we will review the production and consumption data and, if necessary, adjust the metered rate to assure that it generates an amount of revenue equivalent to the current flat rates.

Based upon the foregoing, it is hereby

ORDERED, that the metered rates filed by Lakes Region for the Deer Run, Woodland Grove and Echo Lake Woods systems are approved; and it is

FURTHER ORDERED, that Lakes Region file a report no later than December 31, 1996 on the usage as recorded on the master meter and an aggregation of the metered consumption between October 1, 1995 and September 30, 1996; and it is

FURTHER ORDERED, that Lakes Region is authorized to bill its customers on a quarterly basis; and it is

FURTHER ORDERED, that Lakes Region notify its customers of the change to the metered rate with its September 30, 1995 billing as proposed in its letter dated September 18, 1995.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

[N.H.] Re Lakes Region Water Co., Inc., DR 93-067, Order No. 21,134, 79 NH PUC 101, Feb. 23, 1994.

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NH.PUC\*09/25/95\*[81085]\*80 NH PUC 593\*Public Service Company of New Hampshire

[Go to End of 81085]

80 NH PUC 593

**Re Public Service Company of New Hampshire**

DR 95-100

Order No. 21,830

New Hampshire Public Utilities Commission

September 25, 1995

ORDER approving an electric utility's proposed contract with a qualifying small power production facility, Suncook Energy Corporation, under which the utility will purchase 800 of the project's 820-kilowatt capacity at prices reflecting the utility's unlevelized 1994 avoided costs.

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1. COGENERATION, § 19

[N.H.] Contracts — Standard long-term arrangements — Between electric utility and qualifying small power production facility (QF) — Purchase by utility of QF capacity — Pricing based on utility's unlevelized 1994 avoided costs — Consistency with provisions of the Public Utility Regulatory Policies Act. p. 594.

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APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service of New Hampshire; Stephen V. Camerino, Esq. of the McLane, Graf, Raulerson & Middleton, P.A. on behalf of Suncook Energy Corporation; Kenneth E. Traum from the Office of Consumer Advocate on behalf of New Hampshire residential ratepayers; Robert J. Frank, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

The subject of this proceeding is a proposed "special contract" between Public Service Company of New Hampshire (PSNH) and Suncook Energy Corporation (Suncook) relating to a planned small power production facility located in Nashua, New Hampshire. Suncook intends to operate a landfill gas electric generating project at the Nashua Four Hill Landfill Project (Nashua Project) located in Nashua, New Hampshire. The Nashua Project is a Qualifying Facility (QF)

under the State's Limited Electrical Energy Producer's Act (LEEPA) and the federal Public Utility Regulatory Policies Act (PURPA). PSNH filed its proposed power contract with Suncook on April 13, 1995.

Suncook filed a timely request for full intervention and the City of Nashua requested limited intervention, both of which we granted by Order No. 21,735. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. Following a duly noticed prehearing conference on June 28, 1995 a procedural schedule was established which set an expedited final hearing for August 3, 1995. Prior to the hearing, PSNH filed the direct testimony of Sheldon B. Wicker, Jr., Suncook filed the direct testimony of Allen R. Jensen, and Staff filed the direct testimony of Patrick J. Moast.

At the August 3, 1995 hearing before Commissioner Susan Geiger, Staff requested a continuance because PSNH and Suncook were attempting to renegotiate the terms of their contract in order to address the concerns raised by Staff and the OCA. Commissioner Geiger granted this request and the hearing was rescheduled for August 29, 1995.

On August 25, 1995 PSNH filed a modified power contract with Suncook which was the subject of the August 29, 1995 hearing.

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## II. POSITIONS OF THE PARTIES AND STAFF

### A. *PSNH*

At the hearing, PSNH presented the testimony of Mr. Wicker, PSNH's Manager of Supplemental Energy Sources Department. Mr. Wicker explained the terms of the original contract with Suncook as well as the modified contract for which approval was sought.

PSNH's original power contract with Suncook was based upon PSNH's Standard Long Term Arrangement for Qualifying Facilities and the proposed rates were based upon PSNH's 1992 avoided costs which were on file at the Commission. The original contract provided for a fixed term of ten years. Suncook would also use the 820 KW generating unit dedicated to PSNH to back up the 2.2 MW unit whose generation Suncook had already agreed to sell to New England Power Company (NEPCO).

The modified contract provides for the purchase of 800 KW from a 820 KW unit at the Nashua Project at prices based on PSNH's unlevelized 1994 avoided costs as opposed to prices based on PSNH's 1992 avoided costs as originally proposed. The fixed term of the contract is fifteen years with provisions for PSNH to terminate the contract during years eleven through fifteen if its obligation to buy power under PURPA ceases; or if it no longer has the ability to recover the contract's costs from all of its retail customers due to substantial changes in its franchise. The 820 KW unit dedicated to PSNH will not be available to provide back up supplies to NEPCO as proposed in the original contract. The project will now be in operation by March 31, 1996 instead of December 31, 1995. Mr. Wicker explained that these changes were negotiated in order to address the concerns of Staff and the OCA.

### B. *Suncook*

Suncook originally took the position that it was entitled to PSNH's standard offer contract with prices based on PSNH's 1992 avoided costs, but it agreed to the terms of the modified contract which provide for unlevelized prices based on PSNH's 1994 avoided costs.

#### *C. Staff*

In its pre-filed direct testimony, Staff opposed the contract as originally filed because its prices were based on PSNH's 1992 avoided costs. According to Staff, PSNH was not obligated to offer Suncook purchased power prices based on its 1992 avoided cost rates because prior to its negotiations with Suncook PSNH had already filed with the Commission updated 1994 avoided costs, and because the original contract was not executed until after the Commission had orally approved PSNH's 1994 avoided costs. Staff expressed concern that contract prices based on PSNH's 1992 avoided costs would place unnecessary costs on PSNH ratepayers.

During the hearing, Mr. Moast testified that Staff's concerns were adequately addressed in PSNH's modified contract with Suncook.

#### *D. OCA*

The OCA presented no testimony in this proceeding but participated in the hearing and questioned witnesses. Mr. Traum indicated at the hearing that the OCA had no objection to the modified contract.

### III. COMMISSION ANALYSIS

[1] After reviewing the proposed power supply contract, as modified by PSNH and Suncook, we are satisfied that the terms are reasonable and consistent with PSNH's obligations under PURPA and LEEPA. The modified contract adequately protects PSNH and its ratepayers from incurring unnecessary costs in order to comply with its PURPA and LEEPA obligations. Accordingly, we find that the contract is consistent with the public good and we approve it without modification.

As a result of the modifications to the original contract it is not necessary to rule upon the issues raised by PSNH's original filing, but we will take this opportunity to restate our expectation that electric utilities within our jurisdiction should endeavor to minimize their power costs

Page 594

on all fronts. This includes costs incurred to satisfy mandatory purchase obligations under PURPA and LEEPA.

Based upon the foregoing, it is hereby

ORDERED, that the proposed power supply contract between PSNH and Suncook Energy Corporation is APPROVED; and it

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

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NH.PUC\*09/25/95\*[81086]\*80 NH PUC 595\*VarTec Telecom Inc.

[Go to End of 81086]

80 NH PUC 595

**Re VarTec Telecom Inc.**

DR 95-243

Order No. 21,832

New Hampshire Public Utilities Commission

September 25, 1995

ORDER authorizing an interexchange telephone carrier to offer a new "Dime Club" program, under which residential customers can make toll and calling card calls at a rate of 10 cents per minute, subject to a three-minute minimum billing increment and a flat monthly recurring charge of \$6.95.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Residential "Dime Club" program — Calling at a flat rate of 10 cents per minute — Increase in minimum billing increment — Monthly recurring subscription charge — Additional surcharge for calling card calls — Interexchange carrier. p. 595.

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BY THE COMMISSION:

ORDER

[1] On August 31, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from VarTec Telecom Inc., (Vartec) requesting authority to introduce its Dime Club Program and revise its DimeLine Service, for effect October 1, 1995.

The Dime Club Program is a residential service which offers toll and calling card service for 10 cents per minute. There is a three minute minimum billing requirement and a \$6.95 monthly recurring charge. Calling card calls incur a 60 cent surcharge.

The proposed revision to the DimeLine service is a change in the minimum billing increment from 60 seconds to three minutes. The per minute rate remains 10 cents.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Vartec to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Vartec's tariff, NHPUC No. 1 are approved for effect



as filed:

- 1st Revised Page 1
- 1st Revised Page 3
- 1st Revised Page 4
- Original Page 48.1
- 1st Revised Page 57
- Original Page 62;

and it is

FURTHER ORDERED, that Vartec file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

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NH.PUC\*09/25/95\*[81087]\*80 NH PUC 596\*EqualNet Corporation

[Go to End of 81087]

80 NH PUC 596

## Re EqualNet Corporation

DR 95-245

Order No. 21,833

New Hampshire Public Utilities Commission

September 25, 1995

ORDER approving an interexchange telephone carrier's proposals for offering switched access outbound toll and inbound 800 services, for introducing multi-carrier wide area telephone service, and for eliminating certain volume discount plans.

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### 1. RATES, § 592

[N.H.] Telephone rate design — Toll service — Switched access service — For outbound toll and inbound 800 calls — Billing increment of six seconds — Elimination of certain volume discount plans — Interexchange carrier. p. 596.

### 2. RATES, § 593.1

[N.H.] Telephone rate design — Toll service — Wide area telecommunications service (WATS) — Multi-carrier WATS offerings — Billing increment of one minute — Elimination of certain volume discount plans — Interexchange carrier. p. 596.

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BY THE COMMISSION:

ORDER

[1, 2] On September 1, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from EqualNet Corporation (EqualNet) requesting authority to introduce EqualNet Answer, EqualNet Answer 800 and EqualNet Multi-Carrier WATS, and revise product names, descriptions and rates for effect October 1, 1995.

EqualNet Answer is an outbound toll product which uses switched access. EqualNet Answer 800 is an inbound 800 product which uses switched access. Each of these is billed in six second increments after an initial 18 second minimum.

EqualNet Multi-Carrier WATS is an outbound toll product billed in one minute increments.

The Company has added EqualNet to the name of each of its existing products and simplified their description. Various rates have been revised including some increases and some decreases. The volume discount plan for EqualNet Advantage and EqualNet Solution has been eliminated for intrastate usage.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize EqualNet to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of EqualNet's tariff, NHPUC No. 1 are approved for effect as filed:

2nd Revised Page 2  
 2nd Revised Page 3  
 2nd Revised Page 27  
 2nd Revised Page 28  
 2nd Revised Page 29  
 1st Revised Page 30  
 1st Revised Page 31  
 1st Revised Page 32  
 1st 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;

and it is

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

Page 596

with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 1995.

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NH.PUC\*09/26/95\*[81088]\*80 NH PUC 597\*Public Service Company of New Hampshire

[Go to End of 81088]

80 NH PUC 597

## Re Public Service Company of New Hampshire

DR 95-103

Order No. 21,834

New Hampshire Public Utilities Commission

September 26, 1995

ORDER approving an electric utility's special rate contract with Tourist Village Motel, Inc., a load retention arrangement under which discounted rates are fixed for a 10-year period so as to prevent the customer from reinstalling its cogeneration capabilities.

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### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Load retention incentives — Targeting of customer with prior cogeneration abilities — Retention via special rate contracts — Discounted rates fixed for 10-year period — Electric utility and motel as customer. p. 598.

### 2. RATES, § 322

[N.H.] Electric rate design — Load factors — Programs for retaining load — Anticogeneration incentives — Via special rate contracts — Discounted rates fixed for 10-year period — Customer's proven cogeneration abilities as a factor — Motel as customer. p. 598.

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BY THE COMMISSION:

### ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH or Company), filed with the New Hampshire Public Utilities Commission (Commission) on April 17, 1995, pursuant to RSA 378:18, a request for approval of Special Contract No. NHPUC-110 (NHPUC-110), between PSNH and Tourist Village Motel, Inc. (Tourist Village), which does business in

Gorham, New Hampshire as the Royalty Inn. In February, 1992, Tourist Village ceased taking service from PSNH when it placed a cogeneration unit in service. However, in November, 1994, a fire occurred in the generator building and Tourist Village is now taking service from PSNH but has been actively examining a new cogeneration alternative.

As a result, PSNH describes its filing as a "load retention application as compared with a business retention case." Therefore this case falls neither under the auspices of the Commission's Checklist for Economic Development and Business Retention Discounted Rates set forth in Docket No. DR 91-172 nor the recently enacted bill, 1995 N.H. Laws Chapter 272, requiring the Commission to establish procedures for the review and approval of generally available rate schedules for electric service that foster economic development and retain existing load within the state.

NHPUC-110 is a discounted rate designed to retain Tourist Village as a full requirements customer of PSNH. This departure from the existing tariff specifies customer and demand charges for the ten-year term of the agreement and establishes a formula for energy prices to be applied to a pre-determined base amount of energy and to excess amounts of energy taken. The agreement also provides that Tourist Village will never be charged over a monthly period an amount priced at less than the equivalent of 103 percent of PSNH's short-term avoided costs.

Based on its analyses of Tourist Village's history and costs as well as negotiations with the customer, PSNH contends that the discounted rate is necessary because it is likely

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that Tourist Village will again decide to cogenerate and leave the PSNH system. The Company argues that retaining this load and the resulting contribution to fixed costs will, among other things, assist PSNH's efforts to (1) improve its financial performance and (2) keep rate levels down for all other customers.

[1, 2] The Commission finds the fact that Tourist Village cogenerated for a period of approximately two and one-half years, or until such time as it suffered a fire in its generator building, is uniquely compelling evidence of the seriousness of both its ability and intent to reinstall cogeneration equipment. Thus, there is a credible threat that PSNH will lose this customer. The Commission also acknowledges a corresponding existence of benefits to shareholders during the Fixed Rate Period from retained load and benefits as well to other PSNH customers through FPPAC, but makes no commitment as to future rate treatment regarding the discount.

The Commission notes, finally, that the first page of the special contract contains two errors in its descriptive clauses. The relevant clauses, moreover, conflict with the Company's technical statement and testimony. In fact, Tourist Village is presently taking service from PSNH and the cost of electricity does not represent a significant portion of Tourist Village's operations. The contract must be amended accordingly.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract NHPUC-110 is provisionally approved subject to PSNH filing by October 11, 1995, an amended contract consistent with the discussion above;

and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by PSNH during the life of Special Contract No. NHPUC-110, 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 Tourist Village in Special Contract No. NHPUC-110; 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 October 4, 1995 and to be documented by affidavit filed with this office on or before October 11, 1995; 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 11, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 18, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 30, 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 twenty-sixth day of September, 1995.

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NH.PUC\*09/26/95\*[81089]\*80 NH PUC 598\*Public Service Company of New Hampshire

[Go to End of 81089]

80 NH PUC 598

**Re Public Service Company of New Hampshire**

DR 95-113

Order No. 21,835

New Hampshire Public Utilities Commission

September 26, 1995

ORDER approving an electric utility's special rate contract with Elliott and Williams Roses, Inc., a lighting load retention arrangement under which demand charges will be waived for incremental consumption above a base demand level.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Load retention initiatives — Targeting of lighting load — Retention via special rate contracts — Waiver of demand charges for incremental demand above base

level — Electric utility and greenhouse/nursery customer. p. 599.

## 2. RATES, § 333

[N.H.] Electric rate design — Demand charges — Waiver of — Via special rate contracts — Relative to additional incremental use beyond base demand levels — Pursuant to lighting load retention incentives — Factors affecting approval — Continued contribution to margin — Protection of local jobs. p. 599.

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BY THE COMMISSION:

### ORDER

[1, 2] The Petitioner, Public Service Company of New Hampshire (PSNH), filed on April 25, 1995, pursuant to RSA 378:18, a request for approval of a special contract, Special Contract No. NHPUC-111 (NHPUC-111), between PSNH and Elliott & Williams Roses, Inc. (Elliott & Williams), a New Hampshire corporation with its principal place of business located in Dover, New Hampshire. PSNH describes the intent of its filing as retention of lighting load and therefore this filing falls neither under the auspices of the Commission's Checklist for Economic Development and Business Retention Discounted Rates set forth in Docket DR 91-172 nor the recently enacted bill, 1995 N.H. Laws Chapter 272, requiring the Commission to establish procedures for the review and approval of generally available rate schedules for electric service that foster economic development and retain existing load within the state.

PSNH's filing included, in both redacted and unredacted form, the special contract, testimony, and a technical statement supporting a discounted rate for Elliott & Williams. PSNH also requested protective treatment for certain information considered confidential in the filing. On May 15, 1995, the Commission approved PSNH's Motion for Protective Order (Order No. 21,652).

NHPUC-111 is designed to retain the lighting load of Elliott & Williams and improve the financial situation of Elliott & Williams. PSNH asserts that the cost of lighting represents a significant cost component of Elliott & Williams' rose growing business. Because of the substantial amount of lighting used in its greenhouses and the highly competitive nature of the rose business, PSNH believes Elliott & Williams would seek alternatives to its lighting costs absent approval of NHPUC-111. PSNH argues that retaining the load and the resulting contribution to fixed costs will, among other things, assist PSNH's efforts to (1) improve its financial performance; (2) keep rates lower for all other customers; and (3) help to ensure that Elliott & Williams will remain a viable rose growing business at its current location that will benefit the local economy.

NHPUC-111 provides discounted rates for the ten-year term of the contract by waiving the demand charge on all kilowatts of demand above the designated "Firm Contract Demand" specified in NHPUC-111. All demand above Firm Contract Demand is specified as Interruptible Demand upon one-hour notice by PSNH. Energy usage associated with Elliott & Williams'

demand above Firm Contract Demand will be charged at a rate which equals the total FPPAC costs in PSNH's tariff plus the charge for Nuclear Decommissioning plus a one and one-half cent per kWh adder. All demand and energy used by Elliott & Williams below the specified Firm Contract Demand level will be at PSNH's standard tariff rates. NHPUC-111 also provides that Elliott & Williams will never be charged less than the equivalent of 103% of the short-term avoided cost of PSNH. Elliott & Williams must use PSNH as its sole supplier of electricity during the term of the contract. Failure to interrupt and reduce load to the Firm Contract Demand level will result in resetting a new Firm Contract Demand level for Elliott & Williams based on the excess demand above the Firm Contract Demand level used during the period of the called interruption.

Upon review of the filing and Staff's recommendation, the Commission finds that NHPUC-111 is a load retention special contract that will provide benefits to Elliott & Williams,

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to PSNH during the Fixed Rate Period, and to PSNH's other customers. We will, therefore, approve it as being in the public interest.

We are aware that a potential competitor of Elliott & Williams in the rose business may be disadvantaged by our approval of NHPUC- 111. While we will not at this time order PSNH to offer a similar special contract to that customer (though we note PSNH's willingness to do so), we will direct PSNH to serve that competitor directly with a copy of this Order *Nisi*.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-111 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-111, 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 Elliott & Williams Roses in Special Contract No. NHPUC-111; 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 October 4, 1995 and to be documented by affidavit filed with this office on or before October 11, 1995; 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 11, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or requesting a hearing shall do so no later than October 18, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 30, 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 twenty-sixth day of September, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-113, Order No. 21,652, 80 NH PUC 264, May 15, 1995.

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NH.PUC\*09/26/95\*[81090]\*80 NH PUC 600\*Smartel Communications, Inc.

[Go to End of 81090]

80 NH PUC 600

**Re Smartel Communications, Inc.**

DE 95-165

Order No. 21,836

New Hampshire Public Utilities Commission

September 26, 1995

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

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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 services. p. 600.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 600.

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BY THE COMMISSION:

ORDER

[1, 2] On June 7, 1995, Smartel Communications, Inc. (SCI), a Delaware corporation, petitioned the New Hampshire Public Utilities

**Page 600**

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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.



SCI 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 SCI 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 until the Commission orders otherwise.
3. SCI 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, SCI shall notify the Commission of the change.
5. SCI 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. SCI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. SCI 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. SCI 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. SCI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by SCI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

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

it is

FURTHER ORDERED, that SCI shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before October 10, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. SCI 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 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, 1995 and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than

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October 24, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective October 26, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that SCI shall file a compliance tariff with the Commission on or before October 26, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of September, 1995.

Notice of Conditional Approval of  
Smartel Communications, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On June 7, 1995, Smartel Communications, Inc. (SCI), 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. 21,836, issued in Docket No. DE 95-165, the Commission granted SCI conditional approval to operate as of October 26, 1995, subject to the right of the public and interested parties to comment on SCI 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. Comments on SCI's petition to do business in the State must be submitted in writing no later than October 17, 1995, and reply comments no later than October 24, 1995, 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\*09/26/95\*[81091]\*80 NH PUC 602\*American Express Telecom, Inc.

[Go to End of 81091]

80 NH PUC 602

**Re American Express Telecom, Inc.**

DE 95-204  
Order No. 21,837

New Hampshire Public Utilities Commission

September 26, 1995

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

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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 services. p. 602.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 602.

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BY THE COMMISSION:

ORDER

[1, 2] On August 14, 1995, American

Page 602

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Express Telecom, Inc. (Amex), 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.

Amex 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 Amex 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 until the Commission orders otherwise.
3. Amex 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, Amex shall notify the Commission of the change.
5. Amex 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. Amex shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. Amex 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. Amex 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. Amex shall compensate the appropriate Local Exchange Company for all originating and terminating access used by Amex pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local

Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

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

FURTHER ORDERED, that Amex shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before October 10, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. Amex 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 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, 1995; and it is

Page 603

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 24, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective October 26, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that Amex shall file a compliance tariff with the Commission on or before October 26, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of September, 1995.

Notice of Conditional Approval of  
American Express Telecom, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 11, 1995, American Express Telecom, Inc. (Amex), 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. 21,837 , issued in Docket No. DE 95-204, the Commission granted Amex conditional approval to operate as of October 26, 1995, subject to the right of the public and interested parties to comment on Amex 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. Comments on Amex's petition to do business in the State must be submitted in writing no later than October 17, 1995 and reply comments no later than October 24, 1995, 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\*09/26/95\*[81092]\*80 NH PUC 604\*Central Payphone Services, Inc.

[Go to End of 81092]

80 NH PUC 604

### **Re Central Payphone Services, Inc.**

DE 95-146  
Order No. 21,838

New Hampshire Public Utilities Commission

September 26, 1995

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

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#### 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 services. p. 605.

#### 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Exclusion of local exchange services. p. 605.

**Page 604**

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BY THE COMMISSION:

ORDER

[1, 2] On May 26, 1995, Central Payphone Services, Inc. (CPS), a Georgia 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.

CPS 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 CPS 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 until the Commission orders otherwise.
3. CPS 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, CPS shall notify the Commission of the change.
5. CPS 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. CPS shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. CPS 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. CPS 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. CPS shall compensate the appropriate Local Exchange Company for all originating and

terminating access used by CPS pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

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

FURTHER ORDERED, that CPS shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 3, 1995, and an affidavit proving publication shall be filed with the Commission on or before October 10, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. CPS 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 all persons interested in responding to this petition be notified that they may submit their comments or

**Page 605**

file a written request for a hearing on this matter before the Commission no later than October 17, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 24, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 26, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that CPS shall file a compliance tariff with the Commission on or before October 26, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of September, 1995.

Notice of Conditional Approval of  
Central Payphone Services, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On May 31, 1995, Central Payphone Services, Inc. (CPS), a Georgia 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. 21,838, issued in Docket No. DE 95-146, the Commission granted CPS



conditional approval to operate as of October 26, 1995, subject to the right of the public and interested parties to comment on CPS 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. Comments on CPS's petition to do business in the State must be submitted in writing no later than October 17, 1995 and reply comments no later than October 24, 1995, 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\*09/27/95\*[81093]\*80 NH PUC 606\*North Atlantic Energy Corporation

[Go to End of 81093]

80 NH PUC 606

### Re North Atlantic Energy Corporation

DF 95-215  
Order No. 21,839

New Hampshire Public Utilities Commission

September 27, 1995

ORDER authorizing an energy corporation to issue up to \$225 million in unsecured long-term notes, so as to refinance at a lower interest rate \$205 million in high-interest notes that had been issued in conjunction with settlement of bankruptcy proceedings involving its affiliate, Public Service Company of New Hampshire.

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#### 1. SECURITY ISSUES, § 80

[N.H.] Purposes — Of unsecured long-term notes — Refinancing of other notes — To take advantage of lower interest rates — Ratepayer savings — Energy corporation — Original notes as part of bankruptcy settlement. p. 608.

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APPEARANCES: Jane P. Seidl, Esq. on behalf of North Atlantic Energy Corporation;

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Kenneth Traum, on behalf of the Office of Consumer Advocate; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

#### ORDER

On August 4, 1995, North Atlantic Energy Corporation (NAEC or Company) filed a petition for authorization to refinance certain existing financial obligations by issuing up to \$240,000,000 of long-term unsecured indebtedness. NAEC seeks authority to issue up to \$240 million principal amount of variable rate unsecured notes (Notes) to a syndicate of banks in order to finance the principal of, and pay the related call premium and/or transaction costs incurred in connection with, \$205 million aggregate principal amount of outstanding notes (old notes) which were issued in connection with the reorganization of Public Service Company of New Hampshire (PSNH). NAEC is seeking authorization to utilize derivative financial instruments to manage risk associated with the Notes.

In its filing, NAEC sought accelerated treatment of its petition to allow it to accomplish the proposed refinancing in the existing favorable interest rate environment. A duly noticed hearing was held on September 12, 1995.

At the September 12, 1995, hearing, David R. McHale, Assistant Treasurer-Finance for NAEC, testified that NAEC is requesting authorization to issue Notes to refinance \$205 million aggregate principal amount of the old notes and to pay the related call premium and/or transaction costs incurred in connection with that issue. The 15.23% old notes, due July 1, 2000, were issued to the preferred and common stockholders of PSNH as part of the reorganization under Chapter 11 of the Bankruptcy Code. The Commission approved the issuance of the old notes as part of Northeast Utilities acquisition of PSNH. NAEC subsequently assumed PSNH's obligation under the old notes as part of the reorganization of PSNH. *Re: Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR 385, NHPUC 396 (1990).

The 15.3% old notes are redeemable at the option of NAEC on or after July 1, 1995 at an initial redemption price of 115.66% of the principal amount, and at prices declining to 100% on or after July 1, 1999, together with accrued interest to the redemption date. NAEC believes that the decrease in interest rates in 1995 and the current financial climate present opportunities to negotiate a favorable interest rate and other terms. Because NAEC does not have sufficient available property or credits to support the issuance of sufficient new mortgage bonds to refinance and redeem the old notes, NAEC has explored various refinancing options and has decided that the terms of a bank note facility are at least as favorable to NAEC as any terms that could be expected to be received for other types of new public or private credit facilities. At the hearing, exhibits were proffered which indicate that the "all-in" costs of a bank note facility are estimated to be substantially less than the costs of capital market facility of a comparable amount and maturity. NAEC testified that an "all-in" interest rate of approximately 8% would be realized under current market conditions. Mr. McHale testified that there are four arranger banks (Banks)

prepared to provide Notes in the aggregate principal amount of \$225,000,000. He explained that NAEC was changing its original request from \$240 million to \$225 million because NAEC intends to use \$15 million cash to fund the refinancing.

The Company anticipates that the Notes will bear interest at a variable rate. In order to minimize the risk of rate variation, the Company intends to enter into rate protection arrangements with certain third party financial institutions. The arrangements with third parties will either fix the interest rate on the Notes or reduce the variability of the Company's interest cost on the Notes. The term of the Notes will not exceed five years; the interest rate will be based upon a given negotiated margin not exceeding 200 basis points above the applicable one, two, three, or six month London Interbank Offer Rate (LIBOR) selected by NAEC from time to time. NAEC explained that at the end of any particular interest rate period, the given

Page 607

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margin above LIBOR may change if either Standard & Poor's Corporation or Moody's Investor Service, Inc. changes their respective ratings on the first mortgage bonds of PSNH. The Company understands that the Banks prefer to use PSNH first mortgage bond ratings to gauge the credit risk of NAEC. NAEC testified that current market conditions are such that ratings changes are not expected to eliminate ratepayer savings. The Company wishes to enter into rate protection arrangements such as caps, collars, floors, options, swaps and other financial tools (Derivative Arrangements) designed to manage interest rate changes in connection with the Notes. The decision to enter into any Derivative Arrangement will depend upon it having a term no longer than five years from the date of issuance of the Notes, not exceeding the principal amount outstanding of the Notes, and not causing the Notes to have an effective fixed rate in excess of 9.85%.

The 9.85% rate was identified as the ratepayer break even rate: the point at which a higher rate would eliminate ratepayer savings. NAEC states that it will not agree to issue Notes unless the estimated present value of the savings is in excess of the present value of all costs to acquire the old notes and issue the Notes on the basis of an appropriate interest rate for the term of the Notes.

The Notes will be unsecured obligations of the Company and will be subordinate to all other existing indebtedness for borrowed money of the issues, other than borrowings from the Northeast Utilities money pool.

The Company testified that the refinancing provides an opportunity for substantial ratepayer savings. Total ratepayer savings were estimated at approximately \$15-18 million. Additional savings, estimated at \$3,660,000 over three years, would be realized by a reduction in the cost of capital that is applied to the deferral accumulated through the plant exclusion in the rate plan. Furthermore, the Company testified, interest cost savings would flow to New Hampshire Electric Cooperative customers through lower wholesale electric rates.

On September 19, 1995, the Company filed exhibits which were requested at the hearing. These exhibits included a description of the treatment of Derivative Arrangements for both financial statement and tax reporting purposes. Review of these documents indicates that the Company follows Generally Accepted Accounting Principals as set forth by the Financial

Accounting Standard Board (FASB) and its Energy Issues Task Force. At this time, FASB's Statement of Financial Accounting Standards No. 119 generally requires that a company disclose the amounts, nature, and the terms of Derivative Arrangements in its financial statements. The accounting treatment for interest rate caps is comparable to the treatment accorded debt issuance costs. The up front payment for a cap would be considered interest expense and amortized over the life of the debt issue. For tax purposes, the up front cap payment would be treated as current expense, and deferred taxes would be provided for the timing differences between book and tax expense. Interest rate swaps would be treated as either interest income or expense, depending on whether NAEC received payment or paid for the swap arrangement. The Company states that these payments (to or by the Company) would be required in order to effectively fix the interest cost to the company of the new variable rate bank note facility. As FASB is currently addressing derivative accounting issues, the accounting treatment will be subject to change when a new Statement of Derivative Arrangement Accounting is issued.

Staff expressed concern over the use of Derivative Arrangements, noting that Derivative Arrangements themselves contain risks. The Staff took the position at the hearing that the Commission should establish the break-even point (9.85%) as the ceiling for any debt costs which result from the refinancing and the requested use of Derivative Arrangements.

#### I. COMMISSION ANALYSIS

[1] Based upon the testimony and exhibits filed in this case the proposed refinancing of NAEC's \$205 million of 15.23% old notes, due July 1, 2000, is in the public good. It is prudent to refinance the high interest rate old notes which resulted from the resolution of PSNH's

Page 608

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bankruptcy proceedings. The proposed financing will provide interest cost savings to NAEC and to the customers of PSNH. The estimated savings are \$18 million, based upon the Company's estimate of terms and conditions that can be realized in the current financial climate. We share staff's concern over the use of Derivative Arrangements. We will expect the Company to use such arrangements prudently in order to keep interest costs to a minimum. We interpret the break-even point to include any and all costs and payments which result from the use of Derivatives Arrangements. While we expect interest costs to be lower than the 9.85% break-even point, we will order NAEC to take all reasonable steps to insure that the effective interest costs do not exceed it.

Based upon the foregoing, it is hereby

ORDERED, that NAEC is authorized to enter into a Credit Agreement with the Banks and to issue Notes in the aggregate principal amount of up to \$225,000,000, which shall mature no later than five years from the date of issuance, in order to redeem the \$205,000,000 aggregate principal amount of outstanding notes issued in connection with the reorganization of Public Service Company of New Hampshire; and it is

FURTHER ORDERED, that the Notes shall be issued at a variable interest rate to be negotiated but not exceeding 2% over specified indexes such as LIBOR; and it is

FURTHER ORDERED, that NAEC is authorized to enter into Derivative Arrangements

designed to manage interest rate changes in connection with the Notes; and it is

FURTHER ORDERED, that said Derivative Arrangements shall not exceed the principal amount outstanding of the Notes and shall not cause the Notes to have an effective fixed rate in excess of 9.85%; and it is

FURTHER ORDERED, that NAEC shall submit final copies of the Term Credit Agreement and the Form of Note no later than thirty days after finalizing the financing.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 1995.

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NH.PUC\*10/02/95\*[81094]\*80 NH PUC 609\*Telegroup, Inc.

[Go to End of 81094]

80 NH PUC 609

**Re Telegroup, Inc.**

DR 95-248

Order No. 21,841

New Hampshire Public Utilities Commission

October 2, 1995

ORDER approving an interexchange telephone carrier's plan to introduce prepaid calling card services.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Calling card rates — Introduction of prepaid debit card service — Use of standard, promotional, and collectible series of cards — Interexchange carrier. p. 609.

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BY THE COMMISSION:

ORDER

[1] On September 7, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Telegroup, Inc., (Telegroup) requesting authority to introduce pre-paid calling card service for effect October 7, 1995.

Pre-paid calling card service is a debit card service which allows a customer to pay a fixed amount in advance for long distance calling and is debited each time the card is used. Telegroup will offer standard, promotional and collectible pre-paid calling cards.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of pre- paid calling card service.

**Page 609**

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Telegroup's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Check Sheet  
1st Revised Page 11  
Original Page 11.1  
1st Revised Page 12  
Original Page 13;

and it is

FURTHER ORDERED, that Telegroup file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this second day of October, 1995.

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NH.PUC\*10/02/95\*[81095]\*80 NH PUC 610\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81095]

80 NH PUC 610

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-244  
Order No. 21,844

New Hampshire Public Utilities Commission

October 2, 1995

ORDER authorizing a local exchange telephone carrier to tariff rates for Feature Group 2A switched access service for mobile/cellular service providers, which service heretofore had been provided through special rate contracts only.

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1. RATES, § 571

[N.H.] Telephone rate design — Switched access service — For mobile or cellular carriers — Replacement of special rate contracts with tariffed rates — Local exchange carrier. p. 610.

## 2. RATES, § 559.1

[N.H.] Telephone rate design — Mobile cellular services — Switched access for — Feature Group 2A service — Replacement of special rate contracts with tariffed rates — Local exchange carrier. p. 610.

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BY THE COMMISSION:

### ORDER

[1, 2] On September 1, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its NH PUC Tariffs, Numbers 75 and 79 for effect October 1, 1995. Specifically, NYNEX seeks to modify its intrastate access tariff to introduce Feature Group 2A (FG2A) switched access service, to introduce a tariff for Type 1 Interconnection, and to introduce a Company Code on the title page of its NH PUC No. 79 tariff.

FG2A, an access arrangement used by mobile/cellular service providers to interconnect at access tandems with the NYNEX network, allows interconnection to networks of other carriers. Today, wireless carriers purchase this Type 2A Interconnection service through special contracts. Although NYNEX has not filed these special contracts with the Commission, NYNEX asserts that the special contracts employ the same rate elements as the New Hampshire state specific access tariff for Feature Group D (FGD), but higher rate levels, reflective of 1988 Federal Communications Commission rates.

Stating that NYNEX pricing policy requires that all comparable network interconnection arrangements be treated equally, NYNEX proposes to tariff FG2A at the same rates as FGD. NYNEX informed Staff that the current contracts do not specify a term, but simply specify the rates and terms under which Type 2 Interconnection service is provided.

In addition, NYNEX offers Type 1

**Page 610**

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Interconnection service to wireless carriers under special contract. NYNEX has not filed these contracts with the Commission. NYNEX states that the contracts for this service refer to NH PUC No. 75, Flexpath Service as provided in Part C, Section 5 with usage charged as specified in Part A, Section 5 or Section 9, as applicable. NYNEX asserts that the contracts require cellular customers to pay for Measured Service 4E (MS4E) on a message unit basis with a rate of 15.9 cents per message unit, while all other business customers in New Hampshire pay for MS4E on a per message, per minute basis as specified in Part A, Section 5.1.8.C.2. NYNEX proposes to eliminate this disparity by moving this service from contract to tariff as Flexpath service.

NYNEX also proposes to introduce a unique four digit company ownership identifier code



for Exchange Telephone Company Wire Centers listed in the National Exchange Carrier Association, Inc. F.C.C. Tariff No. 4. This allows carriers conducting business with multiple providers in a state to isolate the Telephone Company information.

Staff has reviewed the proposed tariff modifications and the information filed in support of the petition. Based on this review, Staff recommended that the Commission approve the petition.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX's Tariff are approved:

NH PUC - No. 75

Part C - Section 5

Fourth Revision of Page 3

NH PUC - No. 79

Title Page - First Revision of Title Page

Section 1 - First Revision of Page 12

Section 2 - First Revision of Page 1

Section 6 - First Revision of Page 2

39p'- First Revision of Page 5

39p'- Original Page 14.1

39p'- First Revision of Page 15

39p'- Original Page 15.1

Section 30 - Original Page 7.1

and it is

FURTHER ORDERED, that NYNEX modify NH PUC - No. 79, Section 6, First Revision of Page 14, such that the first bullet under paragraphs 6.3.2.B.1 and 6.3.2.B.3 read:

For calls in the terminating direction, the Wireless Carrier will be billed all terminating access charges in accordance with the tariff.

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

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before November 1, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this second day of October, 1995.

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NH.PUC\*10/03/95\*[81096]\*80 NH PUC 611\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81096]



80 NH PUC 611

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-211

Order No. 21,845

New Hampshire Public Utilities Commission

October 3, 1995

ORDER finding that certain parts of a special rate contract executed by a local exchange telephone carrier and Quest Technologies, Inc., should be subject to protective treatment in that such information pertains to the customer's operations and finances. However, the commission finds that the name of the service to which the contract pertains should be disclosed.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate

**Page 611**

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contracts — Policy favoring public disclosure — Exceptions for certain information — Customer-specific operational and financial data — Protection of customer proprietary network information — Benefits of nondisclosure outweighing those of disclosure. p. 613.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contracts — Confidentiality of certain customer-specific operational and financial data — No protective treatment as to name of service that is the subject of the contract — No proprietary interest in the name of the service — Benefits of disclosure outweighing benefits of nondisclosure — Local exchange telephone service. p. 613.

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BY THE COMMISSION:

ORDER

On August 2, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract, pursuant to RSA 378:18, for the provision of services to Quest Technologies, Inc. (Quest). The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure. NYNEX submitted redacted copies of the special contract which, when compared to the full texts also provided, identified the relevant pages, paragraphs and segments containing information for which NYNEX seeks confidential treatment.

In its motion, NYNEX stated that the contract and supporting documents should be afforded protective treatment, pursuant to RSA 91-A, in that they contain customer specific, competitively sensitive data which fall within the scope of the exceptions to disclosure contained within RSA 91-A:5,IV. NYNEX supported its motion by providing information required by Puc 204.07 and Puc 204.08.

According to NYNEX, neither the Commission Staff (Staff) nor the Office of Consumer Advocate took a position with regard to the motion at the time of its filing.

The Commission recognizes that the information claimed to be confidential is critical to Commission review of the special contract, as required by RSA 378:18. The Staff reviewed the motion and the contract and supporting documents. Staff recommends and we agree that certain customer specific information contained within the special contract and supporting information falls within the exceptions to public disclosure in RSA 91-A:5,IV.

Our analysis of the filing submitted in this docket follows closely that in our Order No. 21,731, dated July 10, 1995 (hereinafter cited as *Auditel*). This filing, like several considered in that order, consists of a three part document consisting of an overview of the contract, a cost study section, and the contract itself. The overview reveals the term of years, describes the contract by reference to information contained in Appendix A, and identifies the types of lines the customer includes in its initial system. The cost study section reveals the sites for service, capital costs, operating costs, and contract rates and costs. The contract itself reveals the term of years in section 4.1, the minimum service period in section 5, and otherwise contains standard clauses regarding liability, governing tariffs, methods for termination etc. The contract refers to appendices for other information, some of which can be considered of interest to a competitor, for instance, specific information on the number and location of lines, engineering specifications per line, rates and charges per line, dollar commitments per month, schedules of monthly payments.

By comparing the redacted material with the full texts, we discern that, in addition to the portions of the contract and supporting material described above which in prior dockets has been found to warrant confidential treatment, NYNEX seeks to protect the name of the service provided (both the collective title and the specific service components) as Customer Proprietary Network Information (CPNI). Neither NYNEX nor any other service provider has

**Page 612**

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ever requested that the name of a service contracted for be held confidential; therefore we have never before ruled on whether the name of a service is CPNI and therefore entitled to protection.

NYNEX did not provide separate information demonstrating why the name of the service specifically should be protected. Instead, NYNEX argued for protection of all the redacted information. Disclosure of the redacted information, according to NYNEX's Motion, would (1) undermine NYNEX's ability to compete with other providers of alternate services, (2) disclose information which NYNEX regularly seeks to protect, (3) breach the NYNEX customer's expectation of privacy in the special contract dealings, (4) give customers seeking special contracts an enhanced bargaining position, (5) subject basic exchange rates to upward pressure

as a result of discounts to the unfairly advantaged customers, and (6) compromise the customer's position in its competitive market by revealing financial status, plans for growth, telecommunications strategies, etc., information which the Commission determined should not be made public in Order No. 21,731.

We first consider each of these arguments in turn as they apply specifically to the name of the service contracted for in the special contract. Then we consider whether the harms, if proven, outweigh the benefits of disclosure.

(1) Since NYNEX's competitors already know that this type of service is one offered by NYNEX, the name itself will not undermine NYNEX's ability to compete; and because the specifics of the service will be protected, NYNEX is not at risk of losing this specific customer.

(2) NYNEX has not protected the name of a service before and therefore cannot claim to regularly protect it.

(3) Customers who enter into special contract negotiations with NYNEX do have a reasonable expectation that CPNI and other customer information supplied to NYNEX will be treated confidentially; the question here is whether the name of the service is CPNI.

(4) and (5) We can conceive of no way in which customers will be given an enhanced bargaining position by knowing what services NYNEX offers; without such knowledge a customer would not even deal with NYNEX.

(6) NYNEX's customer does have an interest in protecting its own competitive position. However, the danger to the customer's competitive position is not self-evident and NYNEX has not presented evidence of the harm to the customer which NYNEX or the customer anticipates would flow from revelation of the name of the service offered.

[1, 2] We must consider whether the name of a service is CPNI. NYNEX correctly cites our definition of CPNI as consisting of "information about a telephone customer's use of the telephone network, such as the number of lines ordered, service location, type and class of services purchased, usage levels, and calling patterns." *Auditel* at p. 21. Nonetheless, our definition goes further to include the harms flowing from disclosure of CPNI. We cited numerous FCC cases identifying CPNI as information useful to competitors in identifying potential customers, designing more efficient services, and better meeting customer needs. *Id.* The harms the FCC was referring to were harms occurring "to the BOCs and competitor enhanced service providers in their development and marketing of enhanced services." *Id.* While CPNI is not limited to material which is competitively harmful to telecommunications providers, it is limited to material which is or has some reasonable likelihood of being competitively harmful. In its motion, NYNEX claims harm could befall its customer, Quest, should the name of the service not be kept confidential. NYNEX does not specify the harm. NYNEX does not offer any supporting material from Quest. On the basis of NYNEX's filing, we do not find harm or the reasonable likelihood of harm. We note, for the benefit of future submissions for confidential treatment, that our rules require more than a simple claim that information is CPNI, or other category of information, where the likelihood of harm is not shown. As we stated in *Auditel*, "We will keep confidential ... information as determined by consideration of special contracts on a case by case and page by page basis." *Id.* at 23. Although the likelihood of harm may be apparent to NYNEX, we will not grant confidentiality

unless the likelihood is apparent to us.

Applying the standards for confidentiality, as governed by RSA 91-A and codified in Puc 204, to the information presented in this filing, we find that the benefits of non-disclosure outweigh the benefits of disclosure for the redacted portions of the filing, with the exception of the name of the service itself. Therefore, except for the name of the service contracted for, the information redacted by NYNEX shall remain confidential. The name of the service shall not be protected.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Proprietary Treatment of the special contract between NYNEX and Quest, Inc. for the provision of telecommunications service and all supporting documents is GRANTED in part and DENIED in part in accordance with our analysis above; and it is

FURTHER ORDERED, that NYNEX shall file with the Commission a redacted copy of the contract which conforms to this order no later than October 9, 1995; 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 Public Utilities Commission of New Hampshire this third day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*10/03/95\*[81097]\*80 NH PUC 614\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81097]

80 NH PUC 614

### **Re AT&T Communications of New Hampshire, Inc.**

DR 95-251

Order No. 21,846

New Hampshire Public Utilities Commission

October 3, 1995

ORDER authorizing an interexchange telephone carrier to offer additional denominations (of 15,

25, 50, and 100) to its prepaid calling card units.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Prepaid calling card services — Addition of new denominations or units — Interexchange carrier. p. 614.

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BY THE COMMISSION:

ORDER

[1] On September 8, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to add four new denominations to the AT&T PrePaid Card Service tariff and specify that calls to 500 numbers may not be placed using PrePaid Card service, for effect October 10, 1995.

The proposed revisions will allow customers to purchase PrePaid cards with 15, 25, 50 or 100 unit denominations in addition to the currently approved denominations.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the

Page 614

Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 4 are approved for effect as filed:

*Section 2*

1st Revised Page 21

2nd Revised Page 23;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this third day of October, 1995.

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NH.PUC\*10/03/95\*[81098]\*80 NH PUC 615\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81098]

80 NH PUC 615

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-252

Order No. 21,847

New Hampshire Public Utilities Commission

October 3, 1995

ORDER authorizing an interexchange telephone carrier to revise its tariffs for virtual telecommunications network services with respect to the allocation of usage charges.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Virtual telecommunications network services — Usage charges — Allocation of among multiple users — Applicability to minimum annual usage volumes — Tariff revisions — Interexchange carrier. p. 615.

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BY THE COMMISSION:

ORDER

[1] On September 8, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc., (AT&T) requesting authority to make administrative changes to AT&T Virtual Telecommunications Network Service (VTNS), for effect October 9, 1995.

The proposed revisions include elimination of language which states AT&T will not be responsible for allocating usage charges among multiple users. In addition, language is being eliminated which states VTNS intrastate voice usage charges will contribute towards satisfaction of the customer's minimum annual charge and usage volume pricing plan as specified in the interstate tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

*Table of Contents*

1st Revised Page 25

*Section 23*

1st Revised Page 2

1st Revised Page 3

1st Revised Page 4;

and it is

FURTHER ORDERED, that AT&T file

**Page 615**

properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this third day of October, 1995.

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NH.PUC\*10/03/95\*[81099]\*80 NH PUC 616\*Interlakes Water and Sewer Company

[Go to End of 81099]

80 NH PUC 616

**Re Interlakes Water and Sewer Company**

DR 95-134

Order No. 21,848

New Hampshire Public Utilities Commission

October 3, 1995

ORDER granting a franchise, on an interim basis, to a water utility for service in a mobile home park. Commission notes, however, that the utility has not yet been authorized to bill customers for its services.

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1. FRANCHISES, § 25

[N.H.] Factors affecting grant — Applicant's technical, financial, and managerial abilities — Grant on interim basis only — Correction of quality-of-service problems prior to grant of permanent franchise authority — Operational authority separate from billing authority — Water system. p. 617.

2. PAYMENT, § 17

[N.H.] Billing and metering — Authority to engage in — Necessity of commission approval — Separate from operational authorities — Grant of interim franchise authority not inclusive of

automatic authority to charge for service — Water utility. p. 617.

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BY THE COMMISSION:

#### ORDER

On May 11, 1995, Interlakes Water and Sewer Company (Interlakes) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for approval of a franchise and rates for the Interlakes Mobile Home Park (Park). Supporting testimony and exhibits were filed by Interlakes on June 12, 1995 and July 5, 1995.

As we previously noted in Order No. 21,781, the filing raises, *inter alia*, issues relating to the financial, managerial and technical competence of Interlakes to operate as a public utility. Following the prehearing conference we scheduled a hearing for September 1, 1995 in order to determine whether Interlakes should be granted an interim franchise pending our decision on the merits of the Petition. Interlakes submitted for consideration by offer of proof that (a) under the current ownership it had been providing water service in the Interlakes Mobile Home Park for approximately eighteen (18) years, (b) it currently serves approximately 124 customers, (c) it was not currently charging rates for such service, (d) it installed meters last fall, (e) its current source of water is wells, (f) it is negotiating with the Town of Meredith in order to tie into that system, (g) Interlakes has a full-time manager in the park who recently took the examination to be a certified operator, (h) that the system has had quality of service problems, both in adequacy of supply and water quality, in the past but that those problems should be taken care of by the Company's plan to replace a 20,000 gallon atmospheric tank by November 1, 1995, (i) that the Company's planned capital projects will be funded through the available cash flow of the park, and (j) that the Company was negotiating with the Town of Meredith with respect to the interconnection fee which the Town has proposed.

Staff indicated that it had no objection to the grant of a conditional franchise but offered the testimony of Commission Water Engineer, Douglas Brogan. Mr. Brogan testified that the Staff had received a number of complaints about service and as a result had sent out a

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survey to all customers in order to provide the opportunity for further input. Mr. Brogan summarized the results of that survey and concluded that the Interlake system has a number of potential problems which the company should investigate by hiring an engineer if necessary, and then taking the appropriate remedial action based upon that investigation. Mr. Brogan expressed concern that the Company seemed to be proceeding with the option of hooking into the Town's system without having first conducted a more thorough evaluation of its options.

Staff and intervenor Cloverleaf Association also expressed concern that Interlakes was continuing to send bills to customers who had not previously paid an "initial" billing earlier in the year.

**[1, 2]** Based on its offers of proof, we find that Interlakes has sustained its burden of showing the financial, managerial and technical competence to operate a water utility on an interim basis.



We wish to make it clear, however, that we grant such authority on an interim basis only; the Petitioner still bears the burden of establishing that it would be in the in the public good to receive authorization for a permanent franchise pursuant to RSA 374:26. We also wish to emphasize that Interlakes is not authorized to bill customers until receiving such authority from this Commission. Accordingly, we direct it to cease sending any such bills. With regard to those customers who have already paid charges for water service which we did not authorize, Interlakes is ordered to forthwith provide written notice to those customers advising that they have the option of receiving a refund or a credit with interest in accordance with N.H. Admin. Rule Puc 403.04 (b) (2) in those amounts to any future billings.

Based upon the foregoing, it is hereby

ORDERED, that Interlakes is granted an interim franchise pending the final hearing in this proceeding; and it is

FURTHER ORDERED, that Interlakes shall send written notice to all customers who have paid water bills which were unauthorized by this Commission and advise such customers they have the option of receiving a refund or credit as set forth above; and it is

FURTHER ORDERED, that Interlakes shall cease sending out any bills for water service until so authorized by this Commission.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Interlakes Water & Sewer Co., DE 95-134, Order No. 21,781, 80 NH PUC 525, Aug. 8, 1995.

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NH.PUC\*10/03/95\*[81100]\*80 NH PUC 617\*Public Service Company of New Hampshire

[Go to End of 81100]

80 NH PUC 617

### **Re Public Service Company of New Hampshire**

DR 95-220

Order No. 21,849

New Hampshire Public Utilities Commission

October 3, 1995

ORDER adopting a procedural schedule and delineating the scope of a proceeding addressing an electric utility's most recently filed fuel and purchased power adjustment clause rate of 0.198 cents per kilowatt-hour. Issues to be considered include an outage at the Seabrook nuclear power

plant, the utility's coal reserve practices, and outages at fossil fuel plants, but exclude outages caused by mussel fouling at the Millstone nuclear station in Connecticut, in deference to a pending Connecticut investigation into the matter.

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#### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Nuclear generating costs — Effect of unplanned outages — Cause of outages as a factor —

Page 617

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Deferral to nonjurisdictional regulatory commission as to outages at out-of-state plant — Electric utility. p. 618.

#### 2. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Nuclear station outages — Coal reserve practices — Issues to be addressed in fuel and purchased power adjustment clause rate proceeding. p. 618.

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BY THE COMMISSION:

#### ORDER

On August 10, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) its Fuel and Purchased Power Adjustment Clause (FPPAC) for December 1, 1995 to May 31, 1996. PSNH filed supporting testimony and exhibits on September 15, 1995. The proposed FPPAC rate is \$0.00198/kWh, a reduction from the current FPPAC rate of \$0.00335/kWh. The resulting change will be approximately a 1% reduction in bills to customers. For a typical residential customer using 500 kWh per month, the proposed rate would result in a reduction of approximately 69 cents per month.

The Commission set a prehearing conference for September 26, 1995, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

New Hampshire Electric Cooperative (NHEC), a wholesale customer of PSNH, sought intervention, without objection. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

[1, 2] PSNH argued that the scope of the current FPPAC hearing should not include two related outages which occurred in 1991 at the Millstone 3 nuclear power plant in Connecticut in which PSNH owns an entitlement. They are: 1) the outage due to "mussel fouling" of the water system; and 2) the service water outage which was discovered during the mussel fouling outage. PSNH argued that the mussel fouling outage is currently being investigated by the Connecticut

Department of Public Utility Control (DPUC) and that the DPUC suspended the service water proceeding pending the outcome of the related outage. Although this Commission should not be bound by the DPUC's decision, PSNH argued it would be more efficient to allow the DPUC investigation to be completed before undertaking discovery here. NHEC and OCA took no position on whether these two outages should be part of this FPPAC proceeding. Staff objected to PSNH's request, arguing that the outages occurred in 1991 and the longer one waits, the more stale the information. Staff assured the Commission that it would undertake its own investigation of the two outages and not simply accept the findings of the DPUC.

At the prehearing conference PSNH, NHEC, OCA and Staff agreed to the procedural schedule proposed in the September 19, 1995 Order of Notice:

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

Data Requests from Staff and Intervenors, by FAX	September 28, 1995
Remaining Data Requests by Staff and Intervenors to PSNH, by FAX or in hand	September 29, 1995
PSNH Data Responses	October 13, 1995
Technical Session, 10 a.m. and Oral Data Requests	October 19, 1995
PSNH Responses to Oral Data Requests	October 26, 1995
Updates Exhibits to be Filed	October 27, 1995
Testimony by Staff and Intervenors filed by 12 noon	November 2, 1995
PSNH Written Rebuttal Testimony, Statement of Issues from PSNH, Staff and Intervenors	November 6, 1995
Hearing on merits, 10 a.m.	November 7-9, 1995
Revised Statement of Issues	November 15, 1995
Briefs, if necessary	November 21, 1995

PSNH argued that it was requesting approval of the FPPAC rate as filed but noted that because this FPPAC rate was a reduction

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there was a potential for rate fluctuation if the rate were to increase in the future. PSNH did not ask that the proposed rate be changed, but merely pointed out that for purposes of rate continuity, it might be better not to drop the FPPAC rate at this time.

Also at the prehearing conference, in accordance with the Order of Notice, PSNH stated that it believed the significant issues to be addressed in this proceeding are: 1) one major outage at Seabrook Station, involving transformers; 2) coal purchasing synergies and the status of the coal pile; and 3) presentation of the fossil fuel outages, though none of them appeared to be controversial.

OCA stated that it concurred with PSNH's list of issues, and added that to the extent the recent NHEC refinancing affected PSNH's FPPAC rate, it should be addressed. Further, OCA was concerned about the possible inclusion of Clean Air Act Amendment compliance costs and

stated it intended to explore the variance, if any, between projected and actual residential sales.

NHEC stated it had no initial position on PSNH's filing but wanted to monitor and participate to the extent that issues affected PSNH's wholesale FPPAC at the Federal Energy Regulatory Commission.

Staff stated that in addition to the Connecticut outages that would be considered either in this docket or a future docket, it particularly intended to review: 1) the length of the next refueling outage at Seabrook Station; 2) the nature of the June 18 outage at Seabrook Station; 3) capital costs in PSNH's refinancing; 4) Seabrook's tax rates; and 5) PSNH's projected over and under collections.

We will grant NHEC's request for full intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

We will grant PSNH's request to defer the two Connecticut nuclear outages until the next FPPAC period, to allow the DPUC to develop its record. We encourage the Parties and Staff, however, to discuss how best to keep each other and the Commissioners informed of the progress of the DPUC investigations. We will require a report on the record at the hearings in this docket regarding the status of the DPUC investigations.

In response to PSNH's comments regarding the potential for rate fluctuation with this proposed reduction followed by what may be increases in future FPPAC periods, we will require PSNH to quantify at the hearings in this docket its projections for rates (both base rates and FPPAC) from now through June of 1997. PSNH's forecast should include its proposed recovery for issues which have thus far been deferred in other FPPAC periods. We understand that there can be no certainty to this forecast, but are concerned by PSNH's comments that a reduction at this point may only exacerbate one or more increases in coming months. The cumulative effect, as noted by Staff, could be significant.

Based upon the foregoing, it is hereby

ORDERED, that NHEC is granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that the two Connecticut nuclear outages will not be considered in this docket, and a report on the status of the DPUC investigations shall be provided at the hearings on this docket; and it is

FURTHER ORDERED, that PSNH shall submit no later than the hearings on this docket a forecast of the FPPAC rates and base rate increases for the FPPAC periods through June, 1997.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1995.

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NH.PUC\*10/03/95\*[81101]\*80 NH PUC 620\*Cabletron Systems, Inc.

[Go to End of 81101]

80 NH PUC 620

**Re Cabletron Systems, Inc.**

Joint petitioner: Johnson Controls, Inc.

DR 95-095

Order No. 21,850

164 PUR4th 205

New Hampshire Public Utilities Commission

October 3, 1995

ORDER asserting jurisdiction over retail wheeling by electric utilities. The commission rules that, in enacting § 212 of the Energy Policy Act of 1992 (EPAct), the United States Congress maintained existing state jurisdiction over retail wheeling. It explains that EPAct specifically authorizes state legislation as to the intrastate transmission of electric energy directly to an ultimate consumer.

Commission issues a declaratory ruling that RSA 362-A:2-a — a 1979 state law that allows limited electric energy producers with generating facilities that produce not more than 5 megawatts of power by means of renewable resources or cogeneration to sell power directly to not more than three end users — is a valid exercise of state police powers which is not preempted by federal law.

[The state law provides that upon the request of an eligible limited producer, and subject to the terms of a commission-approved wheeling agreement, any franchised electric utility in the transmission area shall transmit electrical energy from the producer's facility.]

The declaratory ruling addresses only the constitutionality of RSA 362-A:2-a, and does not authorize any particular proposed arrangement for retail wheeling.

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## 1. PROCEDURE, § 29

[N.H.] Disposal of issues — Declaratory ruling — Prerequisites — Standing — Ripe and justiciable issue. p. 623.

## 2. ELECTRICITY, § 2

[N.H.] Commission jurisdiction — Over retail wheeling — As envisioned by the Energy Policy Act of 1992. p. 624.

## 3. ELECTRICITY, § 2

[N.H.] Jurisdiction — State versus federal authorities — Retail wheeling — "Bright line" test. p. 624.

## 4. INTERSTATE COMMERCE, § 28

[N.H.] Burden on interstate commerce — Electric service — Retail wheeling — Jurisdictional issues — Discussion. p. 624.

## 5. SERVICE, § 72

[N.H.] Commission jurisdiction — Electric service — Retail wheeling — Intrastate transmission. p. 624.

## 6. RATES, § 90

[N.H.] Commission jurisdiction — Electric service — Retail wheeling — Intrastate transmission. p. 624.

## 7. RATES, § 47

[N.H.] Commission jurisdiction — Effect of federal preemption claims — Retail wheeling — Intrastate electric transmission service. p. 624.

## 8. CONSTITUTIONAL LAW, § 14

[N.H.] State police powers — Power to regulate public utilities — Electric transmission service — Retail wheeling. p. 624.

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APPEARANCES: James T. Rodier, Esq. on behalf of Cabletron Systems, Inc. and

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Johnson Controls, Inc.; Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Steven E. Thomas, Esq. on behalf of Granite State Electric Company; LeBoeuf, Lamb, Greene & MacRae by Meabh Purcell, Esq. on behalf of Concord Electric Company and Exeter and Hampton Electric Company; Kenneth C. Picton, Esq. on behalf of Connecticut Valley Electric Company; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of Residential Ratepayers; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

**ORDER**

**I. PROCEDURAL HISTORY**

On April 7, 1995 Cabletron Systems, Inc. and Johnson Controls, Inc. (collectively Petitioners) jointly petitioned the New Hampshire Public Utilities Commission (Commission) for a declaratory ruling on the constitutionality of RSA 362-A:2-a and whether it is preempted by federal law.

On May 3, 1995 Public Service Company of New Hampshire (PSNH) filed a motion to dismiss the petition on procedural grounds. On May 10, 1995 the Commission issued an Order of Notice setting deadlines for comments on the petition and scheduling oral argument on the petition for July 6, 1995. The following parties filed comments in response to the Order of Notice: Connecticut Valley Electric Company (CVEC), Granite State Electric Company (GSEC), Concord Electric Company and Exeter and Hampton Electric Company (Concord and Exeter & Hampton), the Petitioners, Public Service Company of New Hampshire (PSNH), the Office of the Consumer Advocate (OCA), and the Staff of the Commission (Staff).

## II. BACKGROUND

In 1978 the New Hampshire General Court enacted the Limited Electrical Energy Producers Act (LEEPA), codified at RSA chapter 362-A, to encourage "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." RSA 362-A:1.

In 1979 the legislature added RSA 362-A:2-a to LEEPA to further that same objective. RSA 362-A:2-a allows a facility that produces not more than 5 megawatts of power by means of renewable resources or cogeneration to sell power directly to not more than 3 end users. RSA 362-A:1-a and RSA 362-A:2-a, I. The section of RSA 362-A:2-a at issue herein provides that:

[u]pon request of a limited producer, any franchised electric public utility in the transmission area shall transmit electrical energy from the producer's facility in accordance with the provisions of this section. The producer shall compensate the transmitter for all costs incurred in wheeling and delivering the current to the purchaser. The public utilities commission must approve all such agreements for the wheeling of power and retains the right to order such wheeling and to set such terms for a wheeling agreement including price that it deems necessary. The public utilities commission or any party may demand a full hearing before the commission for the review of any and all terms of a wheeling agreement.

RSA 362-A:2-a, II.

The Petitioners are industrial customers that currently take service from PSNH at their manufacturing facilities in the Town of Merrimack, New Hampshire. The Petitioners state that they have been approached by a "national cogeneration developer" interested in constructing a cogeneration facility with a design capacity of less than 5 megawatts in Merrimack. The developer has indicated that it is willing to sell power from the facility directly to the Petitioners rather than to PSNH if the Petitioners can arrange for the delivery of power from the cogeneration facility to their manufacturing facilities. The Petitioners represent that the cogeneration facility would qualify as a "limited electrical energy producer" under RSA 362-

Page 621

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A:1-a, III.

By letter dated March 5, 1995 the Petitioners requested transmission by PSNH of the power generated at the proposed cogeneration facility to their Merrimack facilities, and also asked for the terms and conditions of the subject transmission from PSNH pursuant to RSA 362-A:2-a, II. PSNH informed the Petitioners, by letter dated March 21, 1995, that it had concluded that RSA 362-A:2-a was preempted by federal law and, therefore, that all transmission services were subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC). PSNH further informed Petitioners that they were ineligible to access its FERC filed transmission tariff because the tariff specifically proscribed retail wheeling service.

## II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH, Connecticut Valley Electric Company, and Granite State Electric Company*



PSNH, CVEC and GSEC adopted similar positions on the substantive issue in dispute. Additionally, PSNH and CVEC object to Commission consideration of the petition on procedural grounds.

As set out in PSNH's May 3, 1995 motion to dismiss, PSNH and CVEC contend that the petition is procedurally flawed because: 1) the individual or entity seeking an order pursuant to RSA 362-A:2-a is the only party with standing to bring an action under RSA 362-A:2-a; 2) the Petitioners failed to present a justiciable issue because the petition is speculative and vague, lacking sufficient immediacy and reality for a declaratory ruling; 3) the issue is not ripe because the Petitioners have not yet satisfied all of the conditions precedent set forth in RSA 362-A:2-a to qualify for Commission ordered transmission; and 4) the Commission lacks the statutory authority to issue a declaratory ruling.

Substantively, PSNH, CVEC and GSEC contend that this Commission is preempted by the Federal Power Act and the Commerce Clause of the United States Constitution, U.S. Const. Art. I, §8, cl. 3, from ordering an electric utility under the Commission's jurisdiction to provide intrastate transmission services from a New Hampshire generator to end users also located in the State of New Hampshire. Consequently, they also contend that the Commission may not set the rates, terms and conditions of any transmission services.

PSNH, CVEC and GSEC base their contention on their reading of United States Supreme Court decisions delineating state and federal jurisdiction over electric utilities. They also rely on the views of the FERC, as most recently set forth in a FERC Notice of Proposed Rulemaking, the so-called "Mega-NOPR". 60 Fed. Reg. 17,662 (1995) (to be codified at 18 C.F.R. pt. 385). In the Mega-NOPR the FERC proposes to assert the functional equivalent of exclusive jurisdiction over all transmission services and wholesale stranded costs and, in some instances, retail stranded costs.

*B. Petitioners, Concord Electric Company and Exeter and Hampton Electric Company, Office of the Consumer Advocate and Staff*

Petitioners and Staff asserted that the Petitioners had standing to raise the issue, the Commission had the jurisdiction to address the issue and that the issue was ripe and justiciable.

Substantively, Petitioners, Concord and Exeter & Hampton, the OCA and Staff all assert that RSA 362-A:2-a is not preempted by federal law. These parties and Staff contend that under the existing bright line jurisdictional test established by the United States Supreme Court in, for example, *Federal Power Commission v. Southern California Edison*, 376 U.S. 205 (1964) (generally and hereinafter referred to as, *Colton*), the limited impact on interstate commerce balanced against the State's legitimate interests as set forth LEEPA, RSA Chapter 362-A, and the so-called "savings clause" of Section 212(h), 16 U.S.C.A. §824k (Supp. 1995), of the Federal Power Act enacted pursuant to the Energy Policy Act of 1992, RSA 362-A:2-a is not preempted by federal law.

#### IV. COMMISSION ANALYSIS

Before addressing the constitutionality of RSA 362-A:2-a, we must consider the



procedural issues raised by PSNH and CVEC.

*A. Procedural Issues.*

[1] We believe the procedural issues raised by PSNH and CVEC are resolved by RSA 362-A:5, which provides as follows:

*Settlement of Disputes.* Any dispute arising under the provisions of this chapter may be referred by any party to the commission for adjudication.

Thus, the General Court has provided the Commission with specific jurisdiction to issue to any party a declaratory judgment or ruling over disputes arising under RSA chapter 362-A. RSA 541-A:16, I(d) (Supp. 1994) further provides that the Commission may "[a]dopt rules relating to filing petitions for declaratory rulings and their prompt disposition." As it applies to this proceeding, RSA 541-A:16, I(d) is merely a procedural mandate that the Commission adopt procedural guidelines for the filing and disposition of declaratory ruling petitions.<sup>1(63)</sup>

The Commission has not yet adopted such procedural rules. Failure to adopt such procedural guidelines, however, does not limit our authority to consider and dispose of such a petition. The New Hampshire Supreme Court has held that an administrative agency's lack of procedural rules does not deprive it of the substantive authority granted by the legislature. *Smith v. New Hampshire Board of Examiners of Psychologists*, 138 N.H. 548, 553-554 (1994). We think this is especially true in light of the specific language in RSA 362-A:5 cited above, which independent of the Administrative Procedures Act gives the Commission the authority to issue a declaratory ruling.

Because the grant of authority in RSA 362-A:5 is analogous to the grant of authority to the Superior Court to issue declaratory judgments under RSA 491:22, we rely upon the opinions of the New Hampshire Supreme Court interpreting that statute when analyzing RSA 362-A:5.

The Court has held that "the remedy of declaratory judgment affords relief from uncertainty and insecurity created by a doubt as to rights, status or legal relations existing between the parties." *Radkay v. Confalone*, 133 N.H. 294, 296 (1990) (citation and quotation marks omitted). Furthermore, the justiciability of a declaratory judgment action is not dependent upon a showing or proof of an immediate harm committed by one party against another. *Radkay v. Confalone*, 133 N.H. at 297.

The correspondence between the Petitioners and PSNH evidences a dispute between these parties over the constitutionality of RSA 362-A:2-a, creating uncertainty as to their rights and legal status. Thus, PSNH's response to the Petitioners created a justiciable issue for this Commission's consideration. Furthermore, because the legality of the Petitioners' proposed business plan remains uncertain without a clarification of the constitutionality of RSA 362-A:2-a, the issue is ripe for consideration under RSA 362-A:5.

With regard to the assertion the Petitioners lack standing to bring the petition, the Court has held that "[p]etitions for declaratory relief must be liberally construed so as to effectuate the purpose of the law." *Radkay v. Confalone*, 133 N.H. 294, 297. In the case at hand, the purpose of RSA 362-A:5 is to settle disputes arising under RSA Chapter 362-A, thereby resolving the parties' uncertainties. The Petitioners and PSNH dispute the constitutionality of a section of the law that Petitioners, through a third party, need to utilize in order to effectuate a proposed

business arrangement. It is exactly this type of dispute that RSA 362-A:5 was designed to resolve.

In the absence of a declaratory ruling, the only alternative available to the Petitioners is a full scale proceeding under RSA 362-A:2-a. Such a proceeding would essentially compel the Petitioners to finalize their business plans without knowing whether they could be legally implemented. A declaratory ruling is appropriate at this point to resolve a threshold issue.

Thus, we find the Commission has jurisdiction to issue a declaratory ruling, the Petitioners have standing to request such a ruling and the issue is ripe and justiciable.

#### B. *Substantive Issue.*

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[2-8] With regard to the substantive issue in dispute, we consider particularly appropriate to the analysis we must now undertake Justice Brennan's statement that "[m]aintaining the proper balance between federal and state authority in the regulation of electric and other energy utilities has long been a serious challenge to both judicial and congressional wisdom". *Arkansas Electric Cooperative v. Arkansas Public Service Commission*, 461 U.S. 375, 377 (1983). Those administrative agencies charged with the regulation of electric and other energy utilities can be added to the list of those whose wisdom is challenged by this area of the law.

The difficulty of the task notwithstanding, based on the analysis set forth below, we find RSA 362-A:2-a to be a facially valid exercise of the State's police power which is not preempted by federal law.

It is the "well-settled law of this jurisdiction that legislative acts are presumed [constitutionally] valid." (citations omitted) *Wright v. Clarke Equipment Co.*, 125 N.H. 299, 303 (1984). Thus, we must presume RSA 362-A:2-a is a legitimate exercise of the State's police powers, and PSNH, CVEC and GSEC bear the burden of establishing the unconstitutionality of the statute. PSNH, CVEC and GSEC have not met this burden. In the absence of federal legislation, our analysis would focus on the constitutionality of RSA 362-A:2-a directly under the Commerce Clause, and the inherent prohibitions on state actions contained therein because the "Commerce Clause contains an implied limitation on the power of the States to interfere with or impose burdens on interstate commerce." *Arkansas Electric Cooperative*, 461 U.S. 375, 389.

The analysis of state action directly under the Commerce Clause, referred to as dormant Commerce Clause jurisprudence, examines the burden placed upon interstate commerce by the actions of a state. *Arkansas Electric Cooperative*, 461 U.S. 375, 390. Dormant Commerce Clause analysis concentrates on the underlying intent of the Commerce Clause which is to prevent the balkanization of the States that occurred under the Articles of Confederation, and presumes the unconstitutionality of state actions that unreasonably burden interstate commerce where Congress has not acted. As the Court stated in *Arkansas Electric Cooperative*, "uncontrolled regulation by the States can patently interfere with broader national interests." *Arkansas Electric Cooperative*, 461 U.S. 375, 377. *See also, United States v. Lopez*, — U.S. —, 115 S. Ct. 1624, 1640 (1995) (Kennedy, J. and O'Connor, J. concurring).

Conversely, "when Congress acts, all segments of the country are represented ... reduc[ing]

significantly the risk that unrepresented interests will be adversely affected by restraints on commerce." *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 91 (1984) (citation and quotations omitted). Thus, where Congress affirmatively acts in a particular field through the enactment of legislation the question becomes one of legislative preemption under the Supremacy Clause, U.S. CONST. Art. 6, cl. 2, rather than any prohibitions on the states inherent in the Commerce Clause. *Schneidewind v. ANR Pipeline Company*, 485 U.S. 293, 311 (1988).

In the case at hand, Congress has affirmatively acted to delineate where and when the regulation of electricity in interstate commerce falls under the jurisdiction of the states and the federal government through the enactment, *inter alia*, of the Federal Power Act of 1935 (FPA) and the Energy Policy Act of 1992 (EPAct). The question before us, then, is whether the FPA, or the FPA as modified by EPAct, preempts RSA 362-A:2-a pursuant to the Supremacy Clause.

In determining whether federal law preempts state action, the United States Supreme Court has stated that:

Congress explicitly may define the extent to which its enactments pre-empt state law. In the absence of explicit statutory language, however, Congress, implicitly may indicate an intent to occupy a given field to the exclusion of state law. Such a purpose properly may be inferred where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where the object sought to be

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obtained by the federal law and the character of obligations imposed by it ... reveal the same purpose. Finally, even where Congress has not entirely displaced state regulation in a particular field, state law is preempted when it actually conflicts with federal law. Such a conflict will be found when it is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress ... (internal quotation marks and citations omitted)

*Schneidewind v. ANR Pipeline*, 485 U.S. 293, 299-300 (1988). Thus, our analysis becomes one of statutory interpretation and Congressional intent and whether there is a conflict between the FPA and LEEPA.

Applying this analysis to the case at hand, we find that Congress in enacting §212 of EPAct, codified at 16 U.S.C.A. §824k (Supp. 1995), maintained existing state jurisdiction over retail wheeling by specifically authorizing state laws such as RSA 362-a:2-a.

Section 824k entitled "*Rates, Charges, Terms and Conditions for Wholesale Transmission Services*" provides in relevant part that:

[n]othing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

16 U.S.C.A. § 824k (h).

By enacting this legislation, we believe, Congress made it clear that in authorizing the FERC to require utilities to provide transmission services, 16 U.S.C.A. §824j (Supp. 1995), it was not granting the FERC jurisdiction to implement or require retail wheeling or to displace or replace state regulation of retail wheeling. The propriety of retail wheeling and authority over the transmission of electric energy to effectuate retail wheeling was left exclusively to the States.

In fact, the Congressional record in referring to the new provisions of §824j states that the amendment made to §824j "manifests Congressional intent to continue to limit the FERC's authority to wholesale transactions only." 144 Cong. Rec. §17617 (1992).

RSA 362-A:2-a is a State law concerning the transmission of electric energy directly to an ultimate consumer. It involves retail transactions that occur solely within the State of New Hampshire. Thus, we find RSA 362-A:2-a is not preempted by federal law, and is in fact specifically authorized by §824k (h) which maintains the traditional "bright line" between state and federal jurisdiction established by Congress when it enacted the FPA in 1935.

The reference in the Congressional Record that §824j reflects a manifestation of Congressional intent to maintain the limitation on the FERC's jurisdiction to wholesale transactions is a reaffirmation of the original Congressional intent in the passage of the FPA in 1935 and the Natural Gas Act (NGA) in 1937. As the Court has held on numerous occasions, Congress' intent in enacting the FPA and the NGA was to fill the gap in regulation created by the Court's decisions in *Public Utilities Commission v. Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927) and its predecessor decisions. *See e.g., Illinois Gas Co. v. Public Service Co.*, 314 U.S. 498 (1942).

This position was set forth unambiguously in the *Colton* decision where the Court stated that:

Congress, in enacting the Federal Power Act and the Natural Gas Act, apportioned regulatory power between state and federal governments according to a test which this Court had developed in a series of cases under the Commerce Clause. The Natural Gas Act grew out of the same judicial history as did ... the Federal Power Act ... ; and § 201 (b) of the Power Act has its counterpart in § 1 (b) of the Gas Act ... . The test adopted by Congress was developed in a line of decisions beginning with *Public Utilities Comm'n v Landon*, 249 U.S. 236 and *Pennsylvania Gas Co. v Public Service Comm'n*, 252 U.S. 23. *In those cases this Court held that the Commerce Clause does not prohibit a state from regulating the sale of gas directly to consumers even though the gas be drawn from interstate mains. Missouri v. Kansas*

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Gas Co., 265 U.S. 298, 309 sketched in the other side of the picture by holding that a State is prohibited from regulating the rate at which gas from out-of-state is sold to independent distributing companies for resale to local customers. (emphasis added).

*Colton*, 376 U.S. 205, 211-212 (1964).

In further support of the intent of Congress in passing the FPA, the Court cites to the Congressional record before the House and the Senate during hearings on the FPA. The Court quotes the General Solicitor of the National Association of Railroad & Utility Commissioners

(currently known as the National Association of Regulatory Utility Commissioners), in relevant part, as follows:

`[t]he second part of the bill [§201 (b)] provides for regulation by the Federal Government of wholesale transactions in electric power. Those are transactions which the United States Supreme Court has held are beyond the reach of the States under the Constitution.

*Colton*, 376 U.S. 205, 213 (1964).

Furthermore, the Court in *Colton* explicitly rejected a case-by-case analysis of the effect of state actions on interstate commerce a test that had been adopted by the Court of Appeals in its decision, holding rather that it was Congress' intent to "draw a *bright line* easily ascertained between state and federal jurisdiction making unnecessary ... case by case analysis." (emphasis added) *Colton*, 376 U.S. 205, 215-216 (1964). This bright line is the wholesale versus retail distinction set out in *Public Utilities Comm'n v. Attleboro Steam and Electric Company*, 273 U.S. 83 (1927) and its predecessor decisions. See e.g., *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953, 966 (1986); *Arkansas Electric Cooperative*, 461 U.S. 375 (1983); *Appeal of Northern Utilities, Inc. & a.*, 136 N.H. 449, 455 (1992).

As set forth above, we find that EPAct explicitly retained this bright line test as the applicable standard for the preemption analysis at issue herein. Because RSA 362-A:2-a involves the sale of electricity at retail, the bright line test set out by the Court and Congress establishes this Commission's exclusive jurisdiction over the applicable rates, terms and conditions of the sale and transmission of that electricity.

Some parties to this proceeding have relied on the Court's 1983 decision in *Arkansas Electric Cooperative*, 461 U.S. 375 to support a contention that RSA 362-A:2-a must be analyzed from the perspective of its burden on interstate commerce, i.e., a case-by-case, dormant Commerce Clause analysis. We disagree; in fact, we believe *Arkansas Electric Cooperative* further supports our conclusion that the bright line test remains the applicable preemption analysis to apply in this case.

The issue in *Arkansas Electric Cooperative* was whether the assertion of jurisdiction by the Arkansas Public Service Commission over a wholesale transaction violated the Commerce Clause or the Supremacy Clause. *Arkansas Electric Cooperative*, 461 U.S. 375, 377. *Arkansas Electric Cooperative* involved the sale of electricity on a wholesale basis from an electric cooperative to its constituent members, a group of electric cooperatives engaged in the retail distribution and sale of electricity. The wholesale cooperative was created by the member cooperatives to purchase bulk power for its constituent members.

The Federal Power Commission, the predecessor to the FERC, had previously held that it did not have jurisdiction over the rates, charges, terms and conditions of the wholesale sale of electricity from one electric cooperative to another electric cooperative because of the pervasive nature of regulation over such entities under the Rural Electrification Act. *Dairyland Power Cooperative*, 37 F.P.C. 12, 67 P.U.R. 3d 340 (1967).

The Court in *Arkansas Electric Cooperative* found, however, that Congress in enacting the Rural Electrification Act intended the Rural Electrification Administration (REA) to act "within the confines of existing state regulatory schemes." *Arkansas Electric Cooperative*, 461 U.S. 375,

386. In reliance on this finding the Court held it was not Congress' intent to allow REA regulation of a wholesale transaction between the two cooperatives. *Id.* The Court

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further noted that in practice the REA had never asserted any jurisdiction over the rates, terms and conditions of service of a rural electric cooperative. *Arkansas Electric Cooperative*, 461 U.S. 375, 386-387. Thus, the Court identified an area of the electric energy industry in interstate commerce that Congress had never addressed.

In the absence of Congressional action, the Court was forced to analyze Arkansas' assertion of jurisdiction directly under the Commerce Clause and its inherent limitations on State actions that unduly burden interstate commerce. *Arkansas Electric Cooperative*, 461 U.S. 375, 389. The Court balanced the "nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce." Applying this test the Court found that Arkansas' assertion of jurisdiction, under the circumstances of the case, did not unduly burden interstate commerce. *Arkansas Electric Cooperative*, 461 U.S. 375, 395.

The Court explicitly recognized that it was not applying the "bright line" Commerce Clause jurisprudence employed by the Court in *Attleboro* and its predecessors, noting that "modern [Commerce Clause] jurisprudence has usually ... given more latitude to state regulation than the more categorical approach of which *Attleboro* is one example." *Arkansas Electric Cooperative*, 461 U.S. 375, 390. The Court further noted that it was not applying the bright line test to this case because the case was not governed by the "Federal Power Act [which] draws a bright line between the respective jurisdictions of federal and state regulatory agencies." *Arkansas Electric Cooperative*, 461 U.S. 375, 392.

Because we are analyzing whether RSA 362-A:2-a is preempted by the FPA, and because the FPA adopted the wholesale versus retail bright line espoused in *Attleboro* and its predecessors, the appropriate standard to be applied herein is the bright line test. Given that RSA 362-A:2-a involves sales at retail, which are under the exclusive jurisdiction of the State of New Hampshire, it is not preempted by federal law, and is in fact specifically authorized by Congressional legislation.

Assuming for the sake of argument, we were to analyze the constitutionality of RSA 362-A:2-a under the dormant Commerce Clause analysis set forth in *Arkansas Electric Cooperative*, as argued by the OCA, our conclusion of constitutionality would remain the same. In *Arkansas Electric Cooperative* the Court stated that modern Commerce Clause analysis holds that

[w]here [a] statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and whether it could be promoted as well with a lesser impact on interstate activities.

*Arkansas Electric Cooperative*, 461 U.S. 375, 393-394. (quoting *Pike v. Bruce Church, Inc.*, 397

U.S. 137, 142 (1970)).

Thus, modern Commerce Clause analysis balances the local public interest against the burden placed on interstate commerce.

In this case we must balance the stated goals of the New Hampshire General Court to encourage "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" against the burden or impact on interstate commerce.

The goals of the General Court are legitimate and a valid exercise of its police powers. On the other hand, the effect on interstate commerce is less than incidental. The transactions involved take place wholly within the borders of the State of New Hampshire between local generators and local end users. The mere fact that some electrons may slip across State's borders does not establish a legitimate "burden" on interstate commerce.

We note that this decision only addresses the constitutionality of RSA 362-A:2-a; it does not authorize any proposed arrangement for

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retail wheeling. Before authorizing such a transaction between or among any qualifying facility and end users there are a number of requirements under the statute which must be met. In addition, we note that the prerequisites to ordering an electric utility to wheel power under RSA 362-A:2-a, III are, on their face, strict standards which may not be easily met. Based upon the foregoing, it is hereby

ORDERED, that RSA 362-A:2-a is a valid exercise of the police powers of the State of New Hampshire which is not preempted by federal law.

By order of the Public Utilities Commission of New Hampshire this third day of October, 1995.

#### FOOTNOTES

<sup>1</sup>In the absence of specific legislative authority to issue declaratory rulings, such as RSA 362-A:5, RSA 541-A:16, I(d) in conjunction with RSA 541-A:1, V is also a substantive grant of authority to the State's administrative agencies to entertain petitions for declaratory rulings.

#### EDITOR'S APPENDIX

##### Citations in Text

[U.S.Sup.Ct.] Arkansas Electric Co-op. v. Arkansas Pub. Service Commission, 461 U.S. 375, 52 PUR4th 514, 76 L.Ed.2d 1, 103 S.Ct. 1905 (1983). [U.S.Sup.Ct.] Federal Power Commission v. Southern California Edison Co., 376 U.S. 205, 52 PUR3d 321, 11 L.Ed.2d 638, 84 S.Ct. 644 (1964). [U.S.Sup.Ct.] Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co., 314 U.S. 498, 42 PUR(NS) 53, 86 L.Ed. 371, 62 S.Ct. 384 (1942). [U.S.Sup.Ct.] Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 74 PUR4th 464, 90 L.Ed.2d 943, 106 S.Ct. 2349 (1986). [U.S.Sup.Ct.] Pennsylvania Gas Co. v. Public Service Commission, 252 U.S. 23, PUR1920E 18, 64 L.Ed. 434,



40 S.Ct. 279 (1920). [U.S.Sup.Ct.] Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83, PUR1927B 348, 71 L.Ed. 549, 47 S.Ct. 294 (1927). [U.S.Sup.Ct.] Public Utilities Commission v. Landon, 249 U.S. 236, PUR1919C 834, 63 L.Ed. 577, 39 S.Ct. 268 (1919). [U.S.Sup.Ct.] Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 90 PUR4th 473, 99 L.Ed.2d 316, 108 S.Ct. 1145 (1988).

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NH.PUC\*10/03/95\*[81102]\*80 NH PUC 628\*Long Distance North of New Hampshire, Inc., et al.

[Go to End of 81102]

80 NH PUC 628

**Re Long Distance North of New Hampshire, Inc., et al.**

DE 87-249

Order No. 21,851

New Hampshire Public Utilities Commission

October 3, 1995

ORDER clarifying that the interim authority granted various interexchange telephone carriers for offering intrastate long-distance services will continue until the commission rules otherwise, even though the initial two-year trial period for such ended on September 30, 1995.

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1. CERTIFICATES, § 123

[N.H.] Telephone carriers — Intrastate intraLATA long-distance services — Interim authority — Trial period to assess benefits of competition — Continuation of interim authority upon expiration of initial trial period — Pending further rulings by the commission. p. 629.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Trial period to assess benefits of competition — Continuation of interim authority upon expiration of initial trial period — Pending further rulings by the commission. p. 629.

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BY THE COMMISSION:

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ORDER

Since January 21, 1991, the Commission has approved over eighty petitions, filed by the companies listed in Attachment A to this order, seeking authority to conduct business as telecommunications public utilities in the State of New Hampshire.



The petitions were filed pursuant to the Modified Stipulation Agreement in Docket No. DE 90-002 (Stipulation), approved by Order No. 20,916 (August 2, 1993). Our orders in each of the dockets listed in the heading above granted each petitioner interim authority for intrastate competition in the telecommunications industry in order to allow the Commission to analyze competition during the two-year Trial Period (October 1, 1993 to September 30, 1995) described in the Stipulation. Each petitioner was 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 during the Trial Period.

[1, 2] Because the Trial Period identified by the Stipulation expires September 30, 1995, we must clarify that the authority we granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period.

The Stipulation imposed reporting requirements on the authorized telecommunications providers. During the Trial Period they were required to file reports quarterly. The last quarterly reports are due at the Commission on November 30, 1995. We also recommend that the companies file any preliminary comments on the Trial Period no later than December 31, 1995. After the final quarterly reports are filed, the Stipulation requires the Commission Staff to prepare and issue within 90 days an analysis of the Trial Period based on the quarterly reports filed.

Based on the foregoing; it is hereby

ORDERED, that the authority granted to the companies listed in Attachment A remains in full force and effect until the Commission orders otherwise; and it is

FURTHER ORDERED, that a copy of this order shall be mailed to the service list established for DE 90-002, and to the record address of the above authorized intraLATA toll competitors; and it is

FURTHER ORDERED, that any company wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the New Hampshire Public Utilities Commission this third day of October, 1995.

Attachment A

DE 87-249  
Long Distance North of NH, Inc.

DE 90-002  
AT&T Communications of NH, Inc.

DE 90-108  
MCI Telecommunications, Corp.

DE 90-127  
US Sprint

DE 91-092  
Cable & Wireless Communications Inc.

DE 91-114  
NOS Communication, Inc.

DE 91-135  
WATS/800 Inc.

DE 91-165  
Witel of New Hampshire, Inc.

DE 92-004  
Network Plus, Inc.

DE 92-007  
Trans National Communications,  
d/b/a Member's LongDistance Advantage

DE 92-029  
Norstan Network Services, Inc.

DE 92-061  
Corporate Telemanagement Group, Inc.

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DE 92-104 Atlantic Connections, Ltd.

DE 92-116 Alternative Communications Technology, Inc.

DE 92-117 Phoenix Network, Inc.

DE 92-122 PAC of New Hampshire, Inc.

DE 92-128 EXCEL Telecommunications, Inc.

DE 92-133 LDDS Communications, Inc. d/b/a ATC New Hampshire, Inc.

DE 92-198 American Teletronics Long Distance, Inc.

DE 92-225 Innovative Telecom Corporation

DE 92-245 Matrix Telecom d/b/a PhoneSave and Small Business Network

DE 93-051 Enterprise Telcom Services, Inc.

DE 93-053 TeleDebit, L.P.

DE 93-057 Telegroup, Inc.

DE 93-073 SAI of New England, Inc.  
DE 93-080 Hertz Technology of New Hampshire, Inc.  
DE 93-085 LCI International of New Hampshire, Inc.  
DE 93-117 West Coast Telecommunications, Inc.  
DE 93-139 AmeriConnect  
DE 93-189 Startel Communications, Inc. d/b/a Telestar Long Distance  
DE 93-223 GE EXCHANGE Corp. of New Hampshire d/b/a GE EXCHANGE and d/b/a GE Capital EXCHANGE  
DE 93-230 Tel-Save, Inc.  
DE 93-264 Quest Telecommunications, Inc.  
DE 94-017 ACC Long Distance of New Hampshire, Inc.  
DE 94-070 MFS Intelenet of New Hampshire, Inc.  
DE 94-092 Working Assets Funding Services, Inc. d/b/a Working Assets Long Distance  
DE 94-129 Universal Network Services of NH, Inc.  
DE 94-147 Network Long Distance, Inc.  
DE 94-154 World Telecom Group, Inc. d/b/a AmeriVox  
DE 94-158 One Call Communications, Inc. d/b/a OPTICOM  
DE 94-159 USX Consultants, Inc.  
DE 94-168 Bottom Line Telecommunications, Inc.

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DE 94-169 MIDCOM Communications Inc.  
DE 94-171 RCI Long Distance, Inc. (Frontier Communications International, Inc)  
DE 94-177 Home Owners Long Distance, Inc.  
DE 94-179 Midwest Fibernet, Inc.  
DE 94-181 EqualNet Corporation  
DE 94-203 Keystone Long Distance, Inc.  
DE 94-204 UniDial Incorporated  
DE 94-205 WorldTel Services, Inc. d/b/a Northeast WorldTel Services  
DE 94-208 NOSVA, Limited Partnership  
DE 94-228 EXECUTONE Information Systems, Inc.  
DE 94-229 Inacom Communications, Inc.  
DE 94-242 Touchtone Network, Inc.  
DE 94-243 Affinity Corporation  
DE 94-248 US Wats, Inc.  
DE 94-269 PowerNet Communications, Inc.  
DE 94-273 Target Telecom, Inc.

DE 94-277 American Telecommunications Enterprise, Inc. (American Telecom)  
 DE 94-291 US Digital Network Limited Partnership  
 DE 94-296 One To One Communications, Inc.  
 DE 94-307 TotalTel USA Communications, Inc.  
 DE 94-308 IDT America, Corp.  
 DE 94-312 LDD, Inc. d/b/a Long Distance Discount  
 DE 95-025 GTE Card Services Incorporated  
 DE 95-033 MTC Telemanagement Corporation (MTC)  
 DE 95-034 Westinghouse Electric Corporation d/b/a Westinghouse Communications  
 DE 95-041 Keystone Telecommunications, Inc. d/b/a KTI Long Distance  
 DE 95-049 Dial & Save of New Hampshire, Inc. d/b/a Dial & Save  
 DE 95-052 IXC Long Distance, Inc.  
 DE 95-067 Switched Services Communications, L.L.C.  
 DE 95-076 United Wats, Inc.  
 DE 95-083 NeTel, Inc.

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DE 95-094 Allnet Communications Services, Inc. (Frontier Communications of New England, Inc.)  
 DE 95-105 VarTec Telecom, Inc.  
 DE 95-109 Calls for Less, Inc.  
 DE 95-111 Budget Call Long Distance, Inc.  
 DE 95-115 Computer Telephone Corp.  
 DE 95-116 ConQuest Operator Services Corp.  
 DE 95-120 Western Union Communications, Inc. (First Data Corporation)

#### 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\*10/09/95\*[81103]\*80 NH PUC 632\*Guidelines for Economic Development and Business Retention Filings

[Go to End of 81103]

80 NH PUC 632

## Re Guidelines for Economic Development and Business Retention Filings

DR 95-216  
Order No. 21,852

New Hampshire Public Utilities Commission

October 9, 1995

ORDER declaring that proceedings designed to set guidelines for governing economic development and load retention tariffs need not be conducted as formal rulemaking proceedings. For an order soliciting public comment on proposed guidelines for such, see Order No. 21,777 (80 NH PUC 514, *supra*).

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### 1. PROCEDURE, § 2

**[N.H.]** Commission jurisdiction — To govern procedure — For developing guidelines for addressing economic development and business retention tariff filings — No need for formal rulemaking proceedings — Legislative initiatives as a factor. p. 633.

### 2. COMMISSIONS, § 11

**[N.H.]** Jurisdiction and powers — As to procedural techniques — For developing guidelines for addressing economic development and business retention tariff filings — No need for formal rulemaking proceedings — Legislative initiatives as a factor. p. 633.

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BY THE COMMISSION:

### ORDER

On August 7, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,777, which it described as an Order Proposing Guidelines for Economic Development and Business Retention Filings (Order). In that Order, the Commission explained that it was "required by 1995 N.H. Laws, Chapter 272, section 11, to establish by November 16, 1995, procedures for the review and approval of generally available rate schedules for electric service that foster economic development and support business retention in the State."

In its Order, the Commission also set forth "Proposed Procedures" and delineated "Substantive Considerations" consistent with the statutory authorization of 1995 N.H. Laws, Chapter 272, section 9, which section will be codified as RSA 378:11-a. The Commission

**Page** 632

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invited written comments to be filed by September 6, 1995. Among the timely comments

received was a filing by the Public Utilities Policy Institute (PUPI) which included a Petition for Adoption of Rules (Petition), pursuant to RSA 541-A:4.

[1, 2] PUPI argues, as does the Save Our Homes Organization (SOHO), that the Guidelines must be implemented as a rulemaking subject to the requirements of RSA chapter 541-A. The essence of PUPI's Position is its conclusion that the Guidelines are a rule as defined by RSA 541-A:1, XV and that the enunciation of such a rule invokes the formal rulemaking requirements of RSA chapter 541-A. For the reasons discussed below we deny PUPI's Petition.

It is clear that the General Court has specifically directed us to "establish procedures" without recourse to the formal requirements of RSA 541-A inasmuch as RSA 378:11-a states:

*Notwithstanding any other provision of law to the contrary, the commission shall establish procedures for the review and approval of tariffs for electric service rates that foster economic development and of tariffs for retention of existing load within the state.*  
(emphasis supplied)

It is instructive to compare the language the General Court has used to modify its directive with respect to economic development rates to the language it used in regard to the regulation of ski craft on lakes and ponds. In the "Ski Craft Act", the General Court stated:

*The commissioner [of safety] shall adopt rules pursuant to RSA 541-A establishing procedures for the public hearing process contained in this section.* RSA 270:74-a  
(emphasis supplied)

The contrast in statutory language is dispositive as to the issue of whether we are required to establish procedures pursuant to RSA 541-A. The Commissioner of Safety was expressly directed to employ RSA 541-A in establishing procedures while we were expressly exempted from the requirements of other provisions of law, *e.g.*, RSA 541-A. We interpret the General Court's instruction to permit us broad discretion in the method of developing the guidelines. However, we nonetheless believe that the constitutional requirements of due process must be met and therefore we are promulgating the guidelines with public participation.

Our conclusion is consistent, moreover, with our reading of the Court's decision in *Appeal of Toczko*, 136 N.H. 480 (1992), which examined the efficacy of ski craft rules. We believe that *Toczko* stands for the proposition that an agency need not follow the formal requirements of RSA 541-A where there is a clear showing, as here, that the Legislature did not intend the requirements of that chapter to apply.

In addition to the express grant of authority by the General Court, there is a history of cases where the Commission has formulated interpretations of general applicability that do not employ the formal rulemaking requirements of RSA 541-A. The area of small power producer rates authorized by RSA 362-A is one instance and the area of least cost planning which presaged RSA 378:37 *et seq.* is another.

As for small power producer rates, the Court recognized in *Appeal of Marmac*, 130 N.H. 53, 57 (1987), a situation where in the absence of a specific directive regarding the method of implementation, the Commission was not required to "implement rates in any particular manner." The Court in *Marmac* also pointed out that an "agency decree, pronouncement, statement, etc., only becomes a rule when it has formally met all the requisites of" RSA 541-A.

Thus, the Court both upheld the Commission's pronouncements on small power producer rates, and contemplated situations where the Commission may issue orders of general applicability which do not adhere to the formal requirements of RSA 541-A.

Support for this position is also found in the Court's findings in *Smith v. N.H. Board of Psychologists*, 138 N.H. 548 (1994). There the Court held that "[p]romulgation of a rule pursuant to RSA chapter 541-A is not necessary to carry out what a statute authorizes on its face." On its face RSA 378-11:a directs us to establish procedures for the review and approval of

Page 633

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specific tariffs. We believe, therefore, based on the statute and existing rules, that we can both establish procedures and review and approve tariffs without promulgating new rules.

A plain reading of the RSA 378:11-a also supports our actions. It would be reasonable to conclude, for instance, that we need not have acted at all in a public forum in order to comply with the statute; the directive to establish procedures could have been taken as a directive to act internally and informally to prepare for the submission of filings. RSA 541-A:1, XV, although not controlling here, excludes from its definition as a rule "internal memoranda which set policy applicable only to its own employees and which do not affect private rights or change the substance of rules binding upon the public."

Rather than act solely on internal memoranda, or solely pursuant to existing rules, which would be similarly allowable, we decided to open the process to include a wide variety of opinions. Our goals were to open the decision-making process and to provide ample guidance to utilities in advance of a filing. In order to meet the General Court's obvious goals regarding timeliness, we published self-imposed deadlines for dealing with tariff filings. It is our view that these actions do not trigger the application of RSA 541-A.

Based upon the foregoing, it is hereby

ORDERED, that PUPI's Petition for Rulemaking is denied.

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Guidelines for Economic Development and Business Retention Filings, DR 95-216, Order No. 21,777, 80 NH PUC 514, Aug. 7, 1995.

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NH.PUC\*10/09/95\*[81104]\*80 NH PUC 634\*MCI Telecommunications Corporation of New Hampshire

[Go to End of 81104]

## Re MCI Telecommunications Corporation of New Hampshire

DR 95-254  
Order No. 21,853

New Hampshire Public Utilities Commission

October 9, 1995

ORDER approving an interexchange telephone carrier's proposals for introducing a flat rate of 18 cents per minute for outbound toll, inbound 800, and calling card calls under its Option E package plan and for allowing prepaid calling cards to be used for accessing directory assistance.

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### 1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Package plans — For outbound toll, inbound 800, and calling card calls — Flat per-minute rate for any type of call — Access to directory assistance via calling cards — Interexchange carrier. p. 634.

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BY THE COMMISSION:

### ORDER

[1] On September 12, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to introduce MCI Flat Rate (Option E), change Vnet usage rates and make a minor text change, for effect October 11, 1995.

MCI Flat Rate (Option E) is a combined toll, 800 and calling card product. The rate is 18 cents per minute for each type of call. Calls placed using the calling card incur a 79 cent surcharge as well.

**Page 634**

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The filing includes rate changes for Vnet (Option G) service. Some Vnet rate elements are increasing, and some are decreasing.

The minor text change eliminates directory assistance calls from those calls which cannot be placed using the MCI PrePaid card. As a result, customers will be allowed to place calls to directory assistance using the MCI PrePaid card.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect



as filed:

- 41st Revised Page 1
- 21st Revised Page 3
- 28th Revised Page 3.1
- 12th Revised Page 4
- 1st Revised Page 33
- 1st Revised Page 34
- 8th Revised Page 39
- 5th Revised Page 59.8;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 1995.

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NH.PUC\*10/10/95\*[81105]\*80 NH PUC 635\*Public Service Company of New Hampshire

[Go to End of 81105]

80 NH PUC 635

**Re Public Service Company of New Hampshire**

DR 95-270

Order No. 21,854

New Hampshire Public Utilities Commission

October 10, 1995

MOTION by electric utility for protective treatment of the customer-specific usage data cited in a special rate contract with an industrial customer, Textron Automotive Interiors, Inc.; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special rate contract — Granted as to customer-specific usage data relied upon — Granted as to customer-sensitive commercial and financial information — Benefits of nondisclosure outweighing those of disclosure — Electric utility and industrial customer. p. 635.

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BY THE COMMISSION:

## ORDER

[1] On September 25, 1995, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, special contract NHPUC-121 with Textron Automotive Interiors, Inc. (Textron) for the provision of electric service. Concurrent with the special contract, PSNH filed a Motion for Protective Order of portions of the Technical Statement and supporting Testimony.

In its motion PSNH states that the information should be afforded protective treatment, pursuant to RSA 91-A and N.H. Admin. Rules,

Page 635

Puc 204.08, in that it contains customer specific usage data and "competitively sensitive information."

According to PSNH, the Commission Staff takes no position on the request until it has had a chance to review the filing. The Office of Consumer Advocate takes no position.

We recognize 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 Commission Staff, as required by RSA 378:18.

We also recognize 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.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order regarding portions of the Technical Statement and supporting Testimony to special contract number NHPUC-121 between PSNH and Textron for the provision of electric service is GRANTED, that is, customer specific information will be exempt from disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08; and it is

FURTHER ORDERED, that this order is subject to reconsideration in the event that the Commission 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 Public Utilities Commission of New Hampshire this tenth day of October, 1995.

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NH.PUC\*10/10/95\*[81106]\*80 NH PUC 636\*One Call Communications, Inc., dba OPTICOM

[Go to End of 81106]

80 NH PUC 636

## Re One Call Communications, Inc., dba OPTICOM

DR 95-256  
Order No. 21,855

New Hampshire Public Utilities Commission

October 10, 1995

ORDER authorizing an interexchange telephone carrier to introduce its "Alliance" service, a toll plan accessed by dialing 10-XXX and charged at distance-sensitive rates.

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### 1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Alliance" plan — Access via 10-XXX dialing — Use of distance-sensitive rates — Interexchange carrier. p. 636.

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BY THE COMMISSION:

### ORDER

[1] On September 14, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from One Call Communications, Inc., d/b/a Opticom (Opticom) requesting authority to introduce Alliance, for effect October 16, 1995.

Alliance is a toll product accessed by dialing 10-XXX. The rates are distance sensitive.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Alliance.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Opticom's tariff, NHPUC No. 1 are approved

**Page 636**

for effect as filed:

5th Revised Page 2  
4th Revised Page 2.1  
4th Revised Page 2.2  
Original Page 50.1  
Original Page 62;

and it is

FURTHER ORDERED, that Opticom file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by

N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1995.

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NH.PUC\*10/10/95\*[81107]\*80 NH PUC 637\*New England Power Company

[Go to End of 81107]

80 NH PUC 637

**Re New England Power Company**

DF 95-235

Order No. 21,856

New Hampshire Public Utilities Commission

October 10, 1995

ORDER authorizing an electric utility to issue up to \$68.35 million in mortgage bonds, so as to refinance at a lower interest rate previously issued pollution control revenue bonds.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes — Of mortgage bonds — Refinancing of other bonds — Pollution control revenue bonds — To take advantage of lower interest rates — Electric utility. p. 637.

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BY THE COMMISSION:

**ORDER**

[1] The Petitioner, New England Power Company (NEPCo or Company), filed with New Hampshire Public Utilities Commission (Commission) on August 23, 1995, a petition for authorization to issue up to \$68.35 million principal amount of general and refunding mortgage bonds (G&R Bonds), to execute loan agreements regarding the refinancing of pollution control bonds (PCRBs) and to execute one or more interest rate hedging arrangements.

In its filing, NEPCo seeks authority to issue through December 31, 2001 up to \$68.35 million of G&R Bonds with a maturity not to exceed 30 years. The additional G&R Bonds will be issued to refinance the Series K and Series L G&R Bonds previously issued to support PCRBs. In May 1986, the Company issued \$29.85 million of its Series L (7.80%) G&R Bonds to the Business Finance Authority of the State of New Hampshire and in October 1989, the Company issued \$38.5 million of its Series K (7.25%) G&R Bonds to Connecticut Development Authority. The Company states the Series K and L Bonds may be refundable at reduced interest costs and such refinancing would result in benefits to the customers.

To refinance the Series K and L G&R Bonds, NEPCo proposes to execute one or more loan agreements with the Business Finance Authority of New Hampshire or Connecticut Development Authority, each of which is a public agency empowered to issue PCRBs. With the issuance of PCRBs, NEPCo would issue corresponding amounts of G&R Bonds to the appropriate public agencies issuing the PCRBs to evidence the Company's obligations for payment of the principal of and premium, if any, and interest on such PCRBs. The PCRBs would mature in not more than 30 years and will bear interest at a fixed rate not exceeding 7.65% per annum (the break-even rate) or variable rate not exceeding 12% per annum. Once the terms of the PCRBs are established, the provisions of the Company's corresponding G&R Bonds would mirror the terms of the PCRBs. All G&R Bonds have a direct first lien on all the principal properties and franchises of NEPCo; therefore, the Company requests authority to

Page 637

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execute one or more indentures supplemental to its G&R Indenture mortgaging or confirming the mortgage of the G&R Indenture on all its property, assets, and franchises as security for all bonds issued or to be issued under and pursuant to the terms of the G&R Indenture.

NEPCo's current authority to enter into interest rate hedging agreements consisting of interest rate swap agreements in notional amounts not to exceed \$617 million expires on December 31, 1996. The Company is requesting an extension of the authority granted by Commission Order No. 20,441 in DF 91-221 as extended by Commission Order No. 21,467. The Company requests modifications to the authority to incorporate (1) expansion of current swap authority to include caps and collars and (2) to reduce its current swap authority to notional amounts not exceeding \$410.35 million, the aggregate amount of all outstanding issues of G&R Bonds issued to support PCRBs. The Company further proposes that its authority to enter into the interest rate hedging agreements be effective through December 31, 1997 subject to such extensions as the Commission may order upon petition by the Company.

We have reviewed the financing documents and NEPCO's petition in support of their approval. Given the terms of the bonds, loan agreements and interest rate hedging agreements, the purposes of the financings and potential benefits to ratepayers, we find the petition to be in the public good pursuant to RSA 369:1.

Based upon the foregoing, it is hereby

ORDERED, that the petition by NEPCo filed August 23, 1995 is consistent with the public good, pursuant to RSA 369:1 and is APPROVED; and it is

FURTHER ORDERED, that the Commission hereby grants to NEPCo its authorization and approval of the issue and sale of one or more issues of G&R Bonds, in an aggregate principal amount not exceeding \$68.35 million, to mature in not more than 30 years from the date on which Bonds are issued; and it is

FURTHER ORDERED, that the proceeds from the issue and sale of the G&R Bonds shall be applied to refinance Series K and Series L Bonds previously issued to support pollution control revenue bonds issued on the Company's behalf by the Business Finance Authority of the State of

New Hampshire, and the Connecticut Development Authority; and it is

FURTHER ORDERED, that the G&R Bonds authorized and approved by the Commission herein issued to support the PCRBs, shall bear interest at a variable rate not in excess of 12% per annum or a fixed interest rate not in excess of 7.65% per annum (in either case unless a subsequent Order of the Commission approves a higher rate) and on such terms as shall be determined by the directors of the Company or officers of the Company pursuant to delegated authority to match the interest rate, price, and other terms of the corresponding PCRBs issued by the Business Finance Authority of New Hampshire or Connecticut Development Authority; and it is

FURTHER ORDERED, that the Commission hereby grants NEPCo its authorization and approval of execution and delivery of one or more loan agreements or supplemental loan agreements, in connection with the refinancing of PCRBs, between NEPCo and the Business Finance Authority of New Hampshire or Connecticut Development Authority, in an aggregate principal amount not exceeding \$68.35 million; and it is

FURTHER ORDERED, that the Commission hereby authorizes NEPCo to mortgage, or to confirm the mortgage of, its present and future property, tangible and intangible, including franchises in New Hampshire, as security for all outstanding issues of its G&R Bonds, including the additional G&R Bonds authorized and approved by the Commission herein, and bonds hereafter issued under the provisions of the Company's G&R Mortgage Indenture; and it is

FURTHER ORDERED, that the Commission hereby grants NEPCo an extension of its authorization and approval of interest rate agreements as authorized by Order No. 20,441 and extended by Order No. 21,467, amended such that interest rate hedging agreements authorization is extended to include caps and collars as well as swaps up to aggregate notional amounts not in excess of \$410.35 million effective through December 31, 1997

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subject to such extensions as the Commission may order upon petition by the Company; 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 said securities, until the entire proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1995.

#### 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. 21,467, 79 NH PUC 694, Dec. 20, 1994.

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NH.PUC\*10/10/95\*[81108]\*80 NH PUC 639\*Lower Village Hydroelectric Associates

[Go to End of 81108]

80 NH PUC 639

## Re Lower Village Hydroelectric Associates

DE 95-139

Order No. 21,859

New Hampshire Public Utilities Commission

October 10, 1995

ORDER adopting stipulation as to property descriptions and compensation for such property, which is being taken pursuant to condemnation proceedings initiated by a hydro group for obtaining mill property belonging to APC Paper Company, Inc.

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### 1. EMINENT DOMAIN, § 5

[N.H.] Condemnation proceedings — Necessity of taking — Federal determination — As evidenced by grant of dam license — Enforcement of right through state authorities — Taking of private mill property by hydro group. p. 640.

### 2. EMINENT DOMAIN, § 8

[N.H.] Condemnation proceedings — Taking of private mill property by hydro group — Compensation for — Stipulation. p. 640.

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BY THE COMMISSION:

### ORDER

On May 19, 1995, Lower Village Hydroelectric Associates (Lower Village) filed a Petition for Condemnation pursuant to RSA 371:1 to obtain property rights necessary for it to operate the hydroelectric dam it has constructed on the Sugar River in Claremont, New Hampshire. The Petition was opposed by APC Paper Company, Inc. (APC) and a prehearing conference was held on August 21, 1995. Subsequently, the Commission issued Order No. 21,790 which, among other things, established the scope of this proceeding. On September 11, 1995, Lower Village filed a Request for Clarification and, in the Alternative, Petition for Rehearing. Responses to Lower Village's Request were filed by APC and Connecticut Valley Electric Company, Inc. (Connecticut Valley) on September 15, 1995. An Order Clarifying Scope of Proceeding, Order No. 21,828, was issued September 25, 1995.

As we explained in Order No. 21,828, the Federal Energy Regulatory Commission (FERC) granted Lower Village a minor water power license authorizing it to construct and operate a

hydroelectric dam and granting it, when necessary, rights of eminent domain or condemnation under 16 U.S.C.A. 814. Lower Village may exercise its rights in state court or, in the case of New Hampshire, before the Public Utilities Commission and it has properly acted to enforce those rights.

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The pertinent statutory provision for condemnation by a public utility in New Hampshire is RSA 371:1, which Lower Village has rightfully invoked. RSA 371:1 specifically directs a utility, when it cannot agree with a property owner as to the necessity or price to be paid for property, to petition the Commission "for permission to take such lands or rights as may be needed". This provision is thus the vehicle that translates Lower Village's rights under federal law into a state law determination. Hence, as we noted in Order No. 21,828, "[i]nasmuch as FERC has already granted Lower Village permission to construct and operate its facility, the issue of necessity is resolved and APC's opposition in this regard is ineffective".

[1, 2] After the decision on scope, the parties concluded settlement discussions on the issue of compensation. At a hearing on September 27, 1995, Lower Village presented the Commission the parties' Stipulation on Condemnation describing the property rights taken and the compensation therefor and asking the Commission in a Joint Motion on Condemnation to issue an order approving the arrangement. On October 2, 1995, Lower Village filed essentially an errata sheet correcting a surveyor's error in the previously filed description of property.

We find that the taking of property is appropriate in accordance with our discussion above and we find further that the amount of compensation stated in the parties' Stipulation on Condemnation is reasonable. Finally, we accept the parties' description of property rights set forth in the Notice of Condemnation, as further amended by a letter dated September 29, 1995, attached to the Stipulation on Condemnation as an accurate description of the property rights to be recorded in the registry of deeds pursuant to RSA 371:2.

Based upon the foregoing, it is hereby

ORDERED, that the taking of the property described in the parties' Notice of Condemnation, as amended, is necessary; and it is

FURTHER ORDERED, that the compensation for the taking of the property as agreed to by the parties is just and reasonable; and it is

FURTHER ORDERED, that Lower Village shall record this final decree with the appropriate registry of deeds.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 1995.

## EDITOR'S APPENDIX

### Citations in Text

[N.H.] Re Lower Village Hydroelectric Associates, DE 95-139, Order No. 21,790, 80 NH PUC 535, Aug. 21, 1995. [N.H.] Re Lower Village Hydroelectric Associates, DE 95-139, Order No.



21,828, 80 NH PUC 590, Sept. 25, 1995.

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NH.PUC\*10/12/95\*[81109]\*80 NH PUC 640\*Public Service Company of New Hampshire

[Go to End of 81109]

80 NH PUC 640

## Re Public Service Company of New Hampshire

DR 95-068

Order No. 21,860

New Hampshire Public Utilities Commission

October 12, 1995

ORDER declaring an accountant's affidavit admissible as parole evidence in a docket addressing an electric utility's proposal to recover its costs of complying with the Clean Air Act Amendments through its fuel and purchased power adjustment clause rate rather than through base rates. The procedural schedule for the docket is revised accordingly, to allow the parties to prepare for discovery in light of the affidavit. Commission cautions that although it has ruled the affidavit admissible, it has as yet assigned no evidentiary weight to such.

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### 1. EVIDENCE, § 16

[N.H.] Admissibility — Parole evidence — Accountant's affidavit — Admissibility distinguished from weight to be accorded — Revised discovery schedule upon ruling as to

**Page 640**

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admissibility — Proceeding addressing recovery of Clean Air Act compliance costs via fuel and purchased power adjustment clause rates. p. 643.

### 2. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect energy costs — Compliance with Clean Air Act Amendment requirements — Proposed recovery via fuel and purchased power adjustment clause rates — Discovery and evidentiary issues — Procedural schedule — Electric utility. p. 643.

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APPEARANCES: Catherine E. Shively and Gerald M. Eaton on behalf of Public Service Company of New Hampshire; Mark W. Dean, Esq. of the law firm of Dean, Rice & Howard, P.A. on behalf of the New Hampshire Rural Electric Cooperative, Inc.; Mary Ruel on behalf of the New Hampshire Department of Environmental Services Air Resources Division; Steven V. Camerino, Esq. of the law firm of McLane, Graf, Raulerson & Middleton on behalf of EnerDev,

Inc.; The Honorable C. Jeanne Shaheen on behalf of New Hampshire Senate District 21; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of New Hampshire residential ratepayers; and Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On March 9, 1995 Public Service Company of New Hampshire (PSNH) filed a request with the New Hampshire Public Utilities Commission (Commission) to recover the costs associated with its compliance with the Clean Air Act Amendments of 1990 (CAAA) through the Fuel and Purchased Power Adjustment Clause (FPPAC) pursuant to the Rate Agreement. Following a duly noticed prehearing conference on April 19, 1995, the Commission granted the New Hampshire Electric Cooperative, Inc.'s (NHEC) request for intervention and established a procedural schedule. Order No. 21,625 (April 24, 1995). The Office of the Consumer Advocate (OCA) is a statutorily authorized intervenor. A subsequent request for intervention by EnerDev, Inc. (EnerDev) was granted at the Commission's May 22, 1995 public meeting.

PSNH's May 25, 1995 request for protective order was granted by Order No. 21,695 (June 20, 1995). On July 28, 1995 PSNH filed a second motion for protective treatment, for its contract with Noell, Inc., which Commission Staff (Staff) had requested in discovery.

On September 11, 1995, Wynn E. Arnold, Assistant Attorney General for the State of New Hampshire, filed a letter and accompanying affidavit of Alan Kessler of Ernst & Young (Kessler affidavit). PSNH thereafter filed a letter stating its intention to mark four exhibits for use at the final hearing, among them the Kessler affidavit. NHEC filed a Motion *in Limine* on September 18, 1995 opposing PSNH's proposal to introduce the Kessler affidavit at the final hearing.

At a duly noticed hearing on September 20, 1995 the Commission heard arguments on NHEC's Motion *in Limine* and related issues. Senator Shaheen made a public statement opposing recovery of the full cost of the CAAA compliance project at Merrimack II. The Air Resources Division of the Department of Environmental Services, though not an intervenor, appeared in order to monitor this docket.

At that hearing, the Commission ruled that the October 4, 1995 hearing date would be used for a further prehearing conference to address a procedural schedule for the duration of this case.

According to a September 27, 1995 letter from Staff, the parties and Staff met to discuss the treatment of the Kessler affidavit. Agreement on use of the Kessler affidavit could not be reached, but two alternative procedural schedules were proposed for Commission

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consideration, one to be used in the event the affidavit were ruled inadmissible, the other in the event the affidavit were ruled admissible. This letter was supplemented by a September 28, 1995 letter from OCA clarifying that it could not take a position on any agreement concerning Mr. Kessler until the Commission rules on the admissibility of the affidavit.

On October 2, OCA filed a letter with the Commission asking that it refrain from ruling on the Motion *in Limine* at the Commission's public meeting but instead wait until it has heard further argument at the October 4, 1995 hearing. The Commission granted this request.

On October 2, 1995, PSNH filed a Motion Concerning Evidentiary Matters in which it offered to withdraw its request to introduce the Kessler affidavit if the Commission took administrative notice of Mr. Kessler's testimony in DR 93-092 and if a subpoena was issued to compel the attendance of Superior Court Judge Larry Smukler.

On October 4, 1995, the Commission heard further arguments from the Parties and Staff regarding the admissibility of the Kessler affidavit, the new arguments concerning whether to subpoena Judge Smukler and to take official notice of Mr. Kessler's testimony in DR 93-092, and proposed amendments to the procedural schedule.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. PSNH

PSNH initially argued that it should be permitted to introduce the Kessler affidavit as rebuttal evidence to Staff's testimony which calls into question PSNH's request for full cost recovery of its CAAA compliance project at Merrimack II. PSNH also contended that the cover letter from the Attorney General's Office could be considered a "limited appearance" by the State pursuant to N.H. Admin. Rules, Puc 203.03, and that even though the State had not formally appeared, the Commission should accept the affidavit into evidence and assign it the appropriate weight in light of the fact that Mr. Kessler was not appearing personally as a witness. PSNH further argued that because Mr. Kessler would not voluntarily appear as a witness for PSNH it should be entitled to use the affidavit to support its position.

PSNH argued in its Motion Concerning Evidentiary Matters that it would withdraw its request to introduce Mr. Kessler's affidavit if it were allowed to subpoena Superior Court Judge Larry Smukler and if the Commission would take official notice of Mr. Kessler's prefiled and live testimony in DR 93-092. PSNH stated that Judge Smukler's testimony would not be any different from that offered by the Kessler affidavit.

### B. NHEC

NHEC seeks to exclude the Kessler affidavit on the grounds that neither Mr. Kessler nor the State of New Hampshire are parties to this proceeding and that the affidavit is, "in substance if not form," prefiled testimony. Motion *in Limine*, p. 1. NHEC argues that it has not had an opportunity to conduct any meaningful discovery relative to the contents of the affidavit and Mr. Kessler's recollections. According to NHEC, these procedural objections implicate NHEC's due process rights under the New Hampshire and United States Constitutions.

At the hearing, NHEC argued alternatively that if the affidavit is not excluded from evidence, the Commission should amend the procedural schedule in order to allow the parties an opportunity to conduct discovery and further investigation.

NHEC argued that while the Commission has authority to subpoena Judge Smukler, it did not believe that was necessary. Similarly while the Commission has the authority to take official notice of Mr. Kessler's testimony in DR 93-092, NHEC did not support doing so.

*C. EnerDev, OCA and Staff*

The above-referenced parties initially concurred with NHEC's Motion, but at the September 20, 1995 hearing all argued that the appropriate relief is to amend the procedural schedule in order to allow the parties an opportunity to conduct further discovery with regard

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to the recollections of Mr. Kessler and possibly those of other individuals who participated in the Rate Agreement negotiations. EnerDev pointed out that it had not been provided a copy of the affidavit and that it first learned of its existence when NHEC sought EnerDev's concurrence to NHEC's Motion. The OCA argued that the appropriate remedy would be to amend the procedural schedule and to make the State of New Hampshire a mandatory party to the proceeding. It suggested that the schedule might be expanded to allow complete reconsideration of the Rate Agreement. Staff stated that the Kessler affidavit may be cause for a modification of Staff's position, possibly necessitating revised testimony.

At the October 4, 1995 hearing, OCA argued that the Kessler affidavit should be rejected for credibility issues. If it is to be admitted, OCA stated a need to cross-examine Mr. Kessler on credibility and other matters. It did not oppose the Commission taking official notice of Mr. Kessler's testimony in DR 93-092 but did not consider that testimony to be a substitute for Mr. Kessler's appearance in this docket. OCA took no position on the request to subpoena Judge Smukler. OCA also requested amendment to the procedural schedule to provide additional time for discovery if the Commission found it would accept the Kessler affidavit.

EnerDev argued that if Mr. Kessler appears and is available for cross-examination, then admission of the affidavit is not a concern, but the affidavit should not be introduced without Mr. Kessler on the stand. Similarly, it did not oppose official notice being taken of Mr. Kessler's testimony in DR 93-092 but did not consider that to be a substitute for Mr. Kessler's appearance. EnerDev took no position on the request to subpoena Judge Smukler.

Staff urged the Commission to reject the request to subpoena Judge Smukler as unnecessary, as the Rate Agreement speaks for itself. Staff also argued that the Commission need not take official notice of Mr. Kessler's testimony in DR 93-092 as it was not necessary to the Commission's analysis.

*D. Senator Shaheen*

Senator Shaheen made a public statement relative to PSNH's request for full cost recovery of its CAAA compliance costs. She stated that according to her reading of the Rate Agreement, PSNH was not entitled to recovery of the threshold amounts of \$20 million in capital costs and \$2 million in annual expenses. She also expressed concern that the Attorney General's Office was supporting PSNH's position when it should be acting on behalf of New Hampshire ratepayers. Finally, Senator Shaheen contended that Mr. Kessler's affidavit should be excluded on the ground that he has a conflict in that Ernst & Young has provided services to Northeast Utilities.

**III. COMMISSION ANALYSIS**

[1, 2] Although we have not yet had the opportunity to evaluate the evidence and arguments on the interpretation of the Rate Agreement and will not do so until the record is complete in this case, it is apparent that the pertinent language is susceptible to different interpretations and, therefore, the use of parole evidence to expand on the meaning of the Rate Agreement provisions is appropriate. *C & M Realty Trust v. Wiedenkeller*, 133 N.H. 470, 476 (1990). For that reason we will allow the Kessler affidavit into evidence, though the weight we accord it will be determined during the course of the hearings themselves. We will also entertain a subpoena for Mr. Kessler if necessary, in order to address the due process concerns raised by the Kessler affidavit.

This ruling is consistent with our announcement at the September 20, 1995 hearing that the most appropriate and fair resolution of this matter is to suspend these proceedings to allow the parties and Staff further opportunity to conduct discovery as a result of the Kessler affidavit. Mr. Kessler's sworn recollections are akin to testimony; simple procedural fairness dictates that we provide the parties an opportunity to prepare their cases after reasonable notice that such information would be presented. Although we are reluctant to delay these proceedings, the circumstances are sufficiently unique to warrant such relief.

Although we have agreed to admit the

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Kessler affidavit, we are cognizant of the procedural complications caused by the way in which it has been offered. We reject PSNH's contention the affidavit is rebuttal evidence. The affidavit goes to the essential merits of PSNH's request to recover these expenditures. Moreover, the affidavit was filed well after the deadline for rebuttal testimony. Likewise, we do not consider the affidavit to be that of a limited intervenor or member of the public in the typical sense contemplated by Rule Puc 203.03, as argued by PSNH. Mr. Kessler was more than a casual participant in the reorganization negotiations.

Although we note NHEC's objection based on relevance grounds, it is clear that Mr. Kessler's statements constitute his interpretation of the portion of the Rate Agreement which is a core issue in this proceeding. The affidavit may contain information relevant to our inquiry here, and therefore we will allow it to be introduced as an exhibit in this proceeding.

By this order, however, we do not mean to suggest that we have accepted Mr. Kessler's interpretation of the Rate Agreement. Rather, we believe that the Kessler affidavit should be considered admissible for two reasons: 1) the existence of the affidavit itself has become an issue in this case, and should therefore be made a part of the record given the extent of the controversy over its filing; and 2) the Kessler affidavit contains what may be relevant evidence as we sift through the record regarding the proper interpretation of the Rate Agreement to be ambiguous.

In light of this determination, we believe the proper remedy is to allow the parties an opportunity to conduct their own investigation and discovery with regard to the affidavit. As we noted at the September 20, 1995 hearing, however, we do not view the introduction of Mr. Kessler's affidavit as an opportunity to expand the scope of this proceeding. The issues in this proceeding shall remain limited to those related to PSNH's request for recovery of costs incurred to comply with the CAAA. Although this issue obviously requires us to interpret the Rate

Agreement, we will not allow this proceeding to become an expedition into other disputed aspects of the Agreement.

As we stated at the September 20, 1995 hearing, we will not, in our own motion, subpoena Mr. Kessler as a witness in this proceeding. However, to address the due process concerns raised by admitting the affidavit without Mr. Kessler's live testimony, we encourage the Parties and Staff to seek Mr. Kessler's appearance voluntarily, without resort to a subpoena. If these efforts are unsuccessful, any party who seek to subpoena Mr. Kessler should file a motion for our consideration no later than October 30, 1995.

We will not subpoena Judge Smukler to appear, as according to PSNH's Motion, Judge Smukler's testimony would be "substantially identical" to that of the Kessler affidavit. We exercise our right under RSA 541-A:33,II and N.H. Admin. Rules, Puc 203.10 to exclude evidence which is unduly repetitious.

Pursuant to our authority under RSA 541-A:33,V(b), we will grant PSNH's request that we take official notice of Mr. Kessler's testimony in DR 93-092. Our initial review of Mr. Kessler's testimony in that docket indicates that though it may not be directly on point to the inquiry here, it may nonetheless contain information relevant to our analysis of rate recovery for the Merrimack II compliance project.

Although OCA suggested at the September 20, 1995 hearing that the State be made a mandatory party, we decline to grant such relief. We trust that the State and Mr. Kessler, however, will cooperate with the Parties and Staff regarding discovery and completion of this docket.

We will adopt the second procedural schedule which finds the Kessler affidavit to be admissible and allows discovery on that issue, subject to certain modifications due to the time that has elapsed between the schedule's proposal and its adoption. The schedule is as follows:

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

Data Requests to Mr. Kessler	October 16, 1995
Responses to Data Requests	October 23, 1995
Testimony from Parties, Staff and Request for Subpoena	October 30, 1995
Data Requests	November 6, 1995
Data Responses	November 16, 1995
Rebuttal Testimony from Parties, Staff	November 21, 1995
Hearings on the merits	November 28-30, 1995

Finally, as we noted at the hearing, the Noell contract for which PSNH sought confidential treatment in its July 28th motion had been granted protection in a previous docket, and it is not necessary to issue a further order here.

Based upon the foregoing, it is hereby

ORDERED, that the Kessler affidavit will be considered admissible at the hearing on the merits on November 28 through 30, 1995; and it is

FURTHER ORDERED, that NHEC's Motion *in Limine* is DENIED; and it is  
FURTHER ORDERED, that PSNH's request to subpoena Judge Smukler is DENIED; and it  
is

FURTHER ORDERED, that PSNH's request to take official notice of Mr. Kessler's  
testimony in DR 93-092 is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule as stated above is APPROVED for the  
duration of this case.

By order of the Public Utilities Commission of New Hampshire this twelfth day of October,  
1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 21,625, 80 NH PUC  
223, Apr. 24, 1995.

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NH.PUC\*10/16/95\*[81110]\*80 NH PUC 645\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81110]

80 NH PUC 645

### **Re New Hampshire Electric Cooperative, Inc.**

DE 95-267

Order No. 21,862

New Hampshire Public Utilities Commission

October 16, 1995

ORDER authorizing an electric cooperative to construct and maintain submarine power cables  
under Lake Winnepesaukee for providing service to a customer on an island.

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#### 1. ELECTRICITY, § 6

[N.H.] Wires and cables — Power cables — Crossing of public waters as a factor —  
Underwater installation — For meeting island customer's service request — Electric cooperative.  
p. 645.

#### 2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Underwater conduits — Crossing of public waters as a factor — For  
meeting island customer's service request — Electric cooperative. p. 645.

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BY THE COMMISSION:

ORDER

[1, 2] On September 22, 1995, New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 371:17 to install and maintain a submarine power cable under the public waters of Lake Winnepesaukee in the Town of Alton, New Hampshire. The cable will supply electric power as requested by Timothy Miller, owner of, and sole customer of the service to be

Page 645

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provided on, Plum Island in so called Roberts Cove, Lake Winnepesaukee.

On October 12, 1995, NHEC filed supplemental information as requested by Staff regarding elements of the power distribution plan, easements, and construction standards. Electric service will consist of a radial circuit extending one span from an existing overhead service pole thence crossing to Plum Island at subsurface depths averaging 20 feet. The 1/0, 15 Kv submarine electric cable will extend approximately 1600 feet and will be operated at 7200 volts.

In order to provide this service, NHEC must maintain this submarine cable through public waters which are defined by RSA 371:17 as "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe." The Commission prescribes this crossing of a portion of Lake Winnepesaukee to be across public waters.

NHEC has obtained and filed with the Commission copies of all applicable permits, licenses, easements and right-of-ways including Permit No. 95-01113, issued by the Wetlands Board, Department of Environmental Services.

NHEC has attested and Staff agrees that construction of the crossing will meet or exceed the requirements of the 1993 National Electric Safety Code as well as all other applicable safety standards.

The Commission finds such a crossing necessary for NHEC to meet its obligation to provide electric service 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 upon the foregoing, it is hereby

ORDERED *NSI*, that NHEC is authorized, pursuant to RSA 371:17 *et seq.*, to install and operate a submarine electric cable beneath Lake Winnepesaukee as well as associated plant depicted on NHEC Staking Sheets for Work Order No. 536073 and other documentation on file with this Commission 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; and it is



FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, NHEC shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than October 18, 1995 and to be documented by affidavit filed with this office on or before October 30, 1995; and it is

FURTHER ORDERED, that NHEC notify the Town of Alton of this matter by serving a copy of this order on the Town Clerk by first-class mail, said notification to be verified by affidavit filed on or before October 18, 1995; 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 25, 1995. We recognize that the response time is limited, but necessary to permit construction in accordance with NHEC tariff provisions requiring that normal construction be completed by November 15th; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 1, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 3, 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 sixteenth day of October, 1995.

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NH.PUC\*10/16/95\*[81111]\*80 NH PUC 647\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81111]

80 NH PUC 647

**Re New Hampshire Electric Cooperative, Inc.**

DR 95-021

Order No. 21,863

New Hampshire Public Utilities Commission

October 16, 1995

ORDER accepting an electric cooperative's proposed revisions to the compact fluorescent lighting component of its approved 1995-96 demand-side management and conservation and load management plans.

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1. CONSERVATION, § 1

[N.H.] Electric cooperative — Demand-side management plans — Individual conservation and load management programs — Revisions to compact fluorescent lighting component — Purchases of bulbs from any retailer — Purchases via mail order — Increase in purchase limit

eligible for rebates — Rebates by check rather than bill credit — Reduction in customer participation goals. p. 647.

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BY THE COMMISSION:

#### ORDER

[1] On June 26, 1995, the New Hampshire Public Utilities Commission (Commission) in Order No. 21,711 approved the Demand-Side Management Programs of the New Hampshire Electric Cooperative, Inc. (NHEC) for the program year July 1, 1995 through June 30, 1996. As approved by the aforementioned order, the Residential Compact Fluorescent Lighting Program was designed to allow customers to purchase compact fluorescent light bulbs from any retailer in New Hampshire and receive a credit on their energy bill after providing NHEC with appropriate documentation.

Since Order No. 21,711 was issued, Robert Reals, NHEC's new Director of Demand Side Services, has reviewed the approved design. He concluded that the program would be administratively burdensome and not likely to achieve its projected participation and energy savings goals. Therefore, in a October 5, 1995 letter to the Commission, Mr. Reals proposed the following revisions.

1. The customer participation goal would be reduced from 8,550 to 4,275 customers.
2. Customers could purchase up to 6 bulbs instead of the approved 2 bulb limit.
3. An energy service company would be used to process all rebate requests instead of NHEC personnel.
4. Rebates would be in the form of a check instead of the bill credit.
5. Bulbs may also be purchased from the energy service company via a mail order request form or an 800 telephone number. Purchase prices would reflect the \$7 rebate.

According to Mr. Reals, the proposed revisions would not affect the approved budget or the benefit/cost ratio. In addition, the distribution of bulbs to low income customers through the local Community Action Program offices would be unaffected by the proposed modifications.

On October 12, 1995, Staff filed a memo with the Commission supporting the proposed revisions. Staff noted that the proposed revisions comply with Order No. 21,305 (July 22, 1994) which approved NHEC's 1994 Conservation and Load Management Program. Further, the proposed revisions reflect the type of program currently offered by other New Hampshire utilities.

After reviewing NHEC's proposed revisions to the Residential Compact Fluorescent Lighting Program and Staff's memo, we find that the revisions are reasonable and will benefit NHEC's customers by offering cost effective opportunities to purchase such lighting products. We are encouraged that NHEC has taken the time to thoughtfully reassess this program design prior to implementation. We will

approve the changes as requested.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's proposed revisions to the Residential Compact Fluorescent Lighting Program are APPROVED; and it is

FURTHER ORDERED, that NHEC continue to comply with all monitoring and evaluation requirements for this program and other conservation and load management offerings.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 93-212, Order No. 21,305, 79 NH PUC 416, July 22, 1994. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 95-021, Order No. 21,711, 80 NH PUC 387, June 26, 1995.

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NH.PUC\*10/16/95\*[81112]\*80 NH PUC 648\*Chalet Village Association

[Go to End of 81112]

80 NH PUC 648

### **Re Chalet Village Association**

DE 94-162

Order No. 21,864

New Hampshire Public Utilities Commission

October 16, 1995

ORDER finding that a homeowners' association, as successor in interest to a small community water system, is exempt from commission regulation and is not a public utility, its provision of service to seven nonmembers notwithstanding. Commission notes that the association is not-for-profit and has met all environmental requirements, and that the nonmembers will pay the same rates and receive the same quality of service as members, making regulation by the commission as to those seven nonmembers unnecessary.

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#### 1. PUBLIC UTILITIES, § 51

[N.H.] Regulatory status — Homeowners' association — Exemption from commission jurisdiction — Service to members only as a factor — Nonpublic service — Not-for-profit status as a factor — Water system. p. 649.

## 2. PUBLIC UTILITIES, § 58

[N.H.] Regulatory status — Mutual association — Exemption from commission jurisdiction — Service to nonmembers as a factor — No impact on regulatory exemption — Incidental service to very small number — No difference in rates or service level for nonmembers — Water system. p. 649.

## 3. PUBLIC UTILITIES, § 23

[N.H.] Tests of regulatory status — Compensation or profit — Not-for-profit nature as a factor — Homeowners' association — Exemption from regulation — Service to limited number of nonmembers notwithstanding — Water service. p. 649.

## 4. MUTUAL COMPANIES, § 4

[N.H.] Homeowners' association — Water service to nonmembers — No impact on regulatory exemption — Factors — Limited, incidental service to nonmembers — Not-for-profit status. p. 649.

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APPEARANCES: Thomas Roux for Chalet Village Association; and Eugene F. Sullivan III, Esq. for the New Hampshire Public Utilities Commission

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

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Chalet Village Association (Chalet Village or Association) filed, on August 2, 1994, a petition for exemption from New Hampshire Public Utilities Commission (Commission) regulation pursuant to RSA 362:4,I. The petition enclosed the Association's Constitution, By-Laws, and Articles of Agreement.

The Association was duly formed on May 2, 1994 to take title to the water system serving the subdivision known as Chalet Village of Belknap Mountain, Inc., and provides water service to fifteen predominantly seasonal residences. Eight of the fifteen homeowners constitute the membership of the Association.

On August 23, 1994, the Commission issued an Order of Notice that required the Petition to be amended no later than September 30, 1994 to provide additional information that was necessary for Commission consideration of an exemption. The Commission also set a hearing on the amended Petition for October 11, 1994.

At the hearing, a number of issues were addressed including:

1. a requirement that the Association's By-Laws be amended to show that non-members would be charged the same water rate as members;
2. that the deed to the water system be formally assigned to the Association;

3. that the Water Supply and Pollution Control Division and Water Resources Division of the Department of Environmental Services (DES) had concurred with the Association's exemption from regulation pursuant to RSA 374:22; and

4. that the Association correct outstanding water system deficiencies as reported by DES Sanitary Survey dated June 28, 1994.

The Commission deferred its decision pending documentation that the deficiencies noted had been corrected. On February 13, 1995, the Commission received amended By-Laws, documentation showing the transfer of deed to the Association, and supporting letters from the DES Divisions as required by RSA 374:22, leaving only the issue of correction of DES identified system deficiencies unresolved.

At its public meeting on June 5, 1995, the Commission noted that the Association had still not complied with DES requirements, and that the DES Water Supply and Engineering Bureau (WSEB) had issued a Proposed Administrative Order and had scheduled a hearing for June 30, 1995. Approval of the request for exemption was again deferred pending receipt of the results of the DES proceedings.

At the June 30, 1995 hearing, DES concluded that a WSEB engineer would inspect the Chalet Village water system on July 6, 1995, note all discrepancies, amend the Proposed Administrative Order if necessary, and set a deadline for system compliance with DES requirements. As a result of the July 6, 1995 inspection, the Association was notified in writing by DES on July 10, 1995 that there were 21 items that had to be corrected within sixty days of the inspection date. On September 11, 1995, a member of the WSEB Staff performed a follow-up inspection, and on September 20, 1995, notified the Commission in writing that the improvements made by the Association brought the water system into compliance with DES regulations.

## II. COMMISSION ANALYSIS

[1-4] This Commission has general regulatory powers over, *inter alia*, the rates and quality of service of:

every ... association ... owning operating or managing any plant or equipment or any part of the same ... for the manufacture or furnishing of ... water to the public .... RSA 362:2 (Supp. 1994)

Thus, any association providing water to the "public" is subject to our jurisdiction. The issue for our consideration, then, is whether the Association is providing water service to the public and, therefore, is subject to our jurisdiction.

In an opinion authored by the Department of Justice at the request of this Commission on January 31, 1980, the Attorney General stated that:

[w]here residents of a subdivision have bound themselves together into an ...

**Page** 649

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association for the purposes of owning and operating a water system for the provision of water only to themselves, no public utility has been formed. In such an association each

of the members of the association owns a percentage interest in the water system. In such an association all of the consumers of the water service are also all of the providers of water service. The rates to be charged, if any, the quality of service to be provided, the extent of the plant and equipment in existence, indeed the entire control of the provision of the water service is vested in the consumers of the service. *Thus, there is no entity providing water to the public. Rather, it is a group of people providing water to themselves.* (emphasis added).

Opinion of the Office of the Attorney General, at 2, (January 31, 1980)

In the case at hand, we have a nonprofit association, the membership of which is open to all of the users of the water system, providing service to its members. Pursuant to the analysis set forth above the Association would not be a public utility subject to our jurisdiction if all of the users were members of the Association because it would constitute one entity providing service to itself.

In addition, however, the Association serves seven other customers. Therefore, to the extent the Association provides water service to these non-member households it is a public water utility subject to our jurisdiction pursuant to RSA 362:2.

The Association, in recognition of this fact, has requested exemption from regulation pursuant to RSA 362:4,I. RSA 362:4,I provides, in pertinent part, that if an association providing water service to the public:

shall supply a less number of consumers than 10, each family, tenement, store or other establishment being considered a single consumer, the commission may exempt any such water ... company from any and all provisions of this title whenever the Commission may find such exemption consistent with the public good.

RSA 362:4,I (Supp. 1994)

As set forth above, we find the Association is providing service to itself and seven additional consumers. Therefore, it would qualify for exemption from regulation pursuant to RSA 362:4,I provided we find such an exemption to be in the public good.

In evaluating whether such an exemption is in the public good we will first assess the benefits of regulation by this Commission to the seven households. Initially, we must identify any of the benefits of regulation.

One of this Commission's principal regulatory powers is the setting of just and reasonable rates to ensure a fair return on prudently invested capital to the utility while at the same time protecting consumers from extortionate rates. RSA 378:28. In this case, the Association is nonprofit and, therefore, will not seek a return on its invested capital. Furthermore, the By-laws have been amended to provide that non-member customers will pay the same rates as members. We find this method of rate assessment equitable and consistent with this Commission's cost allocation methodologies. *Cf.*, RSA 362:4,III (Supp. 1994).

Another regulatory responsibility of this Commission and potential benefit of regulation is the assurance of quality service to the consumer. Given that all of the members have the same interest in quality service as the non-members we see no need for regulation in this area.

Our consumer protection rules and the benefits that they provide to customers are another significant regulatory responsibility of this Commission, as it relates to this type of utility. One of the most significant of these rules relates to customer disconnection. While the remedies of Section XIII of the By-laws regarding failure to pay the dues or assessments involve a \$10 fee, a 1% per month late charge and ultimately a lien on the property, and thus differ from our N.H. Admin. Rule Puc 603.08, we find that they are reasonable.

In conclusion, in evaluating all of the circumstances surrounding the providing of water service to the customers of Chalet Village, we can discern no concrete benefit to the non-member customers of Commission regulation of

**Page 650**

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this water system. Further, we can now find that all DES and Commission requirements have been met, and that approval of an exemption permitting the Association to operate without regulatory oversight is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that Chalet Village Association, a non-profit association providing water services in the Town of Gilford, is granted full exemption from the regulation of the Commission pursuant to RSA 362:4; and it is

FURTHER ORDERED, that a significant change in quality of service or other circumstances could require a reconsideration of this exemption; and it is

FURTHER ORDERED, that the Association keep plant records to provide adequate accounting in the event the exemption is withdrawn; and it is

FURTHER ORDERED, that the Association shall notify the Commission if and when it expands the water system to serve 10 or more customers as defined in RSA 362:4; and it is

FURTHER ORDERED, that the Association mail or hand-deliver a copy of this order to the Town of Gilford and all water system customers by November 30, 1995, and document same by affidavit filed with the Commission on or before December 15, 1995.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of October, 1995.

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NH.PUC\*10/17/95\*[81113]\*80 NH PUC 651\*Inacom Communications, Inc.

[Go to End of 81113]

80 NH PUC 651

**Re Inacom Communications, Inc.**

DR 95-262  
Order No. 21,865

## New Hampshire Public Utilities Commission

October 17, 1995

ORDER approving an interexchange telephone carrier's proposals for introducing "INACALL" package plans, providing for outbound toll, inbound 800, and calling card services with both switched and dedicated access.

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## 1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "INACALL" package plans — For outbound toll, inbound 800, and calling card calls — Availability of both switched and dedicated access — Volume discount options — Interexchange carrier. p. 651.

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BY THE COMMISSION:

## ORDER

[1] On September 18, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Inacom Communications, Inc., (Inacom) requesting authority to restructure Sections 3 and 4, revise rates for the Inacom SDN Product and introduce INACALL, for effect October 18, 1995.

The proposed revisions reorganize the service and rate sections (3 and 4) for Inacom SDN, 800 and Travel Card service. Discount plans for these services are being introduced as well.

INACALL is a toll, 800 and calling card product with switched and dedicated access options. The product includes various discount options, teleconference and bill management capabilities.

The proposed revisions require a change to more than 50 percent of the existing tariff. NH Admin. Rules, Puc 1601.05(b) (2), requires "when more than 50% of the pages of a complete tariff are effected in a single filing a complete new tariff shall be filed." Therefore, we direct Inacom to file a completely new tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such

**Page 651**

competition. Therefore, the Commission will authorize Inacom to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Inacom's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Page 1



1st Revised Page 2  
1st Revised Page 16  
1st Revised Page 17  
1st Revised Page 18  
1st Revised Page 19  
1st Revised Page 20  
Original Page 20.1  
Original Page 20.2  
Original Page 20.3  
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Original Page 20.25  
Original Page 20.26  
Original Page 20.27  
1st Revised Page 21;

and it is

FURTHER ORDERED, that Inacom file a complete new tariff, Inacom NHPUC No. 2, incorporating the changes approved above with the existing approved pages in Inacom's NHPUC No. 1, in compliance with Puc 1601.05(b) (2), and properly annotated as required by N.H. Admin. Rules, Puc 1601.05 (k), no later than 30 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1995.

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NH.PUC\*10/17/95\*[81114]\*80 NH PUC 652\*Frontier Communications International, Inc.

[Go to End of 81114]

80 NH PUC 652

**Re Frontier Communications International, Inc.**

DE 95-265

Order No. 21,866

New Hampshire Public Utilities Commission

October 17, 1995

ORDER approving an interexchange telephone carrier's proposals for tariff revisions as to the definition of "customer," implementation of a "casual calling" option, and applicable rate periods for travel card service.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Tariff revisions — Definition of "customer" — Introduction of "casual calling" option — Clarification of billing rate periods for travel card service — Interexchange carrier. p. 652.

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BY THE COMMISSION:

ORDER

[1] On September 19, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Frontier Communications International, Inc., (Frontier) requesting authority to clarify the "customer" definition, add a Casual Calling option to

**Page 652**

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Frontrunner Service and modify the definition of Rate Period for Product 1 Travel Card for effect October 20, 1995.

The definition of "customer" is being modified to clarify that the customer is the person or firm who uses service from Frontier, whether for resale or personal consumption regardless of how the customer accesses the service.

A Casual Calling option is being added to Frontrunner service for customers who use the service by dialing 10XXX. These customers are billed through the local exchange carrier.

The definition of Rate Period for Product 1 Travel Card is being clarified to state that Rate Period 1 is from 8:00 a.m. to but not including 5:00 p.m., Monday through Friday.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Frontier to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Frontier's tariff, NHPUC No. 1 are approved for effect as filed:

- 6th Revised Page 2
- 1st Revised Page 7
- Original Page 7.1
- 3rd Revised Page 22
- Original page 39.1
- 1st Revised Page 56.e;

and it is

FURTHER ORDERED, that Frontier file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1995.

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NH.PUC\*10/17/95\*[81115]\*80 NH PUC 653\*Manchester Water Works

[Go to End of 81115]

80 NH PUC 653

**Re Manchester Water Works**

DE 95-237

Order No. 21,867

New Hampshire Public Utilities Commission

October 17, 1995

ORDER authorizing a municipal water utility to extend service outside corporate boundaries into a part of the Town of Bedford, where there was no opposition to the move, no other utilities were in that vicinity, and the municipal's water supplies were sufficient for serving the additional area.

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1. SERVICE, § 204

[N.H.] Extensions — By municipal utility — Beyond corporate limits — Factors affecting approval — Lack of other service providers — Lack of opposition or challenge — Sufficiency of utility's supply — Water service. p. 653.

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BY THE COMMISSION:

ORDER

[1] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission) on August 24, 1995, a petition to extend its existing service area in the Town of Bedford, New Hampshire. Manchester intends to provide service under its existing tariff provisions for customers outside its municipal boundaries to 12 contiguous lots in Bedford as described below.

The Town of Bedford and Pennichuck Water Works, Inc. have provided written support for the proposed extension. In addition, the Department of Environmental Services has confirmed the suitability and availability of

Page 653

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Manchester's water supplies.

There are no other water utilities in the vicinity of the proposed extension and as noted above consent from relevant parties has been obtained. The Commission finds that allowing Manchester to extend its service area as requested is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Manchester's Petition to Extend Service Area in the Town of Bedford is granted; and it is

FURTHER ORDERED, that Manchester is correspondingly granted permission pursuant to RSA 374:22 and 26 to extend its service area into a limited area of Bedford consisting of Lots 46-6, 45-2, 45-1, 47, 48, 50-3, 50-6, 50-5 and 50-4 on Tax Map 10 and Lots 39, 40 and 41 on Tax Map 13; and it is

FURTHER ORDERED, that the Petitioner shall serve a copy of this Order *Nisi* on the Bedford Town Clerk by first class mail and shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such service and publication to be no later than October 24, 1995 and to be documented by affidavit filed with this office on or before October 31, 1995; 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 November 7, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 14, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 16, 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 seventeenth day of October, 1995.

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NH.PUC\*10/17/95\*[81116]\*80 NH PUC 654\*Manchester Water Works

[Go to End of 81116]

80 NH PUC 654

## Re Manchester Water Works

DE 95-193

Order No. 21,868

New Hampshire Public Utilities Commission

October 17, 1995

ORDER authorizing a municipal water utility to extend service outside corporate boundaries into a part of the Town of Hooksett, where there was no opposition to the move, no other utilities were in that vicinity, and the municipal's water supplies were sufficient for serving the additional area.

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### 1. SERVICE, § 204

[N.H.] Extensions — By municipal utility — Beyond corporate limits — Factors affecting approval — Lack of other service providers — Lack of opposition or challenge — Sufficiency of utility's supply — Water service. p. 654.

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BY THE COMMISSION:

### ORDER

[1] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission) on July 13, 1995, and revised on August 14, 1995, a petition to extend its existing service area in the Town of Hooksett, New Hampshire. Manchester intends to provide service under its existing tariff provisions for customers outside its municipal boundaries to two areas in Hooksett which contain a total of 13 lots as described below.

The Town of Hooksett and the Central Hooksett Water Precinct have provided written support for the proposed extension. In addition, the Department of Environmental Services has

**Page 654**

confirmed the suitability and availability of Manchester's water supplies.

There are no other water utilities in the vicinity of the proposed extension and as noted above consent from relevant parties has been obtained. The Commission finds that allowing Manchester to extend its service area as requested is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Manchester's Petition to Extend Service Area in the Town of Hooksett is granted; and it is

FURTHER ORDERED, that Manchester is correspondingly granted permission pursuant to RSA 374:22 and 26 to extend its service area into a limited area of Hooksett consisting of Lots 32-2 and 32-3 on Tax Map 31; Lot 26 on Tax Map 32; Lots 12, 13, 14, 21, 22, 23 and 24 on Tax Map 34; and, Lots 1, 1-1 and 2 on Tax Map 35; and it is

FURTHER ORDERED, that the Petitioner shall serve a copy of this Order *Nisi* on the Hooksett Town Clerk by first class mail and shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such service and publication to be no later than October 24, 1995 and to be documented by affidavit filed with this office on or before October 31, 1995; 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 November 7, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 14, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 16, 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 seventeenth day of October, 1995.

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NH.PUC\*10/17/95\*[81117]\*80 NH PUC 655\*Hampton Water Works Company

[Go to End of 81117]

80 NH PUC 655

**Re Hampton Water Works Company**

DE 95-238

Order No. 21,869

New Hampshire Public Utilities Commission

October 17, 1995

ORDER noting interventions and adopting a procedural schedule for a docket addressing a municipal water utility's plan to locate certain new facilities at an extraterritorial site.

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1. WATER, § 12

[N.H.] Water utility practices — Construction and equipment — Proposed extraterritorial location of new facilities — By municipal utility — Procedural schedule for considering — Standing and intervention — Jurisdictional protection of aquifer as an issue. p. 655.

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BY THE COMMISSION:

### ORDER

[1] On August 25, 1995 Hampton Water Works Company (Hampton) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Locate Utility Facilities in Stratham, New Hampshire. Subsequent requests for intervention were filed by the Town of Stratham, New Hampshire and the North Hampton Water Commission (Water Commission). State Senator Burt Cohen filed a request for limited intervention. A duly noticed prehearing conference was held on October 4, 1995 before Hearing Examiner, Robert J. Frank. At the prehearing conference the following proposed procedural schedule was presented by the parties:

**Page 655**

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

Legal Memoranda - October 25, 1995  
 Reply Memoranda - November 9, 1995  
 Oral Argument - to be scheduled at  
 the discretion of the  
 Commission

The parties agreed that the memoranda would address two legal issues. The first issue, raised by the Town of Stratham, is whether the exemption power granted to the Commission in RSA 674:30 applies to the aquifer protection ordinances of the Town. In Stratham's view, this Commission lacks jurisdiction to hear zoning exemption requests which relate to its aquifer protection ordinances. Hampton raises a parallel issue of whether Stratham's aquifer protection ordinance gives it the right to challenge Hampton's plan to drill a well in order to serve customers within its existing franchise territory. Hampton argues that the jurisdiction over the aquifer resides with the State Department of Environmental Services (DES).

Senator Cohen stated that he was appearing in order to express his concerns for his constituents in the Town of Stratham and the potential adverse effects upon Stratham's water supply if the well is sited as proposed by Hampton. He also indicated that the participants in this proceeding should consider the rules which have been established by the DES and that he would work with the Town of Stratham to find an appropriate resolution of this matter.

Although Hampton filed no written objection prior to the prehearing conference, it offered an oral objection to the intervention requests of the Water Commission. Hampton stated that it had not received a copy of the Water Commission's request until the morning of the prehearing conference. Hearing Examiner Frank noted that the Commission received the Water Commission's request on September 28, 1995, one day after the filing deadline for such requests

as specified in the Commission's Order of Notice dated September 13, 1995. Mr. Frank directed Hampton to file a written objection to the Water Commission's intervention request by October 11, 1995, which Hampton timely filed.

Hampton's written objection argues that the intervention request of the Water Commission should be denied on the grounds that (a) it has failed to meet the statutory criteria of RSA 541-A:32, (b) that the Water Commissioners do not have the requisite authority to intervene in this proceeding and (c) that the intervention request was not timely filed.

The proposed procedural schedule is reasonable and we approve it as proposed. In addition to the proposed schedule we will reserve December 1, 1995 at 10:00 a.m. for a hearing on oral argument and will notify the parties by November 24, 1995 if we believe such a hearing is necessary.

With regard to all of the requested interventions, including that of the Water Commission, we find that their rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding, and that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the interventions. NH Admin. Rule Puc 203.02. In granting the request of the Water Commission, however, we wish to make it clear that it has asked to represent the interests of the Water Commission, not the Town of North Hampton. Although the intervention request was filed one day late, it is within our discretion to accept the filing. *See* NH Admin. Rules Puc 201.05. The intervention requests of the Town of Stratham and Senator Cohen are also granted.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule set forth above is APPROVED; and it is

FURTHER ORDERED, that the requests for full intervention by the Town of Stratham and the Water Commission are GRANTED; and it is

FURTHER ORDERED, that the request for limited intervention filed by Senator Burt Cohen is GRANTED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1995.

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NH.PUC\*10/17/95\*[81118]\*80 NH PUC 657\*SNET America, Inc.

[Go to End of 81118]

80 NH PUC 657

**Re SNET America, Inc.**

DE 95-156

Order No. 21,870

New Hampshire Public Utilities Commission

October 17, 1995



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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 657.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 657.

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BY THE COMMISSION:

ORDER

[1, 2] On June 1, 1995, SNET America, Inc. (SNET), a Connecticut 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. SNET has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that SNET is granted 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 until the Commission orders otherwise.
3. SNET 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,

Page 657

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SNET shall notify the Commission of the change.

5. SNET 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. SNET shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. SNET 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. SNET 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. SNET shall compensate the appropriate Local Exchange Company for all originating and terminating access used by SNET pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission orders otherwise; and it is

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

FURTHER ORDERED, that SNET shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 24, 1995, and an affidavit proving publication shall be filed with the Commission on or before October 31, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. SNET 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 all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 7, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 14, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective November 16, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that SNET shall file a compliance tariff with the Commission on or before November 16, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of October, 1995.

Notice of Conditional Approval of  
SNET AMERICA, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On June 15, 1995, SNET America, Inc. (SNET), a Connecticut 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. 21,870, issued in Docket No.

**Page 658**

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DE 95-156, the Commission granted SNET conditional approval to operate as of November 16, 1995, subject to the right of the public and interested parties to comment on SNET 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 SNET's petition to do business in the State should submit written comments no later than November 7, 1995. Anyone interested in replying should submit written reply comments no later than November 14, 1995, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*10/18/95\*[81119]\*80 NH PUC 659\*LDC Telecommunications, Inc.

[Go to End of 81119]

80 NH PUC 659

**Re LDC Telecommunications, Inc.**

DE 95-183

Order No. 21,871

New Hampshire Public Utilities Commission

October 18, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 659.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 659.

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BY THE COMMISSION:

ORDER

[1, 2] On June 15, 1995, LDC Telecommunications, Inc. (LDC), a Florida 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. LDC has demonstrated the financial,

managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No.

Page 659

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21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that LDC is granted 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 until the Commission orders otherwise.
3. LDC 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, LDC shall notify the Commission of the change.
5. LDC 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. LDC shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. LDC 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. LDC 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. LDC shall compensate the appropriate Local Exchange Company for all originating and terminating access used by LDC pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission orders otherwise; and it is

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

FURTHER ORDERED, that LDC shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than October 25, 1995, and an affidavit proving publication shall be filed with the Commission on or before November 1, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. LDC 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 all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 8, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 15, 1995; and it is

**Page 660**

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FURTHER ORDERED, this Order *Nisi* shall be effective November 17, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that LDC shall file a compliance tariff with the Commission on or before November 17, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1995.

Notice of Conditional Approval of  
LDC TELECOMMUNICATIONS, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On June 15, 1995, LDC Telecommunications, Inc. (LDC), a Florida 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. 21,871, issued in Docket No. DE 95-183, the Commission granted LDC conditional approval to operate as of November 17, 1995, subject to the right of the public and interested parties to comment on LDC 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 LDC's petition to do business in the State should submit written comments no later than November 8, 1995. Anyone interested in replying should submit written reply comments no later than November 15, 1995, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*10/18/95\*[81120]\*80 NH PUC 661\*Carleton Water Company Trust

[Go to End of 81120]

80 NH PUC 661

**Re Carleton Water Company Trust**

DR 95-028  
Order No. 21,872

New Hampshire Public Utilities Commission

October 18, 1995

ORDER adopting stipulation as to a water utility's proposed rate increase. The utility is allowed to increase rates in each of its four service areas, with additional step increases in two of the areas, to cover the costs of necessary capital improvements. The utility is warned to keep its books and records in order and to abide by generally accepted accounting principles.

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1. RATES, § 596

[N.H.] Water rate design — Allocation of rate increase — Among separate service areas — Additional step increases — To cover the costs of mandated capital improvements. p. 665.

Page 661

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2. RECORDS, § 3

[N.H.] Water utility books and records — Compliance with commission standards — Compliance with generally accepted accounting principles — To expedite reviews in rate case proceedings. p. 665.

3. EXPENSES, § 19

[N.H.] Corporate or organizational costs — Change in corporate structure — Consideration on post-organization basis only — No allowance based on mere estimates — Recovery via step adjustment — Water utility. p. 665.

4. RATES, § 2

[N.H.] Nature of rate making — Statutorily and judicially set rate-making procedures — Superseding and taking precedence over contractual provisions — Nonenforceability of service rates specified in property sales contract. p. 665.

5. EXPENSES, § 89

[N.H.] Rate case expense — Factors affecting partial disallowance — Imprudent rate filings — Deficiencies in recordkeeping — Actual hours spent in preparation — Hourly rates reflecting persons of like experience and skill — Water utility. p. 665.

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APPEARANCES: Stephen St. Cyr for Carleton Water Company Trust; Paul DegliAngeli, William DeProfio, Lawrence Fallon, Robert A. Manzelli, Richard Fairbank and Ed Davis, *pro se*; Thomas Lyle for the Office of the Consumer Advocate; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 17, 1995, Carleton Water Company Trust (Carleton) filed with the New Hampshire Public Utilities Commission (Commission) a petition for rate increase and supporting



testimony and exhibits. Carleton proposed an overall revenue increase of 62.9% over current revenues including the surcharge from the prior rate case. The rate increases for each of the four developments, however, based on the Commission Staff's (Staff) calculations derived from the exhibits, excluding the prior rate case surcharge were as follows: Birch Hill 107%, Hidden Valley 140%, Sunrise Estates 144%, and 175 Estates 133%.

In its Order No. 21,599 (March 31, 1995), the Commission set a prehearing conference for April 18, 1995, set a deadline for intervention requests, proposed a draft procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

At the April 18, 1995 prehearing conference, the following customers sought intervention, without objection: Paul DegliAngeli of Birch Hill, William DeProfio of Sunrise Estates, Lawrence Fallon of Sunrise Estates and Robert A. Manzelli of Birch Hill. In addition, Richard Fairbank of Birch Hill and Ed Davis of Hidden Valley sought limited intervention, without objection. The parties, Staff, and the Office of Consumer Advocate (OCA) presented a procedural schedule, and Carleton, intervenors, and Staff all presented their initial positions with respect to Carleton's filing.

On April 25, 1995 the Commission issued Order No. 21,631 which granted full intervention to Paul DegliAngeli, William DeProfio, Lawrence Fallon and William Manzelli, and limited intervention to Richard Fairbank and Ed Davis. The Order also approved the procedural schedule as submitted by the Staff and parties.

On August 16, 1995, after extensive written discovery, two technical sessions, and pre-filed testimony, Carleton, the OCA, Mr. DegliAngeli, Mr. Fallon and Staff met for settlement discussions. Other intervenors were given proper notice of the settlement discussions but did not attend. Those involved in the settlement discussions agreed to a stipulation resolving some of the issues raised in this docket and agreed that some issues remained in dispute.

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On August 18 and August 22, 1995, Carleton submitted additional proposals for settlement. As a result of further discussion among the parties and Staff, an agreement resolving all issues was reached (Stipulation). *See* Stipulation, Exhibit 1.

On August 23, 1995 a hearing was held at which the Stipulation was presented. The Stipulation was executed by Carleton, Staff, and OCA. Mr. DegliAngeli was not able to attend the hearing, but indicated his acceptance of the Stipulation. Mr. Fallon declined to execute the Stipulation, but did not object to it. Mr. DeProfio and Mr. Manzelli did not participate in settlement discussions and, therefore, did not execute the Stipulation.

On September 21, 1995, Staff filed a memorandum relative to step increases for Sunrise Estates and 175 Estates, rate case expenses, and the costs of changing the form of Carleton's organization. On September 27, 1995, Carleton filed an objection to Staff's recommended disallowances which were based on Carleton's submissions relative to the step increases and rate case expenses. On October 4, 1995, the OCA filed comments recommending a disallowance of rate case expenses larger than that proposed by Staff. On October 5, 1995, Paul DegliAngeli filed a letter requesting the Commission to direct Staff to re-review the rate case expenses together with the OCA and Intervenors. On October 6, 1995, Staff filed a memorandum in

response to the comments of Carleton, the OCA and Intervenors.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Carleton*

Mr. St. Cyr testified in support of the Stipulation. He explained that the primary reasons for the rate increases were the length of time between test years since Carleton's rate case in DE 89-083 and the capital additions that have been made in the systems since 1988. He also supported the two step increases for Sunrise Estates and for 175 Estates that are contemplated in the Stipulation. In addition, he requested that the rate changes as anticipated in the Stipulation, if approved, be effective on October 1 so that the third quarter could be billed at current rates and the fourth quarter at the new rates. Also, in noting that the Stipulation calls for Carleton to establish a form of ownership for the utility other than the present trust, he requested that the Commission approve such a change to be effective January 1, 1996 in order to avoid duplicate tax and regulatory compliance filings.

Subsequent to the hearing, Carleton submitted documentation in support of the two step increases, for recovery of costs involved in the change of the form of ownership of the utility, and for its rate case expenses. Carleton requested to recover a total of \$13,287.10 in rate case expenses over a one-year period at the conclusion of its current surcharge.

### B. *Staff*

Staff witness Mark A. Naylor presented the Stipulation and recommended that the Commission approve it.

As indicated on the attachments to the Stipulation detailing rate base for each system (BH-1, HV-1, 175-1, and SR-1), rate base is stipulated at \$87,030 for Birch Hill; \$8,949 for Hidden Valley; \$4,015 for 175 Estates; and \$42,061 for Sunrise Estates. In addition, the Stipulation provides for step increases for the purchase of land and the construction of a new well at Sunrise Estates, and for the deepening of an existing well at 175 Estates. The estimated additional revenue to be generated by these step increases is \$6,200, or \$102 per customer annually at Sunrise Estates, and \$1,200, or \$32 per customer annually at 175 Estates.

The Stipulation calls for revenue requirements and annual customer rates, exclusive of the step adjustments, as follows: Birch Hill, \$45,009, (\$260.17 annually per customer), an increase of 10.69%; Hidden Valley, \$5,640 (\$225.60 annually per customer), a decrease of 1.43%; 175 Estates, \$7,192 (\$189.27 annually per customer), a decrease of 11.77%; and Sunrise Estates, \$18,435 (\$302.21 annually per customer), an increase of 24.26%.

The Stipulation also contains an overall rate of return of 7.75%, with a capital structure

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of 100% debt: debt in the amount of \$64,548 at 6%, and debt in the amount of \$47,708 at 10.12%. For application to the anticipated step increases, a cost of capital of 8.58% is stipulated, which incorporates the above debt in addition to debts incurred in 1995 in connection with the financing for the projects giving rise to the step adjustments.

The Stipulation also requires that Carleton bring its records into full compliance with the

Uniform System of Accounts, as required by the Commission, within 90 days of the date the Commission accepts the Stipulation, and establishes mechanisms for the resolution of outstanding matters relating to the Staff audit of Carleton. In addition, the Stipulation requires Carleton to file a metering plan within 90 days of the date the Stipulation is accepted or, alternatively, a report justifying continuation of non-metered service.

The Stipulation also mandates that Carleton establish a form of ownership for the utility other than its present form as a trust. Costs associated with such a transformation are to be capitalized and included in rate base.

The Stipulation presented at the hearing would require Carleton to establish a Depreciation Fund as permitted under RSA 374:10. The amount of depreciation expense currently collected by Carleton is \$6,831 prior to any depreciation that will result from the step increases contemplated in the Stipulation.

Subsequent to the hearing, on September 21, Staff submitted its recommendations for the step increases, the costs of changing the form of the organization, and Carleton's rate case expenses. For the step increase at Sunrise Estates, Carleton documented an investment of \$48,731.87. Staff recommended Carleton be allowed to earn a return of \$4,065.83 on a total investment of \$47,387.28, which, with depreciation expense of \$1,417.77 and tax effect of \$306.04, results in additional revenue of \$5,789.64 or \$94.91 per customer annually. For the step increase at 175 Estates, Carleton documented an investment of \$9,823.36. Staff recommended that Carleton be allowed to earn a return of \$762.19 on a total investment of \$8,883.36, which, with depreciation expense of \$477.19 and tax effect of \$57.37, results in additional revenue of \$1,296.75 or \$34.13 per customer annually.

Finally, Staff recommended recovery of \$9,950.35 of Carleton's requested \$13,287.10 of rate case expenses, to be collected over a one-year period at the conclusion of the current surcharge. The recommended disallowance is a sum of the following: disallowance of half of the charge from Mr. St. Cyr for preparation of the filing (\$1,250), given that the initial filing contained little that was not already contained in Carleton's Annual Report which Mr. St. Cyr had also prepared; reduction in Mr. St. Cyr's hourly rate from \$75 to \$65 as more in keeping with the hourly rates for accountants of similar background and experience appearing before the Commission (\$1,125); elimination of 12.5 of Mr. St. Cyr's allowed hours, which were spent primarily on the Staff audit report and the creation of data that but for Carleton's inadequate record keeping would have been available (\$937.50); and an adjustment to actual cost of the stenographer bill (\$24.25).

#### *C. OCA*

OCA did not offer testimony at the hearing, but fully participated in the proceeding and executed the Stipulation.

Subsequent to the hearing, OCA submitted comments with respect to the rate case expenses of Carleton and the recommendation made by Staff. OCA recommended that Carleton should be allowed to recover only \$5,883 of its expenses in the prosecution of its case.

#### *D. Lawrence Fallon*

Mr. Fallon participated in the settlement discussions, but opted not to execute the Stipulation.

He stated at the hearing that he felt he had a contract with Carleton's predecessor which ensured that his water rate would never go above \$50 per year, and that the Commission should recognize it.

*E. Paul DegliAngeli*

Mr. DegliAngeli participated in the settlement discussions, but was not able to attend the

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hearing on August 23. He indicated to Staff his support of the Stipulation. He also submitted comments on Carleton's rate case expense request and the Staff's recommendation, and indicated that he found the Staff's recommendation unacceptable. He pointed out the initial concerns of OCA with respect to Carleton's filing, and his observation that Carleton's record-keeping was an issue in Carleton's prior docket as well as this one. He asked that the Commission direct the parties to review the expenses and make a recommendation which reflected only those expenses which Carleton deserved.

### III. COMMISSION ANALYSIS

[1] We have reviewed the record in this case and the Stipulation submitted by the parties and Staff. We find the Stipulation to be a fair resolution of Carleton's petition for a permanent rate increase, and we believe it results in just and reasonable rates for the utility's customers. We will approve the Stipulation.

We will also approve the step adjustments for the Sunrise Estates and 175 Estates systems at the levels recommended by Staff. Each of these capital projects were clearly required in order for Carleton to continue to provide safe and adequate service to its customers. Our approval of these step adjustments will also help prevent immediate earnings erosion on the part of Carleton, and should help to preclude the necessity of another early rate filing.

We also find that the plant and equipment contained in Carleton's rate base is used and useful, and that costs associated with it were prudently incurred.

[2] With respect to the provisions of the Stipulation relating to Carleton's records, we fully expect Carleton to abide by those provisions and to bring its books and records into full and complete compliance with Commission standards as expeditiously as possible. Carleton has known for a number of years that it has the responsibility to maintain proper records, and we will not look favorably upon any future indications from Staff that Carleton has not met these standards.

[3] Further, we accept Staff's recommendation that Carleton's request for recovery of costs relating to changing the form of the organization must await their actual expenditure. At the point Carleton incurs these costs, and the utility is then being operated under a different form of organization, we will entertain a step adjustment proposal from Carleton. In addition, we will expect that Carleton will seek Staff's review of the form of its ownership prior to the conversion.

[4] We will deny Mr. Fallon's request for Commission approval of a \$50 per year rate based on a representation in a purchase and sale Stipulation executed with Carleton's predecessor in title, Sunrise Development Corp. *See*, Exhibit 6. The General Court has established a pervasive

statutory scheme establishing the methodology and the procedure to set rates for public utilities in New Hampshire. RSA chapter 378. This statutory scheme is exclusive, and any attempt to set rates outside of that scheme is *ultra vires*. Thus, the contractual term contained in Mr. Fallon's purchase and sale Stipulation which attempts to establish the rate for this utility has no force or effect at law, and cannot be enforced. Any compensation due to Mr. Fallon should be based on the contract between himself and the entity responsible for the *ultra vires* representation. *Russell v. Hixon*, 117 N.H. 35, 37 (1977).

[5] We accept the Staff's recommended level of \$9,950.35 for rate case expenses as the most reasonable solution given the history of this utility and the issues involved. Although we are always concerned with the level of rate case expenses, disallowances must be made on the basis of objective criteria, and the Staff's recommendations are so based.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation is approved; and it is

FURTHER ORDERED, that Carleton Water Company Trust is authorized to increase its water rates in its four water systems to the levels detailed in the Stipulation, effective for service rendered on or after October 1, 1995; and it is

FURTHER ORDERED, that Carleton's step adjustments for Sunrise Estates and 175 Estates are hereby approved, for effect October

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1, 1995 and as detailed above, providing total annual customer rates of \$397.12 at Sunrise Estates, and \$223.40 at 175 Estates; and it is

FURTHER ORDERED, that Carleton is authorized to recover \$9,950.35 in rate case expenses related to this proceeding, in a surcharge to its customers over a one-year period beginning at such time as the existing surcharge from the prior rate case is fully collected; and it is

FURTHER ORDERED, that Carleton file compliance tariff pages reflecting the new permanent rate level and the rate case expense surcharge within ten days of the date of this Order; and it is

FURTHER ORDERED, that Staff shall provide Carleton with guidance on the questions raised by Carleton with regard to the Audit Report no later than November 17, 1995, and Carleton shall bring its records into compliance with the Uniform System of Accounts no later than January 16, 1996; and it is

FURTHER ORDERED, that Carleton will provide a metering plan no later than January 16, 1996, or in the alternative, provide a report justifying the continuation of non-metered service.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 1995.

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NH.PUC\*10/23/95\*[81121]\*80 NH PUC 666\*Consumers New Hampshire Water Company, Inc.

[Go to End of 81121]

80 NH PUC 666

**Re Consumers New Hampshire Water Company, Inc.**

DR 95-124  
Order No. 21,874

New Hampshire Public Utilities Commission

October 23, 1995

ORDER again revising the procedural schedule in a water utility's general rate case and clarifying that the used and useful status of certain property will be addressed for rate base purposes, but that the prudence of investments in such property will not be, as that issue has already been considered and settled.

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1. VALUATION, § 193

[N.H.] Property included in or excluded from rate base — Used and useful nature as a factor — Distinguished from the prudence of acquiring or investing in the property — Settlement of prudence issues prior to resolution of used and useful issues. p. 668.

2. PROCEDURE, § 33

[N.H.] Rehearing — Grounds for granting — Good cause shown — Submission of evidence not previously available — Burden of proof on movant. p. 669.

3. PROCEDURE, § 22

[N.H.] Notice and hearing — Necessity of notice — As to supplemental or further proceedings — Change in issues or focus of docket — No need for additional notice as to every single change in a docket. p. 669.

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APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. and Harry T. Judd, Esq. for Consumers New Hampshire Water Company, Inc.; Donahue, McCaffrey, Tucker and Ciandella by Robert D. Ciandella, Esq. for The Town of Hudson, New Hampshire; Leonard A. Smith, *pro se*; Representative Donald White, *pro se* (limited intervenor); Office of Consumer Advocate by Michael W. Holmes, Esq. for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

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Consumers New Hampshire Water Company, Inc. (Consumers) filed on June 20, 1995 a petition for an overall 23.1% rate increase (Petition). The Office of Consumer Advocate (OCA) filed on July 19, 1995 a Motion to Dismiss Petition to Increase Rates or, In the Alternative, to Hold Further Proceedings in Abeyance (Motion), to which Consumers objected on July 27, 1995. Staff responded to OCA's Motion, to which Consumers objected. By Order No. 21,796 (August 28, 1995), the Commission granted intervention requests, clarified the scope of the proceeding to include an analysis of whether certain property identified in the DR 89-224 rate case determination, 76 NHPUC 521 (1991), was found to be prudently incurred and used and useful, and denied OCA's request to dismiss the petition.

On September 27, 1995 OCA filed a Motion for Rehearing and Other Relief (OCA Motion) asking that the Commission rehear its decision to dismiss the petition or, in the alternative, order an extended procedural schedule and consider the Motion for Rehearing to be a new motion to dismiss.

On September 28, 1995 Consumers filed a Request for Clarification or, in the Alternative, Motion for Rehearing (Consumers Motion) seeking three clarifications or corrections of Order No. 21,796: 1) page 1 incorrectly noted the date on which Consumers objected to a Staff motion; 2) page 4 incorrectly characterized Consumers' position on the prudence and used and useful analysis in the DR 89-224 order; and 3) Order No. 21,796 mischaracterized Consumers' interpretation of Order No. 20,196 as to whether the Commission had already ruled on the prudence of certain property in that case.

OCA responded to Consumers' Motion on October 2, 1995, arguing that it was not clear what had been found to be prudent and Consumers should present evidence on the prudence of all property emerging from the prior rate case. OCA also argued that the requested corrections to the order raise new issues and are unnecessary. It argued that Consumers Motion raised "new grounds which could have been raised before or grounds that are not new which were previously addressed in the Commission's order which has not been complied with" and urged the Commission to reject the Motion.

On October 4, 1995 Consumers objected to OCA's September 27, 1995 Motion, arguing that the case need not be dismissed. Also on October 4, 1995, Consumers responded to OCA's October 2, 1995 response to the Consumers Motion. This led to OCA's October 5, 1995 Motion for Relief which stated that Consumers had no right to file a response to OCA's response under Commission rules and requested "relief which is just and equitable" without specifying the relief it sought.

Staff responded to OCA's Motion and Consumers' Motion on October 5, 1995 but did not respond to the other filings.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Consumers' Requests for Drafting Errors Correction*

As noted above, Consumers raised two drafting errors in the order. Staff agreed that these were mistakes and recommended granting the requested corrections. The first correction is to substitute on page 1 the date on which Consumers objected to a staff motion, so that the sentence would read "Staff responded to OCA's Motion on July 31, 1995 to which Consumers objected on



August 3, 1995." The second correction is to amend on page 4 the paragraph describing Consumers' position on Order No. 21,196 in DR 89-224 to read as follows:

Consumers argued at the hearing that those items included in rate base in DR 89-224 on which there has not yet been a finding of "used and useful" [strike: or prudence] should be allowed to remain in rate base pending completion of the generic analysis of excess capacity.

*B. Consumers' Request for Clarification Regarding Prudence*

Consumers also argues that in Order No. 21,796 the Commission misconstrued the meaning of Order No. 20,196 when it stated that

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Order No. 20,196 left open both the issues of prudence of certain property in the 1989 rate case and whether it was used and useful. In the alternative, Consumers asked that the issue of the proper interpretation of the DR 89-224 order be reheard.

In response, OCA argued that Order No. 20,196 did not state that prudence had been found and believed that Consumers should file testimony on the prudence of all property in question growing out of DR 89-224. Staff submitted a response which argued that the Commission could interpret Order No. 20,196 either as concluding that the property in question had been found prudent but the issue of whether it is used and useful was set aside for a later proceeding or, in the alternative, that both the prudence issue and whether the property was used and useful had been set aside for further analysis.

*C. OCA Motion*

OCA argued that on constitutional and statutory grounds, the Commission should rehear its earlier request to dismiss Consumers' rate case. The OCA's argument is that the filing is inadequate because it fails to address excess capacity issues, which Consumers should have anticipated. Efforts to include those issues now, after triggering the 12 month clock for conclusion of a rate case and the 6 month clock for putting rates into effect under bond, is unfair to ratepayers. OCA argues the case should be dismissed with leave for Consumers to refile if it feels that is necessary.

OCA also argued in the alternative that if the Commission were to reject the Motion as being inappropriate as a motion for rehearing, it should "identify which grounds it finds inappropriate in the Motion for Rehearing so that the remaining grounds can be pursued in a separate Motion to Dismiss." OCA also argued that notice was insufficient in this case because the original notice did not include an analysis of whether certain property identified in DR 89-224 is used and useful.

Staff responded to OCA's Motion, conceding that it had sympathy for the way in which the schedule was now somewhat truncated, but did not believe dismissing the case was necessary.

*D. Procedural Schedule*

After discussion with the Parties on September 22, 1995, Staff proposed a procedural schedule for the duration of the case, to which all but OCA agreed. OCA proposed an alternate



schedule that would go to hearing in late June, 1996, if the Commission did not dismiss Consumers' filing.

### III. COMMISSION ANALYSIS

#### A. *Corrections of Drafting Errors in Order No. 21,796*

We will approve Consumers' two requests for correction of drafting errors in Order No. 21,796. Page 1 shall now include the following amended sentence: "Staff responded to OCA's Motion on July 31, 1995 to which Consumers objected on August 3, 1995." Page 4 shall now include the following amended paragraph:

Consumers argued at the hearing that those items included in rate base in DR 89-224 on which there has not yet been a finding of "used and useful" [strike: or prudence] should be allowed to remain in rate base pending completion of the generic analysis of excess capacity.

#### B. *Interpretation of Order No. 20,196*

[1] We have considered the arguments of Consumers and Staff and reviewed the language of Order No. 20,796. We regret that the language of the order is not more explicit on the issues of prudence, which would have obviated these pleadings. Our review, however, convinces us that though the order is not as clear as it might be, the Commission in DR 89-224 found that investments in all property in the E-22 category as well as in the property in the CIAC category were found to be prudently incurred. The Commission left open the question of whether that property is used and useful.

We reach this conclusion on the basis of

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the language of the order explicitly finding the E-22 property to be prudent (76 NHPUC 521, 526, referencing footnote 2) and a common sense interpretation of the way in which the CIAC property was handled. The Commission did not in that order disallow the CIAC property; rather it adjusted the amount downward for inclusion in rate base and stated that it would consider in a later docket whether the property was used and useful. 76 NHPUC at 526 (Order No. 20,196). We find it illogical to conclude that the CIAC property would have been included in rate base if it were not found to be prudent, in accordance with the standards of ratemaking that property cannot be included in rate base if it is not considered to have been prudently incurred. *Appeal of Conservation Law Foundation*, 127 N.H. 606, 637 (1986).<sup>1(64)</sup> Therefore, we will hear testimony and argument on the extent to which the property addressed in DR 89-224 is used and useful. We will not consider evidence on whether investments in that property were prudently incurred, as that has already been addressed and the investments found to be prudent.

We do not agree with OCA's characterization of Consumers Motion as raising new grounds. We welcome the comments of parties who believe that a drafting error is contained in one of our orders, and further consider it to be appropriate to respond to a request to clarify the meaning of an order in an effort to avoid a request for rehearing.

#### C. *OCA Motion*

[2] We must evaluate OCA's Motion in accordance with the standard governing motions for rehearing contained in RSA 541:3, that is, a motion for rehearing is granted only when good cause is shown. "Good cause" has been defined by our Supreme Court to mean new evidence which could not have been provided at the original hearing. *Appeal of Gas Service, Inc.*, 121 N.H. 797 (1981). OCA has presented no new evidence to compel rehearing of our denial of its original Motion to Dismiss.

OCA suggested that we cull through its pleading and determine which issues fall properly under a motion for rehearing and which are more appropriately contained in a new motion to dismiss. We find this unacceptable. Any party proposing a motion to dismiss or motion for rehearing has the burden to present a compelling case. If OCA believes that a motion to dismiss this rate case is warranted, based on arguments other than those advanced in the original motion to dismiss, it is free to file such a motion. However, we caution the parties not to resubmit those arguments advanced in any prior pleadings.

[3] We have considered the notice in this case and reject OCA's assertion that it is inadequate. The order of notice clearly put customers on notice of the rate case filing and has engendered a good deal of response from some ratepayers and legislators from the affected franchise area. Our expansion of the docket to include an analysis of whether the property emerging from DR 89-224 is used and useful has been identified in subsequent orders and will be noted at the four public hearings held in October and November. We do not believe that cases must be re-noticed for every change in a docket, and never have we applied so strict a rule as to preclude additional issues that were not noted in an initial order of notice. We reject the argument that the case must be dismissed for lack of proper notice or re-notice before going forward.

We are not sympathetic to OCA's argument that it must review Consumers' testimony on used and useful issues on October 30, 1995 before it can develop and put out a request for proposal for a consultant on excess capacity issues. OCA criticized Consumers for not anticipating that excess capacity would be an issue in this case. OCA too could have anticipated the issue; we reject its claim that because it needs a consultant on excess capacity, the procedural schedule should be further extended. We will reject OCA's proposed procedural schedule and adopt the schedule proposed by Staff, as noted below.

We urge Consumers, however, to consider the arguments of OCA regarding the limited time between the filing of the final piece of testimony and the date on which Consumers is entitled to put rates into effect under bond. Under RSA 378:6,I Consumers has a right to

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place its proposed permanent rates under bond within 6 months of the suspension date of the filing, which will be January 20, 1996. We urge Consumers to consider delay of the decision to put rates under bond.

#### *D. Procedural Schedule*

We will adopt the schedule proposed by the Staff and concurred in by all but the OCA, which is as follows:

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

Staff/Intervenor data requests	
on initial filing	Sept. 21, 1995
Technical session on property	Sept. 22, 1995
Consumers responses	Sept. 29, 1995
Consumers Testimony Excess Capacity/ Used and Useful Analysis	Oct. 30, 1995
Staff/Intervenor data requests set #2	Nov. 15, 1995
Consumers responses	Nov. 30, 1995
Technical session	Dec. 5, 1995
Consumers follow-up data responses	Dec. 20, 1995
Staff/Intervenor testimony	Jan. 15, 1996
Data requests to Staff/Intervenors	Feb. 5, 1996
Staff/Intervenor responses	Feb. 19, 1996
Settlement conference, day 1	Feb. 23, 1996
Settlement conference, day 2	Mar. 1, 1996
Filing of settlement agreement, if any	Mar. 7, 1996
Rebuttal testimony if no settlement	Mar. 7, 1996
Surrebuttal testimony	Mar. 12, 1996
Hearing on the merits	Mar. 14-22, 1996

In addition, we should remind the Parties and their constituents that there are four evening public hearings scheduled in locations served by Consumers. Public hearings, beginning at 7:00 p.m., are as follows:

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

Litchfield, Griffin Memorial HS	October 25, 1995
Windham Center School	October 26, 1995
Raymond High School	November 6, 1995
Hudson Memorial School	November 8, 1995

Finally, although we attempt to be as open as possible regarding submissions of Parties and encourage flexibility in filings, we must note for the duration of this case that we will not look favorably on excessive and unnecessary pleadings. Neither Consumers' response to OCA's Objection nor OCA's Motion for Relief added anything which assisted us in our deliberations. Based upon the foregoing, it is hereby

ORDERED, that Consumers Motion is GRANTED; and it is

FURTHER ORDERED, that OCA's Motion is DENIED; and it is

FURTHER ORDERED, that the procedural schedule stated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of October, 1995.

#### FOOTNOTES

<sup>1</sup>RSA 378:28, amended in 1993, now requires that a finding of prudence be made explicit in a rate case order.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., Inc., DR 95-124, Order No. 21,796, 80 NH PUC 545, Aug. 28, 1995. [N.H.] Re Southern New Hampshire Water Co., DR 89-224, Order No. 20,196, 76 NH PUC 521, July 29, 1991; revised July 31, 1991.

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NH.PUC\*10/24/95\*[81122]\*80 NH PUC 671\*Daniels Lake Water Works, Inc.

[Go to End of 81122]

80 NH PUC 671

**Re Daniels Lake Water Works, Inc.**

DR 95-145

Order No. 21,875

New Hampshire Public Utilities Commission

October 24, 1995

ORDER granting a water utility franchise authority and allowing it to charge a *temporary* rate of \$35 per month per customer.

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1. FRANCHISES, § 25

[N.H.] Factors affecting grant — Environmental compliance — Demonstration of technical and managerial abilities — Water utility. p. 672.

2. RATES, § 636

[N.H.] Test or temporary rates — Standard of reasonableness — Less exacting than for permanent rates — Refund provisions — Water utility under new ownership — Factors affecting temporary increases — Recovery of costs of capital improvements — Recovery of costs of environmental compliance. p. 672.

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APPEARANCES: Ransmeier & Spellman by Harold T. Judd, Esq. for Daniels Lake Water Works, Inc.; Edward Shank, *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 May 26, 1995, Daniels Lake Water Works, Inc. (Daniels Lake) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of a franchise and temporary rates for a proposed franchise in a limited area of the Town of Weare, and subsequently the establishment of permanent rates.

On September 6, 1995, the Commission issued Order No. 21,813 which scheduled a hearing on the issuance of a franchise and temporary rates for September 19, 1995.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Daniels Lake*

At the duly noticed hearing on September 19, 1995, Josef Fitzgerald, president of Daniels Lakes, gave testimony on the franchise and temporary rate request. He stated that his responsibilities at present were minimal, in that he provided billing and accounting and consulted with Daniels Lake's attorney and accountant. Mr. Fitzgerald stated that his father Gary Fitzgerald is the certified operator. Gary Fitzgerald is a resident of Weare and resides approximately ten minutes from the water system. Gary Fitzgerald is on call 24 hours a day to provide service to customers, maintenance, superintendence of the plant and is also available to respond to billing inquiries and any complaints.

Josef Fitzgerald stated that at the time he assumed responsibility for the system it was necessary to make a number of improvements, and that since February 1995 the improvements have included a water treatment plant and replacement or relocation of water mains. He testified that the improvements addressed all the

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major violations previously noted by the New Hampshire Department of Environmental Services (DES), Water Supply and Pollution Control Bureau in a sanitary survey of the water distribution system.

Joseph Fitzgerald stated that since assuming responsibility for the system, Daniels Lake has not collected any rates from the customers. The previous rate was \$100 per year. The system presently serves 23 customers and at full build out a maximum of 30 customers would be on the system. Schedules supporting annual operating and maintenance costs provided the basis for the temporary rate request of \$35 per month, per customer, billed in arrears.

### B. *Staff*

Staff engineer James Thyng testified that he believed Mr. Gary Fitzgerald, and therefore Daniel's Lake, had the requisite managerial and technical expertise to operate a water utility. Assistant Finance Director Mark Naylor testified in support of the franchise request and gave his qualified support to the requested level of temporary rates. The previous owners kept no records of operation and maintenance expenses or capital additions, and therefore his opinion would be subject to further revision as his investigation of the Company's books and records of costs continued. Mr. Naylor testified that the proposed temporary rate was within the range of rates found just and reasonable for similarly sized and situated water utilities.

The Town of Weare neither endorsed nor opposed the franchise.

### III. COMMISSION ANALYSIS

[1] Pursuant to RSA 374:22 and RSA 374:26 the Commission finds that Daniels Lake has the technical and managerial expertise to operate this public water utility based on the testimony presented at the hearing on the merits. With regard to the requisite financial expertise, we note that Mr. Josef Fitzgerald testified that he would be working with the Company's financial consultants. We expect him to acquaint himself with the requisite accounting practices necessary to fulfill his office so that Daniels Lake is not entirely dependent upon consultants in this area.

The Commission has also received correspondence from the Water Resources Division, and Water Supply and Pollution Control Division of DES pursuant to RSA 374:22, III both of which indicate they have no objection to the grant of a franchise to Daniels Lake.

Based on the foregoing, we will grant Daniels Lake a franchise in the area described as follows:

In the Town of Weare, running North along Old Town Road starting from South of the intersection of Carolyn Place and Old Town Road;

Bordered on the East and West by Daniels Lake, and;

including both sides of Wayne Drive and Carolyn Place, and;

being the following lots shown on the tax map for the Town of Weare:

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

MapLot

109 30 - 53  
110 1 - 8  
42 - 45  
129 - 132

[2] Based on Mr. Naylor's testimony, we find that the proposed temporary rate is sufficient to yield a reasonable return on the cost of the property of the utility that is used and useful in the public service. Although Mr. Naylor could not unequivocally state the rate was just and reasonable, we note the standard for temporary rates is less exacting than that of permanent rates because of the ability to refund over-collections to customers or collect under-collections from customers once a permanent rate is set pursuant to RSA 378:28. RSA 378:30. *See, e.g., Appeal of the Office of the Consumer Advocate*, 134 N.H. 651 (1991). (Temporary rates are subject to a lesser level of scrutiny as permanent rates.) We further note that Daniels Lake has waived its right to collect any under-collections pursuant to RSA 378:29 should the permanent rate ultimately approved

Page 672

by the Commission be greater than the temporary rate. We find that the public interest requires the establishment of these temporary rates and therefore will approve the proposed temporary rate.

Based upon the foregoing, it is hereby

ORDERED, that Daniels Lake is granted a franchise, as described herein, pursuant to RSA 374:26; and it is

FURTHER ORDERED, that Daniels Lake's request for a temporary rate of \$35 per month per customer is approved for effect on service rendered on or after September 25, 1995 to be billed in arrears on or after November 1, 1995.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1995.

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NH.PUC\*10/24/95\*[81123]\*80 NH PUC 673\*Tilton-Northfield Aqueduct Company, Inc.

[Go to End of 81123]

80 NH PUC 673

**Re Tilton-Northfield Aqueduct Company, Inc.**

DF 95-185

Order No. 21,876

New Hampshire Public Utilities Commission

October 24, 1995

ORDER approving a water utility's proposed borrowing of \$3.124 million so as to convert from a surface water system to a groundwater system, in conformance with the Safe Drinking Water Act.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of notes — Purposes — Additions and betterments — Water utility — Financing of conversion from surface water to groundwater system — Compliance with Safe Drinking Water Act requirements as a factor — Water utility. p. 676.

2. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Sources of supply — Surface water versus groundwater systems — Development of groundwater source versus construction of surface water treatment and filtration system — Safe Drinking Water Act requirements as a factor — Conversion to groundwater system as least-cost alternative. p. 676.

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APPEARANCES: Jay C. Boynton, Esq. on behalf of Tilton-Northfield Aqueduct Company, Inc; and Eugene F. Sullivan III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission for the Staff of the New Hampshire Public Utilities Commission.



Public Comment: Edward Bedard, Tilton Selectman Heeber Feener; and the Selectmen of the Town of Northfield.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On June 20, 1995 Tilton-Northfield Aqueduct Company, Inc. (Tilton-Northfield or the Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting authority to issue a note not to exceed \$3,124,398.13 in order to comply with the requirements of the Safe Drinking Water Act (SDWA). The petition requested a finding by the Commission that the terms and conditions of the note and the proposed use of the funds are prudent and "consistent with the public good", pursuant to RSA 369:1. It also requested the approval of a methodology for a rate increase to service the resulting debt. The petition included testimony and financial exhibits in support of the requested relief.

On July 18, 1995 the Commission issued an order of notice scheduling a prehearing conference for September 6, 1995. On September 6, 1995 the Commission Staff (Staff) and the Company set a procedural schedule to govern

**Page 673**

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the Commission's investigation into the petition setting a final hearing date for September 25, 1995. Between September 6, 1995 and September 25, 1995 the Staff conducted discovery on the petition<sup>1(65)</sup>. At 7:00 p.m. on September 21, 1995 the Commission held a public hearing on the petition at the Northfield Town Hall at which the Company presented its proposed SDWA compliance plan and the public was given the opportunity to provide input relative to the issuance of the proposed notes and the use to which the funds were to be put.

On September 25, 1995 the Commission held the duly noticed hearing on the merits of the petition. Staff and the Company presented a stipulation (Stipulation) and testimony in support of the petition.

### II. POSITIONS OF THE PARTIES AND STAFF, AND PUBLIC COMMENT

#### A. *Tilton-Northfield and Staff*

As is set forth above, Tilton-Northfield and the Staff entered into an agreement supporting Tilton-Northfield's petition. The Stipulation requested a finding from the Commission that the terms and conditions of the note and the proposed use of the funds are prudent. The Stipulation further requested the approval of a methodology for a determination of just and reasonable rates that will provide the Company with sufficient funds to service the resultant debt once the capital items constructed with the funds are providing service to customers.

#### B. *Statement of Edward Bedard*

Edward Bedard appeared at both the public hearing and the hearing on the merits and urged the Commission to deny the Company's request to borrow \$3,124,398.13. Mr. Bedard is a resident and a landlord in the Town of Northfield. He takes service from the Company at



approximately 140 of his apartments.

Mr. Bedard stated that he believed there were lower cost alternatives available to the Company to comply with the SDWA, such as the construction of a surface water filtration system at the Company's current source of supply. He also stated that the Company had chosen a compliance alternative that would allow it to expand its area of operations in a manner that does not benefit existing customers, especially those in the Town of Northfield. Mr. Bedard indicated that he believed the compliance method chosen by Tilton- Northfield would primarily benefit the Town of Tilton.

Finally, Mr. Bedard stated that he would disconnect his apartments, approximately 5% of the Tilton-Northfield's customer base, from the Company's distribution system if the Commission approved the proposed financing petition because of the increase in rates that would inevitably follow.

#### *C. Statement of Tilton Selectman Heeber Feener*

Heeber Feener, a selectman and resident of the Town of Tilton, appeared and spoke at both the public hearing and the hearing on the merits. Mr. Feener gave his unconditional support to the means chosen by the Company to comply with the SDWA. Mr. Feener indicated the plan would bring water to those areas of Tilton zoned for commercial and industrial uses in proximity to Exit 20 of Interstate Highway 93, which have experienced extensive growth in the last few years. He also commented on the need to replace the aging mains in the system that are in constant need of repair.

#### *D. Letter from the Town of Northfield Board of Selectmen*

On September 22, 1995 the Commission received a letter from the Northfield Board of Selectmen in support of Tilton-Northfield's petition. The letter stated that the Company's proposed means of compliance with the SDWA is in the best interest of the growing needs of both the Towns of Tilton and Northfield.

### III. BACKGROUND

In 1990 the United States Environmental Protection Agency (EPA) promulgated a Surface Water Treatment Rule (SWTR), 40 CFR

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§141.70, pursuant to its authority under the 1986 amendments to the SDWA, Pub. L. 99-339, 100 Stat. 642. In 1991 the New Hampshire Department of Environmental Services (DES) accepted primary jurisdiction over the SWTR which requires the filtration and other treatment of most surface water sources of supply for public drinking water by June 29, 1996. The only practical alternative to filtration is the development of groundwater sources of supply to replace surface water sources of supply.

Tilton-Northfield has supplied the Towns of Tilton and Northfield with surface water for over 100 years. The current source of supply is Knowles Pond located in Northfield. Knowles Pond flows to a reservoir, where it is chlorinated and distributed via gravity to the Company's customers. During the 1980's Tilton-Northfield periodically exceeded DES' regulations for the

safe yield of Knowles Pond, leading the Company to question its ability to add new customers to its system.

Since the late 1980's, the Company has sought a source of financing throughout New England that would allow it to construct a surface water treatment facility, or to locate and develop an adequate groundwater source of supply to replace Knowles Pond. Since that time, the Company could find only one financial institution, Bank of New Hampshire (the Bank), willing to lend it the funds necessary to comply with the SWTR.

The Bank's financing commitment is premised on the representations of the Staff that the Commission would incorporate an analysis of the prudence of the proposed means of compliance with the SWTR in the Company's financing request pursuant to RSA chapter 369. The Bank also required the Company to request a revenue increase sufficient to service the resultant debt at the time of the financing petition for effect at the time the capital additions constructed with the borrowed funds are providing service to the Company's customers.

#### IV. COMMISSION ANALYSIS

The primary issue for our consideration is whether the terms and conditions of the proposed financing, and the proposed use of the funds are consistent with the public good. RSA 369:1. Secondly, if we find the proposed financing in the public good, we must determine if the ratemaking methodology proposed in the Stipulation to service the resultant debt is appropriate.

The relevant terms and conditions of the proposed financing require the personal signatures of Kenneth Money and Barbara Money, officers and shareholders of the Company, in addition to a Small Business Administration guarantee up to its maximum amount of \$750,000. The interest rate will be fixed for three years at 175 basis points (1.75%) over the prevailing Wall Street Journal base rate at the time of the acceptance of the commitment letter. Thereafter, the rate will be adjusted every three years based on market conditions at that time. The interest rate review will be at the end of the second year to allow for Commission approval if rates are to be changed. The term of the loan is 11 1/2 years with a 20 year amortization schedule. Payment, fees, and security are detailed in the Bank's commitment letter. *See*, Exhibit #1.

As is set forth above, the Bank is the only source of financing available to Tilton-Northfield because of its size and the size of the loan. Notwithstanding these circumstances, the Commission's finance director testified that the terms and conditions of the note, in particular the interest rate, are within the range of the terms and conditions of financing petitions recently reviewed by the Commission or currently under review by the Commission for larger utilities with better access to the financial markets. Given this testimony, we find the terms and conditions of the proposed financing to be in the public good.

With regard to the proposed use of the funds, in *Appeal of Easton*, 125 N.H. 205 (1984), the Supreme Court held that "the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good - a determination which includes considerations beyond the terms of the proposed borrowing." *Easton*, 125 N.H. at 213; *See also*, *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1984). The Court further held that the "PUC may reject management decisions when

inefficiency, improvidence, economic waste, abuse of discretion or action inimical to the public interest are shown." *Easton*, 125 N.H. at 215.

Thus, the Court has held that the Commission not only has the obligation to review the prudence of the terms and conditions of the proposed borrowing, but also the prudence of the proposed use of funds at the time the utility seeks authority to borrow pursuant to RSA chapter 369.

[1, 2] Applying this standard to Tilton-Northfield's petition, we find the proposed use of the funds, the development of a groundwater source of supply, to be a prudent means of compliance with the SWTR promulgated pursuant to the SDWA. The groundwater source allows Tilton-Northfield to comply with the SDWA by avoiding the requirements of the SWTR, since the SWTR applies only to surface water and not to groundwater.

Tilton-Northfield has examined numerous alternative means of compliance with SWDA and the SWTR, including: 1) building a water treatment facility to treat the water at Knowles Pond, which would have required a pipeline to the Winnepesaukee River to supplement the water in Knowles Pond; 2) building a water treatment facility in Tilton along the Winnepesaukee River, to replace Knowles Pond as the Company's new source of supply; and 3) developing a groundwater source of supply.

With the assistance of its consultant, DL Maher Co., the Company located what has been characterized by the Company and Staff as an excellent groundwater source of supply on State Route 140 in Northfield. The Company then conducted an economic analysis comparing the costs and benefits of each alternative source of supply and the method for transmitting the alternative water supplies to its current transmission and distribution system. Based on this analysis the Company concluded that developing the groundwater source of supply on Route 140 and transmitting the water back to its current transmission and distribution system along Route 140, an option that would not trigger the requirements of the SWTR, was the most prudent means of complying with the SDWA.

Both the Company and Staff testified that the Company's chosen means of compliance with the SDWA was the least cost alternative on a present value basis. The Company and Staff also concluded that this means of compliance was consistent with good utility or business practice because it provided the Company with access to those areas of Tilton and Northfield zoned for, and currently undergoing, commercial and industrial development. They further testified that access to these areas of development created the potential to spread the increase in costs incurred to comply with the SDWA over a larger customer base, thereby minimizing rate increases.

The Company stipulated it would use good faith efforts to attract new customers to its system along the new transmission mains that are experiencing commercial and industrial growth. We anticipate the Company will vigorously attempt to attract these customers. In fact, to ensure that the Company takes full advantage of this potential new source of revenue, we will require our Staff to monitor and evaluate the Company's marketing efforts at periodic intervals. We take this action to ensure that the Company takes appropriate steps to expand its customer base and minimize the effect of inevitable rate increases to customers.

With regard to the concerns expressed by Mr. Bedard, we believe the Company's attempt to expand its service area and potential customers is in the overall interest of all of the residents of

Tilton and Northfield and the ratepayers of those Towns. We also believe the Company has chosen the most economically efficient means of compliance with the SDWA.

We also believe the stipulated means of revenue recovery is in the public good as it allows the Company an opportunity to earn sufficient revenues to service the resultant debt. Our Finance Department shall audit the Company's expenditures as construction progresses.

Although we have found Tilton-Northfield's proposed means of compliance with the SDWA prudent, we will review the actual construction process and practices once the Company seeks to place these capital additions in rates to ensure that the construction process and practices were conducted prudently.

Page 676

We further note that we are barred from allowing recovery until this project results in service to consumers. RSA 378:30-a.

Based upon the foregoing, it is hereby

ORDERED, that Tilton-Northfield is authorized to borrow up to \$3,124,398.13 to meet the requirements of the SDWA; and it is

FURTHER ORDERED, that Tilton-Northfield's chosen means of compliance with the SDWA is prudent; and it is

FURTHER ORDERED, that the stipulated means of deriving Tilton- Northfield's revenue requirement once the new source of supply provides service to customers is approved; and it is

FURTHER ORDERED, the Stipulation entered into between Tilton- Northfield and Staff is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1995.

FOOTNOTES

<sup>1</sup>Although Staff's investigation into the petition appears to have occurred over a very short period of time, we note that our Staff has worked closely with Tilton-Northfield, financial institutions, the New Hampshire Department of Environmental Services and the federal Environmental Protection Agency to assist the Company with compliance with the SDWA since 1989. *See e.g.*, testimony of Douglas Brogan and Eugene F. Sullivan Jr.

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NH.PUC\*10/24/95\*[81124]\*80 NH PUC 677\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81124]

80 NH PUC 677

**Re AT&T Communications of New Hampshire, Inc.**

DE 95-266  
Order No. 21,877

New Hampshire Public Utilities Commission

October 24, 1995

ORDER authorizing an interexchange telephone carrier to introduce long-distance digital data service, incidental to a customer subscribing to integrated services digital network access.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Digital data service — As adjunct to subscription to access service via integrated services digital network — Interexchange carrier. p. 677.

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BY THE COMMISSION:

ORDER

[1] On September 22, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T), requesting authority to introduce AT&T Digital Long Distance Service, for effect October 23, 1995.

AT&T Long Distance Service allows the customer the capability to communicate in data at a digital rate of 64 kilobits per second or in voice. Customers must subscribe to the local exchange carrier's Integrated Services Digital Network (ISDN) for access.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of AT&T Digital Long Distance Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 4 are approved for effect as filed:

*Master Table of Contents*  
3rd Revised Page 1

*Table of Contents*  
Original Page 9

**Page 677**

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*Section 5*  
Original Pages 1-5;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1995.

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NH.PUC\*10/24/95\*[81125]\*80 NH PUC 678\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81125]

80 NH PUC 678

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-272

Order No. 21,878

New Hampshire Public Utilities Commission

October 24, 1995

ORDER authorizing an interexchange telephone carrier to discontinue offering its "Optimum" service to new customers and to provide for grandfathering of existing Optimum customers.

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1. SERVICE, § 275

[N.H.] Discontinuance — By telephone carrier — Of specific service features — Elimination of "Optimum" offerings to new customers — Grandfathering of existing "Optimum" customers — Interexchange carrier. p. 678.

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BY THE COMMISSION:

ORDER

[1] On September 26, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, Inc. (AT&T), requesting authority to grandfather existing AT&T Optimum customers, for effect October 26, 1995 and otherwise discontinue Optimum Service.

The proposed change to the New Hampshire intrastate tariff states that customers who subscribe to AT&T Optimum Service as of September 27, 1995, may continue service, but no customers may order the service after September 27, 1995. There are no intrastate customers who subscribe to this service in New Hampshire.

We approve the petition inasmuch as it closes subscription to new customers as of September 27, 1995. For nationwide consistency, AT&T has chosen to close the service in New Hampshire

rather than withdraw it, and we do not object to that approach. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following page of AT&T's tariff, NHPUC No. 1 is approved for effect as filed:

Section 11, 1st Revised Page 2; and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1995.

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NH.PUC\*10/24/95\*[81126]\*80 NH PUC 679\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81126]

80 NH PUC 679

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-269

Order No. 21,879

New Hampshire Public Utilities Commission

October 24, 1995

ORDER authorizing a local exchange telephone carrier, on a short-term basis, to reclassify certain exchanges to different rate groups, but expressing some concern as to the continued efficacy of the use of such value-of-service-based rate groups.

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1. RATES, § 538

[N.H.] Telephone rate design — Rate groups — Classification of exchanges — Factors affecting reclassification — Consistent exceeding of rate group limits — Local exchange carrier. p. 679.

2. RATES, § 536

[N.H.] Telephone rate design — Rate groups — Based on value-of-service principles — Investigation into continued efficacy of — Local exchange carrier. p. 679.

## 3. SERVICE, § 445

[N.H.] Telephone — Classification of exchanges — Factors affecting reclassification — Consistent exceeding of rate group limits — Local exchange carrier. p. 679.

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BY THE COMMISSION:

ORDER

[1-3] On September 27, 1995, New England Telephone and Telegraph Company (NYNEX or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking to reclassify the Pittsburg, Piermont, Canaan, Milton Mills, Enfield, Plainfield, Wolfeboro, Center Ossipee, Milton, Lebanon, Penacook, Concord and New Boston exchanges that have exceeded their rate group limits for two consecutive years as of June 1995, 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, NYNEX submitted sworn testimony 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. As a direct result of this proposed revision, NYNEX estimates revenues to increase by \$231,700 in the first year this filing is in effect.

Staff recommended that this filing be approved since it is not inconsistent with NYNEX's current tariff. However, Staff stated its objection to such value of service pricing in general and asserted its belief that the number of NYNEX's rate groups should be reduced and that systematic reclassification should be eliminated in the near future. While Staff recommends approval of this particular filing in order to resolve the problem in these exchanges in the short-term, therefore, it asserts that the Commission should undertake a comprehensive review of rate group structure.

Having reviewed the petition and the Staff recommendation, the Commission finds that for the purposes of resolving the problem posed by these exchanges in the short-term, reclassification is in the public good. The Commission agrees with Staff that it is appropriate re-examine the structure of rate groups and the process of automatic reclassification as a whole. A comprehensive analysis, therefore, will be commenced by our Staff before the end of the year.

Based on the foregoing, it is hereby

ORDERED, that NYNEX is authorized to

Page 679

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implement the rate group reclassification submitted in the Company's filing of September 27, 1995; and it is

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



NHPUC - No. 75, Part A - Section 5

Twenty-Sixth Revision of Page 8

Fifteenth Revision of Page 22

Seventeenth Revision of Page 23

Fourteenth Revision of Pages 24 and 25

Fifteenth Revision of Page 26

Thirteenth Revision of Page 27;

and it is

FURTHER ORDERED, that NYNEX send an individualized notice by first-class mail to each customer directly affected by the rate group reclassification, on or before November 7, 1995, 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 N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1995.

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NH.PUC\*10/24/95\*[81127]\*80 NH PUC 680\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81127]

80 NH PUC 680

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 94-276

Order No. 21,880

New Hampshire Public Utilities Commission

October 24, 1995

ORDER approving a special rate contract executed by a local exchange telephone carrier and Lockheed Sanders, Inc., for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — As alternative to private branch exchange — Special contract treatment — Basic commitment amount — Monthly service charge — Separate local exchange usage charge — Local exchange carrier and business customer. p. 681.

## 2. SERVICE, § 463

[N.H.] Telephone — Centrex service — As alternative to private branch exchange — Multiline business customers — Use of special contract arrangements — Overall versus term-by-term reasonableness — Local exchange carrier. p. 681.

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BY THE COMMISSION:

ORDER

The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed Special Contract No. 94-2 for Centrex service between NYNEX and Lockheed Sanders, Inc. (Sanders) on November 18, 1994. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. Also on November 18, 1994, NYNEX filed a motion seeking protective treatment of its filing.

On November 29, 1994, the Commission issued Order No. 21,438 granting NYNEX's motion for proprietary treatment. In January, Commission Staff sought additional information from the Company regarding costs associated with the Additional System Features, as described on Section 1, Page 1 of the filing package. NYNEX responded by providing the additional information.

On March 3, 1995, the Commission received, from Joseph Scotti of Auditel, a motion seeking removal of proprietary treatment of all contracts filed by NYNEX, including the proposed contract with Sanders, and to

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deny proprietary treatment of all future contracts. On March 16, 1995, the Commission opened docket DR 95-069 to address the issues raised in the Auditel motion. On July 10, 1995, the Commission issued Order No. 21,731 approving in part and denying in part Auditel's motion to remove confidential treatment of special contracts. On July 28, 1995, NYNEX submitted a copy of the filing package, including Special Contract No. 94-2, redacted to comply with Order No. 21,731.

[1, 2] Sanders, located in Nashua, New Hampshire, currently purchases Centrex service from NYNEX under a special contract signed in 1986. As a large purchaser of Centrex service, Sanders has available competitive substitutes in the form of customer owned private branch exchanges (PBX). Permitting NYNEX to go off tariff and to offer Centrex service to Sanders under special contract, allows NYNEX to respond to competitive pressures. NYNEX's proposed contract includes a three element price structure including a commitment amount, a monthly service charge and a local exchange usage charge. In addition, Sanders must pay the Federal Communications Commission's End User Common Line charge.

Staff believes that, when examined in its entirety, the proposed special contract provides benefits to the general body of ratepayers in New Hampshire by providing contribution to fixed costs. However, when examined on an element by element basis, Staff expressed concern that

NYNEX's price structure was not well aligned to cost. Staff recommended that the Commission approve the special contract, based on its totality. However, Staff cautioned the Commission that some rate elements when considered on their own are of questionable merit.

We note Staff's concerns regarding NYNEX's pricing of individual rate elements. Having reviewed the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest. However, we caution the Company that approval of this special contract does not constitute acceptance of this form of ratemaking for future filings, especially as we move towards an environment of unbundling.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 94-2 with Lockheed Sanders, Inc. is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 94-2, 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, Inc. in Special Contract No. 94-2; 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 October 31, 1995 and to be documented by affidavit filed with this office on or before November 7, 1995; 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 November 14, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 21, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 23, 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 twenty-fourth day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. Co., DR 94-276, Order No. 21,438, 79 NH PUC 650, Nov. 29, 1994.

**Page 681**

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*10/30/95\*[81128]\*80 NH PUC 682\*Northern Utilities, Inc.

[Go to End of 81128]

80 NH PUC 682

**Re Northern Utilities, Inc.**

DR 95-101

Order No. 21,881

New Hampshire Public Utilities Commission

October 30, 1995

ORDER approving a natural gas local distribution company's plan for the first full-scale demand-side management program undertaken by a gas utility in the state. Program components will focus on water- and space-heating measures for residential customers and on insulation and clock thermostat devices for commercial and industrial customers.

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1. CONSERVATION, § 1

[N.H.] Demand-side management programs — Residential components — Hot water heating and space heating — Commercial and industrial components — Insulation and clock thermostat projects — Financing via guaranteed loans — Regular reports as to participation and results — Local gas distribution company. p. 684.

2. GAS, § 7

[N.H.] Operational practices — Demand-side management programs — Full-scale versus pilot efforts — Monitoring of customer participation and progress — Residential and commercial heating and insulation projects — Local gas distribution company. p. 684.

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APPEARANCES: LeBoeuf, Lamb, Greene & MacRae by Paul B. Dexter, Esq. on behalf of Northern Utilities, Inc.; Office of the Consumer Advocate by Kenneth R. Traum on behalf of Residential Ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 14, 1995, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a proposed Demand Side Management (DSM) Program along with supporting testimony and exhibits. Northern requested pre-approval of programs and

recovery of all associated costs. Because Northern is the first gas company in New Hampshire to undertake a full-scale DSM program, the Commission contacted EnergyNorth Natural Gas, Inc. (ENGI) to suggest participation in the docket relative to DSM standards which might affect ENGI. On June 28, 1995, ENGI filed a motion to intervene which the Commission granted by Order No. 21,787 dated August 15, 1995. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

During the course of the docket as detailed in a procedural schedule approved by the Commission in Order No. 21,691, dated June 20, 1995, Northern, ENGI and the OCA (collectively the Parties) and Commission Staff (Staff) exchanged discovery requests and responses and participated in two technical discussions. Staff filed testimony on September 14, 1995; neither OCA nor ENGI filed testimony.

Settlement discussions occurred on October 12, 1995, at which all of staff's with one exception, were resolved. At a hearing on the merits held October 20, 1995, the Parties and Staff presented a Stipulation for the Commission's consideration and oral argument regarding the one outstanding issue.

## II. POSITIONS OF THE PARTIES AND STAFF

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### A. Background

Northern's proposed plan offers DSM measures to Residential Heating, Residential Non-Heating and Commercial and Industrial (C&I) customers. The measures were screened on the basis of avoided costs using the total resource cost test, which permits a conservation measure to be offered only if the total benefits, including avoided costs and any operational savings, exceed the cost of the measure. Under the proposed plan residential customers will be offered a Water Heating Customer Program and a Space Heating Program. Small C&I customers will be offered a variety of measures such as attic insulation, wall insulation, clock thermostats, duct or pipe insulation, an incremental incentive for the installation of a high efficiency heating system; and large C&I customers will be offered more customized services based upon walkthrough energy audits and engineering studies. For both small and large C&I customers, Northern proposes financing assistance for eligible measures. All of the measures Northern proposes to offer are described in Appendix I of the Stipulation.

The Parties and Staff entered into a Stipulation regarding all issues except one. The litigated issue concerns Northern's proposed financing plan for its Commercial and Industrial customers.

### B. Stipulation

The Parties and Staff agreed that, for the twelve month period beginning November 1, 1995 (Program Year), Northern will offer the DSM programs described in Appendix I to the Stipulation. General overhead costs will be allocated to each program using percentages based upon the relationship of direct cost for each program as compared to the total direct costs for all programs. A portion of Bay State Gas Company's labor and benefits costs, estimated to be \$24,740, shall be allocated to Northern's DSM programs and collected through Northern's Conservation Charges (CCs). Seventy-five percent of the costs of the installed measures will be

offered to low income tenants. The Parties and Staff agreed to an implementation budget and a cost accounting program for the Program Year.

The Parties and Staff agreed that Northern need not offer residential customers DSM financing program options funded through the CCs other than that now being offered by a financing subsidiary of a Northern affiliate company. The financing program provides the ability to borrow up to \$10,000 to make qualified energy efficiency improvements, underwritten on the basis of "FannieMae" credit criteria. No costs of the financing program are to be included in the CCs.

The Parties and Staff agree that CCs shall be implemented effective for the first billing cycle on or after November 1, 1995, reflecting the Program Year budget shown on Appendix II and including recovery of Lost Net Base Revenues on an estimated basis. Reconciliation of any over- or under-collection with carrying charges will be included in the CCs for the next Program Year. CCs shall be \$0.0140 and \$0.0052 for Residential water heating and heating customers respectively. Staff and the Parties agree that, without including costs of any financing program which the Commission may approve, CCs for C&I customers shall be \$0.0212.

As in electric industry DSM programs, the Parties and Staff agreed that Northern may collect a Performance Incentive as a result of the DSM programs implemented in the Program Year in accord with the Stipulation, to be calculated and collected in the next Program Year. In addition, the Parties and Staff agreed that Northern may recover, subject to audit, the costs associated with a DSM Pilot Program approved by Commission Order No. 20,707 in DR 92-045.

The Parties and Staff agreed that Northern will undertake Monitoring and Evaluation efforts, outlined in Appendix VII of the Stipulation, and summarize the results of those efforts in next year's DSM filing.

### C. C&I Financing Plan

#### 1. *Northern*

Northern proposes providing financing

**Page 683**

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options for C&I customers' DSM measures in conjunction with a commercial bank. The financing program permits customers to borrow up to \$50,000 for 5 years at the prime rate and Northern will guarantee all loans against default. An outside consulting firm, the Catalyst Group, will perform all underwriting functions. The costs of underwriting all loans and performing any necessary credit reviews are included in the borrowing rate. The Catalyst Group will also complete all documentation for the loans, charging Northern a \$200 fee per loan.

Northern argued that it should recover all the loan processing fees and any losses resulting from customer default. Projecting 14 loans during the first program year, Northern seeks to include recovery of \$2,800 loan fees through the CCs. Projecting a 5% bad debt rate, based on research performed by the Catalyst Group, Northern anticipates a \$4,475 bad debt write-off in future years. Northern plans to recover that amount through the CCs, arguing that all company incurred DSM costs should be recovered.

Northern testified that its plan is less expensive than the interest rate buy-downs used by some other DSM programs. Northern argued that the total cost to buy-down from market rates would be \$12,442 whereas the total cost to buy-down from guaranteed rates would be \$4,475.

## 2. Staff

Staff argued that Northern's plan to acquire prime rate financing in exchange for Northern's guarantee of the loans actually places the risk of default upon non-participants in the DSM programs. Although only some of Northern's customers will utilize the financing program, all Northern's customers pay CCs. Staff pointed out that assumption of the risk of loss could more reasonably be assumed by the risk-taker, i.e., the lender or the guarantor. Staff's experience with DSM in the electric industry has been to minimize the risk placed on customers. The purpose of financing plans, according to Staff, is to reduce CCs by having the DSM participants assume more of the costs of conservation measures. Northern's plan does not achieve that purpose.

Staff also questioned Northern's comparison of the cost of its proposed guarantee versus a buy-down from market rates. The market interest rates used by Northern were 19%, 17%, and 14.5%.

## III. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony and exhibits and find that the DSM measures proposed in the Stipulation are reasonable and in the public good. As in our application of the principles of DSM in the electric industry, which we discussed fully in our Order No. 19,905, *Re Incentives for Conservation and Load Management*, 75 NHPUC 527 (1990), our interest in promoting DSM is to capture its benefits for ratepayers, the utility and the public at large. In considering this Stipulation we are satisfied that programs are expected to provide net benefits in that the value of each program to customers exceeds the total cost of the program's implementation. Residential low income customers are provided DSM opportunities, although larger savings can be anticipated from the commercial and industrial customers. Financing options have been provided to both residential and C&I customers. Reporting requirements for Monitoring and Evaluation efforts are sufficient. We will therefore approve the Stipulation with appropriate changes to the Conservation Charges as may be necessary due to our decision on the financing plan.

After review of the oral arguments presented by Northern and by Staff regarding the proposed financial plan, we find that Northern's proposed plan to guarantee loans in order to obtain a favorable interest rate is a reasonable plan and in the public good. We recognize that there is risk involved and that the risk may fall on all ratepayers just as the Conservation Charges of DSM programs fall on all ratepayers. The risk appears small: Staff testified that no defaults have been reported in the electric industry C&I financing programs. In addition, Northern's ability to find a bank willing to enter into a buy-down scenario as favorable as the guarantee program is questionable.

By approving Northern's financing plan,

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the CCs, as reported in Appendix III of the Stipulation, change for C&I customers.



According to an amended Appendix III, submitted by Northern along with other late filed exhibits and reviewed by Staff and the OCA, the cost of the commercial program increases from \$317,743 to \$320,543. The overall cost of the full DSM program thus increases from \$557,432 to \$560,232. The CC Rate changes from \$0.0212 to \$0.0213.

In order to insure Staff's ability to analyze the progress of the DSM measures and the innovative financing plan we here approve, we will require monthly and quarterly reports be filed with the Commission by Northern. The monthly reports are to include: the actual and estimated recovery of CCs, and a variance analysis demonstrating the difference between the amount recovered in each program and the actual costs thereof. The quarterly reports are to include: the number of inquiries received about the program, the number of applications received, an indication of how each applicant learned of the financing program, the number of applications approved as participants, a description of each participant's DSM measures for which financing was sought, the percentage of the total costs of the DSM measures covered by financing any defaults occurring under the financing program described above, and the expected savings estimated will be attained by the DSM measures financed.

Based upon the foregoing, it is hereby

ORDERED, that the 1995-1996 DSM programs, as proposed in the filing and revised by the Stipulation, are approved at a total budget level of \$560,232, and shall be implemented as of November 1, 1995; and it is

FURTHER ORDERED, that the DSM financing plan proposed by Northern is approved with a quarterly reporting requirement as described above.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Northern Utilities, Inc., DE 92-045, Order No. 20,707, 77 NH PUC 803, Dec. 21, 1992.

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NH.PUC\*10/30/95\*[81129]\*80 NH PUC 685\*Northern Utilities, Inc. - New Hampshire Division

[Go to End of 81129]

80 NH PUC 685

### **Re Northern Utilities, Inc. - New Hampshire Division**

DR 95-257

Order No. 21,882

New Hampshire Public Utilities Commission

October 30, 1995



ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a credit of 5.24 cents per therm, a significant decrease from the last authorized winter CGA.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors affecting decrease — Credit mechanism — Prior-period overcollections — Pipeline refunds — Increase in interruptible sales margins — Minimization of supply costs — Local distribution company. p. 689.

### 2. APPORTIONMENT, § 10

[N.H.] Expenses — Capacity-related demand charges — Gas utility — Multi-state operations as a factor — "Proportional responsibility" (PR) allocation method — Effect on winter cost-of-gas adjustment filings — Simultaneous approval of PR method by all relevant state agencies. p. 689.

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### 3. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Reasonableness of procurement practices — Compliance with least-cost directives — Use of spot market opportunities — Impact on winter cost-of-gas adjustment filings. p. 689.

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APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Kenneth E. Yasuda, Sr., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

### I. PROCEDURAL HISTORY

On September 15, 1995, Northern Utilities, Inc., (Northern), a public utility engaged in the business of distributing and transporting natural gas to select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission), Thirteenth Revised Page 32, Sheet No. 1 and Ninth Revised Page 32, Sheet No. 2, superseding Twelfth Revised Page 32, Sheet No. 1 and Eighth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C., which provides for a Winter 1995/1996 Cost of Gas Adjustment (CGA) for the period November 1, 1995 through April 30, 1996, effective November 1, 1995. The filing was accompanied by the pre-filed direct testimony and supporting attachments of Elizabeth S. McDonough, Manager of Gas Costing and Rate Analysis, and Thomas A. Sacco, Vice President of Gas Supply.

Separately on September 15, 1995, Northern also filed a Motion for Protective Order and Confidential Treatment, which was granted by the Commission on September 25, 1995 in Order No. 21,826.

On October 18, 1995, Northern filed with the Commission, Fourteenth Revised Page 32, Sheet No. 1 and Tenth Revised Page 32, Sheet No. 2, superseding Thirteenth Revised Page 32, Sheet No. 1 and Ninth Revised Page 32, Sheet No. 2, respectively. Northern's updated 1995/1996 Winter CGA is a credit of \$0.0524 per therm, exclusive of the New Hampshire State Franchise Tax which was eliminated in the Summer of 1994. This represents a decrease of \$0.0555 per therm over the 1994/1995 Winter CGA period per therm charge of \$0.0031.

Also on October 18, 1995, Northern filed with the Commission an explanation of the "Proportional Responsibility" (PR) methodology used to allocate fixed, capacity-related demand charges between New Hampshire and Maine. In its updated 1995/1996 Winter CGA filing, Northern proposed to utilize the PR methodology to allocate the relevant fixed costs between its New Hampshire and Maine Divisions.

## II. POSITIONS OF NORTHERN AND STAFF

### A. *Northern*

In addition to Ms. McDonough and Mr. Sacco, Joseph A. Ferro, Northern's Manager of Pricing Services, testified at the duly noticed public hearing on October 19, 1995.

Ms. McDonough detailed the proposed cost of gas adjustment calculations, addressing in particular the diverse causes of the rather large negative Winter CGA. As noted in her testimony, the four major factors which contributed to the CGA decrease were (i) the return to firm ratepayers of the large prior period over- collection (stemming from an unusually warm 1994/1995 winter season), (ii) an increase in interstate pipeline refunds to firm sales customers, (iii) a continued reduction in product commodity costs, and (iv) an increase in interruptible sales margins. These four components help to explain the large credit of \$0.0524 per therm, which is a decrease of \$0.0555 per therm from last winter's charge of \$0.0031 per therm.

Ms. McDonough also discussed Northern's proposed PR fixed cost allocation methodology. The PR methodology assigns Northern's total annual fixed demand costs to the individual months on the basis of the peak

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demand for each month, and then allocates the resulting assigned monthly fixed demand costs to each Division, New Hampshire and Maine, on the basis of firm sendout factors. In Northern's assessment, the PR methodology more closely mirrors the true cost causation of each Division. The rate impact for New Hampshire of adopting the PR allocation methodology is to reduce the CGA rate by \$0.0022 per therm from the rate filed on September 15, 1995.

Ms. McDonough summarized her oral testimony on the PR methodology, noting that (i) Northern's bottom line is not affected either positively or negatively by the adoption (by both States) of this new cost allocation methodology, (ii) Northern is advancing this new approach because it believes it more accurately represents the true cost picture for the two Divisions, and

(iii) Northern is making this PR proposal contingent upon both State Commissions accepting it.

Should either State Commission reject the proposed PR methodology, Northern has requested that a revised 1995/1996 Winter CGA credit of \$0.0502 per therm become effective November 1, 1995. This revised CGA reflects the current fixed cost allocation mechanism. See Exhibit 4 for the details of the calculation of this revised CGA credit.

Mr. Sacco's written and oral testimony described how Northern met the gas requirements of its customers during the 1994/1995 Winter season and explained how Northern will meet these requirements for the upcoming heating season. In describing last year's activities, Mr. Sacco underscored that the 1994/1995 Winter season was one of the warmest winters in recent history, approximately eight (8) percent warmer than normal, when measured in effective degree days. This weather anomaly partially accounted for the increased availability of pipeline natural gas and the less-than-full utilization of underground storage capacity. Assuming normal weather conditions, Northern expects to utilize approximately 90 percent of its underground storage capacity during the 1995/1996 winter period. The 1993/1994 Winter season, which was marked by an abnormally cold winter, had a utilization rate for underground storage capacity of 97 percent; the 1994/1995 Winter season found only 55 percent of Northern's underground storage capacity utilized.

Northern's ProGas supply used during the 1994/1995 Winter season was particularly scrutinized. This is a gas supply which was first examined in the context of an Affiliate Contract between Northern and Bay State Gas Company during the 1992/1993 Winter season CGA hearing. In response to cross-examination from the Commission Staff (Staff), Mr. Sacco noted that while ProGas proved to be somewhat costly this past year, displacing cheaper gas supplies on the order of \$25,000, the cumulative performance of the ProGas supply was still very much to the benefit of Northern's firm customers. In particular, the savings from the displacement of more expensive gas supplies was in the neighborhood of \$1,427,000 and \$60,000 during the 1992/1993 and 1993/1994 Winter seasons, respectively. Mr. Sacco agreed to keep the Commission apprised of the cost performance of the ProGas supply on both an annual and cumulative basis.

With respect to how Northern will meet the gas requirements of its customers during the upcoming winter period, Mr. Sacco described briefly the steps taken by Northern to secure a diverse and reliable yet economically efficient gas supply portfolio. In particular, Mr. Sacco noted that the selection criteria utilized by Northern over the past two years have not changed for this upcoming Winter season, where four new pipeline natural gas supply contracts are set to come into effect. In addition to fully utilizing its daily allocation of pipeline natural gas (from existing and new supply contracts), other sources of gas supply include underground storage, liquified propane, Bay State LNG, and a new contract for supplemental supply from Gaz Metropolitan, Inc. (GMI). Like the Bay State supplemental supply, Mr. Sacco anticipates that GMI, through its unique operational terms, will provide a very high degree of flexibility.

Mr. Sacco stated that the estimated level of utilization of the underground storage capacity for this Winter season will be less than in prior years, weather-related issues aside. He

anticipates that the interruptible transportation (IT) or "best-efforts" transportation service from Northern's Penn-York storage facilities on the Tennessee Gas Pipeline (TGP) will be somewhat restricted; this was the case during the 1994/1995 Winter season — which is another reason for the under utilization of the Northern's storage capacity last year. Mr. Sacco further indicated that Northern will continue to monitor the level of IT (best efforts) service from TGP and will reflect such analyses in future estimates of underground storage availability.

In his oral testimony, Mr. Ferro focused on the calculation and allocation of interruptible sales margins and costs between the New Hampshire and Maine Divisions and (ii) the status of Northern's cost recovery of its capital investment at PSNH's Newington plant.

The first issue was raised in DR 94-226, Northern's New Hampshire Division 1993/1994 Winter CGA proceeding. In that docket, it was determined, in the wake of FERC Order No. 636, that Northern implemented a new methodology for first calculating and then allocating the interruptible sales margins between its New Hampshire and Maine Divisions. Specifically, certain monthly gas costs, including possibly those for interruptible sales service, had to be recorded on an estimated basis since some supplier invoices had not been received in time for the monthly closing of Northern's books. A true-up of all gas costs was made 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 sendout volumes (approximately 50 percent to each Division). Under Northern's new methodology, no attempt was made to separate the interruptible sales portion of the monthly true-up of total gas costs.

Order No. 21,407, dated November 2, 1994, which stemmed from DR 94-226, directed Northern to conduct a study implementing a more refined and accurate calculation and allocation of interruptible sales margins and gas costs between the two Divisions, along the lines suggested by Staff in the aforementioned docket. Specifically, Staff recommended that the interruptible sales portion of the monthly true-up of total gas costs be identified and the resulting interruptible sales margins allocated to the two Divisions based on the monthly interruptible sales sendout volumes associated with each Division.

Northern conducted such an analysis for the period November 1, 1993 through October 31, 1994 and reported the findings in a letter to Mr. Stuart Hodgdon, Chief Auditor of the Finance Staff, dated January 17, 1995. An update containing a correction was submitted to Mr. Hodgdon on March 23, 1995. See Exhibits 9 and 10.

As noted by Mr. Ferro, the results contained in Exhibit 10 showed that the New Hampshire Division's firm gas costs would have increased by \$2,422 for the twelve months ended October 1994; correspondingly, there would have been a decrease of \$2,422 in interruptible gas costs and an increase in interruptible sales margins of \$2,422. Given the significant amount of time and effort expended by Northern to produce these more accurate figures, and given the small magnitude of change in the interruptible sales margins, Mr. Ferro argued that such an expenditure of resources was not in the best interest of Northern's ratepayers. In essence, Northern's position has remained the same as in DR 94-226.

Concerning the status of the capital investment cost recovery at PSNH's Newington plant, Mr. Ferro reported that a little over \$700,000 of the original \$1,072,443 capital investment expenditure has been recovered as of October 1, 1995, and that all other things being equal, the

remaining amount should be recovered before the end of the Special Contract period.

*B. Staff*

With the exception of the issue of the calculation and allocation of interruptible sales margins and costs between the New Hampshire and Maine Divisions, Staff indicated its support for Northern's 1995/1996 Winter CGA filing.

In particular, upon review of Northern's filing, Staff generally concluded that (i) Northern's gas purchasing policies are sound

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and reasonable, (ii) Northern is utilizing its available resources in a manner which minimizes gas costs, (iii) Northern's proposed PR fixed cost allocation methodology is far superior to the current methodology based just on annual firm sendout factors and, as such, should be adopted, and (iv) Northern's proposed 1995/1996 Winter CGA credit of \$0.0524 per therm is reasonable and should be approved.

James Cunningham, Jr., PUC Examiner, testified on behalf of Staff regarding the contentious and difficult issue of the proper accounting treatment of interruptible sales margins and costs. In his oral testimony, Mr. Cunningham again critiqued Northern's current methodology for 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 monthly total gas cost true-ups, interruptible sales margins could not be accurately calculated. Furthermore, Mr. Cunningham contended that from an accounting standpoint, it is not correct to allocate interruptible sales margin true-ups on the basis of the firm MMBtu sendout volumes of each Division. Lastly, Mr. Cunningham argued that even though Northern's study of the November 1, 1993 through October 31, 1994 period showed only a minor increase in interruptible sales margins, Northern could not guarantee that such would always be the case in subsequent years. Further, 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.

### III. COMMISSION ANALYSIS

**[1-3]** Based upon the record in this case, 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 Northern to be reasonable and cost effective. We would expect Northern, however, to make a mid-course correction should changes in the spot market gas prices result in gas costs markedly different from those projected.

We have carefully reviewed the proposed PR methodology to allocate fixed, capacity-related demand charges between New Hampshire and Maine and concur with Northern and Staff that it more accurately assigns these costs to the two Divisions. We are also sensitive to the fact that this new methodology must be adopted simultaneously by the two States, in order to protect both ratepayers as well as Northern from either an over- or under-collection of all CGA- includable costs in the instance where just one State adopts the PR approach. As such, we approve the use of the PR methodology in this and subsequent CGA proceedings, contingent upon acceptance of

this same methodology by the Maine Public Utilities Commission (Maine Commission) in its Winter cost of gas review.

We also find the proposed Winter CGA rate of (\$0.0524) per therm, calculated under the proposed PR methodology, to be just and reasonable and in the public interest, provided that the Maine Commission has also adopted the same PR methodology, and will approve this CGA rate, contingent upon this adoption by the Maine Commission.

Should the Maine Commission not adopt the proposed PR methodology, we then approve the alternate Winter CGA rate of (\$0.0502) per therm, calculated using the current fixed cost allocation methodology and detailed in Exhibit 4, and find this alternative rate to be just and reasonable and in the public interest, under this circumstance.

With respect to Northern's method of calculating and allocating the monthly true-ups of interruptible sales margins, we note that while we appreciate the principle that Staff is upholding, we nevertheless agree with Northern at this juncture, that the net benefit to New Hampshire ratepayers is better served using Northern's methodology. We further observe that in both the January 17, 1995 and March 23, 1995 letters from the Company to Mr. Hodgdon, Exhibits 9 and 10 respectively, Northern indicated that its new gas tracking software system provides more accurate information regarding incremental gas supply purchases and gas costs which will help to minimize the differences

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between the positions of Northern and Staff. Nevertheless, we encourage the Finance Staff to continue to audit Northern's process of calculating and allocating the interruptible sales margins between the two Divisions, and should it appear that these differences are widening, Staff shall report this information to both the Commission and Northern.

Based upon the foregoing, it is hereby

ORDERED, that Fourteenth Revised Page 32, Sheet No. 1 and Tenth Revised Page 32, Sheet No. 2, superseding Thirteenth Revised Page 32, Sheet No. 1 and Ninth 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 (\$0.0524) per therm for the period of November 1, 1995 through April 30, 1996, is approved by this Order, conditioned upon the Maine Public Utilities Commission (Maine Commission) adoption of the Proportional Responsibility (PR) methodology for allocating fixed, capacity-related demand charges between New Hampshire and Maine in its Winter cost of gas review, effective for bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that should the Maine Commission not adopt the PR methodology, Northern shall file the appropriate tariff pages providing for a CGA of (\$0.0502) per therm for the period of November 1, 1995 through April 30, 1996, effective for bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that the over-/under-collection 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 date 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 percent trigger mechanism, Northern shall file a revised CGA; and it is

FURTHER ORDERED, that Northern shall continue to use its current methodology in calculating and allocating the monthly true-ups of interruptible sales margins between New Hampshire and Maine. The Commission Finance Staff shall continue to review this process during the course of its audit and shall report any new developments to the Commission and Northern; and it is

FURTHER ORDERED, that Northern file N.H.P.U.C. No. 2 Tariff in compliance with this Commission Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 94-226, Order No. 21,407, 79 NH PUC 612, Nov. 2, 1994.

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NH.PUC\*10/30/95\*[81130]\*80 NH PUC 690\*Northern Utilities, Inc.

[Go to End of 81130]

80 NH PUC 690

### **Re Northern Utilities, Inc.**

DR 95-258

Order No. 21,883

New Hampshire Public Utilities Commission

October 30, 1995

ORDER adopting stipulation as to a \$255,931 step rate increase for a natural gas local distribution company, so as to cover additional costs of a bare steel piping replacement project.

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#### 1. RATES, § 380

[N.H.] Gas rate design — Special factors — Necessity of replacing corroded bare steel piping — Step increase — Stipulation. p. 692.

#### 2. GAS, § 5.1

[N.H.] Safety matters — Hazards posed by corrosion and deteriorating bare steel piping — Replacement program — Funding via step rate increase. p. 692.



## 3. SERVICE, § 292

[N.H.] Service pipes and connections — Replacement projects — Factors — Corroded, deteriorated bare steel piping — Funding via step rate increase — Gas distribution company. p. 692.

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APPEARANCES: Richard P. Cencini for Northern Utilities, Inc.; Eugene F. Sullivan, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

## I. PROCEDURAL HISTORY

On July 21, 1992 in Docket DR 91-081, the New Hampshire Public Utilities Commission (Commission) approved by Order No. 20,546 the Settlement Agreement proposed by the Commission Staff (Staff) and Northern Utilities, Inc. (Northern) for Northern's permanent rate case which had been filed on July 18, 1991. The Settlement Agreement included a provision for periodic step adjustments for certain defined investments and depreciations in a program for replacement of bare steel. Northern is replacing its unprotected bare steel mains with either cathodically protected mains or plastic mains (depending on the required pipeline pressure). This replacement program was implemented throughout the natural gas industry in order to minimize active corrosion and gas leaks.

On September 15, 1995, pursuant to the Settlement Agreement and Order No. 20,546, Northern filed a petition for a step adjustment to base rates, to be effective with the November 1, 1995 billing cycle (Petition). The Petition seeks an adjustment to rates to recover the depreciation and return on certain non-revenue producing investments related to its main placement program.

This is Northern's fourth annual step adjustment filing pursuant to Order No. 20,546. The requested increase in base rate revenues was \$279,089.

Northern, on September 28, 1995, prefiled testimony of its Regulatory Affairs Director, Richard P. Cencini.

By Order of Notice (September 19, 1995) the Commission set a deadline for intervention by October 6, 1995. There were no intervention requests. The Office of Consumer Advocate is a statutorily authorized intervenor, though it did not participate in the docket.

The Commission also scheduled a technical session to address the contents of the Petition, an audit performed by Staff and to explore the possibilities of settlement. Northern and Staff filed on October 12, 1995 a Stipulation on Proposed Step Adjustment (Stipulation). The Commission heard evidence in support of the Stipulation on October 17, 1995.

## II. POSITIONS OF NORTHERN AND STAFF



Mr. Cencini testified in support of the Stipulation which agrees upon a slightly lower revenue increase of \$255,931. The reduction is due to actual expenses rather than originally forecasted amounts, updated deferred taxes and adjustments made after the Commission's audit. The Stipulation provides as follows:

1) Base rates will be increased to reflect a pre-tax rate of return of 13.19% and related income taxes on Northern's replacement investment in capital expenditures from October 1, 1994 through September 30, 1995;

2) Base rates will also be increased to reflect annualized depreciation expense on those plant additions, based on the depreciation rates agreed to in DR 91-081;

3) The step adjustment is reduced by \$71,916, the amount equal to the net increase in revenues from Domtar Gypsum, Inc., a large customer of Northern. This adjustment was made in order to compensate for additional revenues 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 of the Stipulation.

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The impact on a typical residential customer is estimated by Northern to be an increase of less than 1%, resulting in less than \$1.00 per month in additional charges.

### III. COMMISSION ANALYSIS

[1-3] We have reviewed the Stipulation and testimony in support of the Stipulation and find the stipulated recovery amount of \$255,931 to be reasonable. The investments required to replace Northern's bare steel mains have been prudently incurred and are used and useful in the provision of utility service. We will approve the Stipulation as filed.

At the hearing we requested a map or maps from Northern delineating the location of mains which have been replaced and those which still need replacement. As the work progresses in the remaining years of the project, Northern should include updated maps and indications of areas remaining to be done, in its step adjustment petition.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation between Northern and the Staff for an increase to base rate revenues of \$255,931 per year, to recover depreciation and return on investments related to Northern's bare steel replacement program is APPROVED for bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that Northern submit compliance tariffs within 15 days of this order; and it is

FURTHER ORDERED, that Northern submit a map delineating the location of mains which have been replaced and areas still to be replaced in coming years within 30 days of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

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\*10/30/95\*[81131]\*80 NH PUC 692\*Northern Utilities, Inc. - Salem Division

[Go to End of 81131]

80 NH PUC 692

**Re Northern Utilities, Inc. - Salem Division**

DR 95-259

Order No. 21,884

New Hampshire Public Utilities Commission

October 30, 1995

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a rate of 28.76 cents per therm.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors — Overall reasonableness of supply procurement practices — Exclusion of state franchise tax — Local distribution company. p. 692.

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APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Kenneth E. Yasuda, Sr., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1] On September 15, 1995, Northern Utilities, Inc. (Northern or the Company), a public utility engaged in the business of distributing and transporting gas in select cities and towns of New Hampshire, filed with this Commission Seventh Revised Page 33, superseding Sixth Revised Page 33, N.H.P.U.C., providing for the Winter 1995/1996 Cost of Gas Adjustment

(CGA), effective November 1, 1995. The filing was accompanied by a cover letter and supporting schedules from Michael J. Harn, which explained the filing. The proposed CGA is a charge of \$0.2876 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 19, 1995 at 10:00 a.m. at the Commission's office in Concord, New Hampshire.

The topics covered in the Company's filing and the oral testimony of Mr. Harn included a description of the gas supplies and costs for the Salem Division.

## II. COMMISSION ANALYSIS

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, 1995.

Based upon the foregoing, it is hereby

ORDERED, that Seventh Revised Page 33, superseding Sixth Revised Page 33, N.H.P.U.C. tariff of Northern Utilities, Inc. (Northern) — Salem Division, providing for the Winter 1995/1996 Cost of Gas Adjustment (CGA) charge of \$0.2876 per therm for the period November 1, 1995 through April 30, 1996 is hereby approved, said rate to become effective for bills rendered on or after November 1, 1995; 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 percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the Company file N.H.P.U.C. No. 2 Tariff in compliance with this Commission Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, PUC 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

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NH.PUC\*10/30/95\*[81132]\*80 NH PUC 693\*EnergyNorth Natural Gas, Inc.

[Go to End of 81132]

80 NH PUC 693

**Re EnergyNorth Natural Gas, Inc.**

DR 95-255  
Order No. 21,885

New Hampshire Public Utilities Commission

October 30, 1995

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a credit of 8.18 cents per therm.

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#### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Credit — Factors — Prior-period overcollections — Warmer-than-normal winter weather — Pipeline refunds — Payments for management services — Local distribution company. p. 695.

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APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esquire, on behalf of EnergyNorth Natural Gas, Inc.; and Kenneth E. Yasuda, Sr., on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

#### I. PROCEDURAL HISTORY

**Page** 693

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EnergyNorth Natural Gas, Inc. (ENGI) filed its proposed replacement tariff NHPUC No. 2, which included the Cost of Gas Adjustment (CGA) for the 1995/1996 Winter season on September 15, 1995, following its Motion for Protective Order and Confidential Treatment filed September 14, 1995. ENGI's filing included the direct testimony of Carolyn J. Huber, Manager of Regulatory Affairs and Budgets; Donald E. Carroll, Vice President of Gas Supply; and Michelle L. Chicoine, Vice President and Treasurer. The Commission granted ENGI's request for protective treatment on September 25, 1995 (Order no. 21,831) and ENGI filed unredacted CGA filings reflecting its CGA calculation. On October 10, 1995, the Commission issued Order No. 21,857 suspending the proposed replacement tariff NHPUC No. 2 filing, which included the 1995/1996 Winter Cost of Gas Adjustment. Staff and the Company subsequently agreed on several changes to the replacement tariff and revisions were filed accordingly. There were no requests for intervention filed in this matter, and a duly noticed hearing was held on October 18, 1995.

#### II. POSITIONS OF ENGI AND STAFF

##### A. ENGI

ENGI requests a CGA rate for the 1995/1996 Winter season of (\$0.0818) per therm. Ms. Huber testified that the proposed CGA rate is the result of a prior period over-collection in the

amount of \$3,658,682 and other deductions from the anticipated cost of gas of \$1,537,473 due to refunds, interest, and revenues. The two primary factors contributing to the over-collection were: (i) a 12 percent warmer than normal winter resulting in reduced revenues of \$2,027,153, reduced gas costs of \$3,833,921, thereby producing a net over-collection of \$1,806,768; and (ii) a Tennessee Gas Pipeline Company refund of \$1,544,427 that had not been forecasted. Other factors that contribute to the large CGA credit include an interest deduction of \$284,531 as calculated on the over-collection, 280 Day Sales Service Margins of \$892,487, Capacity Release Margins of \$153,006, and supplier refunds of \$120,035.

Mr. Carroll testified that a Tennessee rate increase of twenty five percent has resulted in an anticipated increase in costs of \$2.4 million. ENGI, as part of the New England Customer Group, is opposed to the increase and has filed for full intervenor status in the case at FERC. Settlement talks have begun but the positions are far apart and no settlement is imminent.

Mr. Carroll also testified regarding the results of the Natural Gas Management Agency Agreement with Pendulum Gas Services (Pendulum), stating that the \$153,006 margin credited in the CGA exceeded what the Company could have expected to achieve on its own. Mr. Carroll further noted that ENGI, as part of the Mansfield Consortium (Consortium), was in the process of selecting one of three companies to provide gas management services for ENGI and the Consortium as a whole.

Staff questioned Mr. Carroll regarding the services provided through the Pendulum Agreement, specifically, whether some of the services would not be more appropriately addressed in base rates. Staff stated that while they did not object to the inclusion of the Pendulum costs in the instant CGA, this action did not constitute acceptance of the CGA as the proper mechanism for recovery of those costs which are administrative in nature. ENGI and Staff agreed that inclusion of these costs in the instant CGA should not be considered precedent setting.

Ms. Chicoine testified that the final cost of the gasholder project was \$3,524,419, which represents a \$8,432 increase from the original projected costs. The Company projected an increase in therm sales from 104,237,630 to 107,337,738. This results in a decreased surcharge, from \$.0048 per therm to \$.0047 per therm. ENGI has filed a complaint in United States District Court against the previous operators, UGI Corporation, seeking to recover those costs. Ms. Chicoine also testified that ENGI filed a revised tariff that is revenue neutral except for the conservation surcharge of \$0.002 per therm in industrial and commercial rates. The conservation revenues are used exclusively to fund conservation programs.

*B. Staff*

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With the exception of the above-referenced potential disagreement over the cost recovery mechanism associated with gas management services, Staff indicated its support for ENGI's 1995/1996 Winter CGA filing.

### III. COMMISSION ANALYSIS

[1] After having reviewed the record, we conclude that ENGI's 1995/1996 Winter CGA is

reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept and approve ENGI's proposed Winter 1995/1996 CGA rate of (\$0.0818) per therm. We will address any disputed cost recovery issues with regard to gas management services when Staff or ENGI requests such a determination and an adequate record exists to make an appropriate finding.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's revised NHPUC Tariff No. 2, providing for a Winter 1995/1996 Cost of Gas Adjustment credit of \$0.0818 per therm for the period November 1, 1995 through March 31, 1996 is hereby approved, effective for bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, ENGI shall file a revised CGA; and it is

FURTHER ORDERED, that a conservation surcharge of \$0.002 per therm be included in industrial and commercial rates; and it is

FURTHER ORDERED, that the surcharge to recover the costs of closure of the Relief Holder at Gas Street, Concord, N.H. and pond investigation be reduced from \$0.0048 to \$0.0047 per therm for the period November 1, 1995 through October 31, 1996, effective on bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that the Company file N.H.P.U.C. No. 2 Tariff in compliance with this Commission order no later than 15 days from the issuance date of this order, as required by N.H. Admin. Rules, PUC 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

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NH.PUC\*10/30/95\*[81133]\*80 NH PUC 695\*Keene Gas Corporation

[Go to End of 81133]

80 NH PUC 695

## Re Keene Gas Corporation

DR 95-275

Order No. 21,887

New Hampshire Public Utilities Commission

October 30, 1995

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a rate of 11.12 cents per therm.

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## 1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors affecting decrease — Warmer-than-normal winter weather — Reasonableness of supply contracts — Stability of customer base — Successful reduction of unaccounted-for losses — Local distribution company. p. 697.

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APPEARANCES: John F. DiBernardo, Assistant General Manager, for Keene Gas Corporation; and Robert F. Egan, Utility Analyst, for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

On October 1, 1995, Keene Gas Corporation (Keene), a public utility engaged in the business of distributing gas within the State of New Hampshire, filed with the New Hampshire

**Page 695**

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Public Utilities Commission (Commission) certain revisions to its tariff providing for a 1995/1996 Winter Cost of Gas Adjustment (CGA), of \$0.1112 effective November 1, 1995. In support of the filing, Keene submitted the pre-filed testimony of Mr. John F. DiBernardo, Assistant General Manager. The proposed adjustment would represent a \$0.0026 per therm decrease from the \$0.1138 CGA rate approved by the Commission for the 1994/1995 Winter period.

A duly noticed public hearing was held at the Commission on October 17, 1995.

#### II. POSITION OF KEENE

Mr. DiBernardo, described the essential elements from which the projected CGA rate was derived, as well as Keene's gas contracts, the current base unit cost of gas, the status of the customer base, and lost and unaccounted for gas. The following summarizes the key issues addressed at the hearing:

##### *A. Derivation of the Cost of Gas Adjustment*

The cost of gas adjustment is derived by dividing the total anticipated costs in dollars by projected sales in therms and comparing that result to the base unit cost of gas identified in Keene's current tariff. Total anticipated costs of \$463,584 for the six month period November 1, 1995 through April 30, 1996, include projected delivered propane costs of \$449,840 and a prior period under-collection (deficiency) of \$13,744. Sales for the period are projected to total 870,440 therms. When total costs are divided by sales, the result is a projected unit cost of gas sold of \$0.5326 per therm. When the current base unit cost of gas of \$0.4214 is subtracted from the projected unit cost of gas sold, the difference represents the winter period CGA rate of \$0.1112 per therm.



The prior period under-collection resulted from a warmer than normal winter and greater than anticipated gas costs. Actual gas sales were 10.7 percent less than projected; gas costs were 4 percent greater than anticipated.

Total firm demand for the forthcoming winter has been calculated based on a three year average of sales, company-use, and unaccounted for gas. Projected propane costs of \$0.4755 per therm delivered are based on publicly traded futures contracts for January 1996, as posted in the *Wall Street Journal*.

#### *B. Supply Contracts*

Keene has contracted with two suppliers for firm delivery of 1,750,000 gallons of propane for the winter period. This amount represents approximately 50 percent of total company needs during the period. One contract specifies a fixed price and the second contract utilizes an indexed price based on the posted spot gas price at Mont Belvieu, Texas on the day of delivery. Additional needs will be filled via the spot gas market. This type of contractual arrangement provides a blend of firm supplies at a fixed price with the flexibility to purchase spot gas when it is economic to do so.

#### *C. Base Unit Cost of Gas*

In response to inquiries from Staff, Mr. DiBernardo explained the significant deviation between the proposed CGA rate and the base unit cost of gas. Base unit gas costs are set only when Keene concludes a base rate case and are derived from actual costs incurred during the test year. The current base rate was established in 1979 and utilized the 1978 test year costs. In the intervening years, wholesale propane prices have escalated. If the trend continues, it is likely that future CGA rates will continue to be higher than the established base rate.

#### *D. Current Customer Base*

Mr. DiBernardo submitted an exhibit which identified the current and historical customer base in a format consistent with the Commission's definition of small and large meters. The exhibit shows that Keene has 1071 total meters in service. It also indicates that the customer base has not changed significantly in the past eight years. Keene expects to add seven additional commercial customers before the end of the year and does not expect an erosion of

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customers in other classes.

#### *E. Lost and Unaccounted For Gas*

In response to a Commission Directive in Docket DR 95-057, Keene submitted a report which identified the steps it has taken to investigate potential sources of lost and unaccounted for gas. The investigation was divided into three major categories: receiving and production, accounting and billing, and distribution. Mr. DiBernardo testified that personnel could find no deficiencies in the first two categories but that an improper meter head assembly was found on a commercial account in the distribution category. The effect of this error, which was discovered at a large volume commercial account, was to increase the unaccounted for gas amount by 1.13 percent over a four year average. The situation has been corrected and the resulting calculation



appears to be within the industry standard for propane systems.

### III. POSITION OF STAFF

Staff indicated that an audit of Keene's books and records had been conducted and that no deficiencies were found. Staff, through Mr. DiBernardo, submitted three exhibits which supported some of the salient points raised in the hearing. Staff recommended that the proposed 1995-1996 Winter CGA rate of \$0.1112 be accepted as filed.

### IV. COMMISSION ANALYSIS

[1] 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's proposed CGA of \$.1112 per therm, which is a reduction from the 1994 CGA, is just and reasonable and in the public good and therefore accepts such as filed.

We commend Keene in its attention to the reports ordered in DR 95-057. It has made a significant effort to investigate the cause of some of its unaccounted for gas and to anticipate the likelihood that its customer base will remain stable in coming years.

Based upon the foregoing, it is hereby

ORDERED, that the 18th Revised Page 26, superseding the 17th Revised Page 26 of Keene Gas Corporation Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Cost of Gas Adjustment of \$0.1112 per therm for the period November 1, 1995 through April 30, 1996 is APPROVED, said rate to be effective for bills rendered on or after November 1, 1995; and it is

FURTHER ORDERED, that Keene file N.H.P.U.C. No. 2 Tariff in compliance with this Commission Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, PUC 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

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NH.PUC\*10/30/95\*[81134]\*80 NH PUC 697\*Granite State Electric Company

[Go to End of 81134]

80 NH PUC 697

## Re Granite State Electric Company

DR 95-169

Order No. 21,888

New Hampshire Public Utilities Commission

October 30, 1995

PETITION by electric utility for authority to implement a temporary rate increase of \$1.177 million pending resolution of its request for a permanent rate increase of \$2.56 million; granted as modified pursuant to settlement, in the amount of \$851,717, with a lesser portion of the

increase being allocated to general service time-of-use customers and small commercial space heating customers.

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## 1. RATES, § 655

[N.H.] Procedure — Rates pending investigation — Temporary rates pending resolution of general rate case — Refunding provisions — Lesser allocations of temporary increase to certain customer classes — Settlement — Electric

Page 697

utility. p. 698.

## 2. RATES, § 321

[N.H.] Electric rate design — Initiation of temporary increase — Pursuant to settlement — While general rate case is pending — Cap on temporary increases to certain general service and space heating customers. p. 698.

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APPEARANCES: Peter J. Dill, Esq. for Granite State Electric Company; Kenneth R. Traum of Office of Consumer Advocate for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

On July 19, 1995, Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for permanent rate increase (Petition) and petition for temporary rates, along with supporting testimony and exhibits. The Petition requests an increase of \$2.56 million, allocated differently among rate classes, from a low of 0.05% to a high of 9.89%. The overall increase requested is 4.04%.

GSEC also requested approval of temporary rates in the amount of 1.86% or \$1.177 million in annual revenues (Exhibit 1).

The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. The Commission granted the request of the Business and Industry Association of New Hampshire (BIA) for limited intervention. *See*, Order No. 21,840 (October 2, 1995). The Commission also adopted the proposed procedural schedule which set a hearing on GSEC's temporary rates for October 10, 1995.

The Parties and Commission Staff (Staff) submitted on October 6, 1995 an Offer of Settlement supporting temporary rates in the amount of \$851,717 (Exhibit 2). This order will address the temporary rate request and Offer of Settlement.

#### II. POSITIONS OF THE PARTIES AND STAFF

[1, 2] GSEC had initially requested temporary rates in the amount of \$1.177 in annual revenues, which is an increase of 1.86% over current levels. Subsequent to the filing, GSEC recognized that it had made a miscalculation in its original request. After removing certain revenues that had been mistakenly included, the temporary rate request was adjusted downward for certain rate classes so that the temporary rate increase would not exceed the revised permanent rate increase for that class. The corrected permanent rate increase requests now range from a low of 0.52% to a high of 9.01%.

The original temporary rate request proposed collecting the increase through a uniform factor of \$0.00173 per kilowatthour, which resulted in an average increase of 1.86%. When the miscalculation was discovered, GSEC proposed to modify its request by capping the temporary increase to the lesser of 1.86% or the proposed percentage increase for the rate class in GSEC's revised permanent rate Petition. The cap affects two classes of customers: G-1 (General Service Time of Use customers with at least 200 kw of demand per month), which would be increased by 0.52% and V (Limited Commercial Space Heating Rate customers) which would be increased by 0.68%. The effect on a typical residential customer bill of 500 kWh per month would be an increase of \$0.86, that is, from \$53.62 to \$54.48.

Any refund or recoupment of amounts over-collected or under-collected as a result of this Offer of Settlement and the final order on permanent rates shall recognize the level of temporary rate increases per class.

In developing its request for temporary rates, GSEC used a 10.13% return on common equity, which is the return that was proposed by the Staff in GSEC's last rate case. Staff's review of the request employed a slightly higher

Page 698

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return on common equity.

The OCA evaluated the request and found that for purposes of rate continuity, equity, and fairness it supported the Offer of Settlement. Similarly, Staff Utility Analyst James J. Cunningham testified that based on the books and records on file with the Commission, temporary rates in the amount of \$851,717 are justified.

By agreeing to the temporary rate request, the Parties and Staff are not committing to any particular methodology or agreement that property has been determined to be prudently incurred or used and useful.

### III. COMMISSION ANALYSIS

We have reviewed the Offer of Settlement and testimony in support thereof. We find sufficient evidence in the books and records on file with the Commission as provided in RSA 378:37 to approve temporary rates in the amount of \$851,717. The rate increases will be 1.86% over current levels except in the case of the G-1 class, which will be increased by 0.52% and the V class, which will be increased by 0.68%. Temporary rates in this amount are just and reasonable and will provide an opportunity for a reasonable return on GSEC's investment.

Based upon the foregoing, it is hereby

ORDERED, that the Offer of Settlement regarding a temporary rate increase of \$851,717 for bills rendered on or after November 1, 1995 is APPROVED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1995.

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NH.PUC\*11/01/95\*[81135]\*80 NH PUC 699\*MCI Telecommunications Corporation of New Hampshire

[Go to End of 81135]

80 NH PUC 699

## Re MCI Telecommunications Corporation of New Hampshire

DR 95-278

Order No. 21,889

New Hampshire Public Utilities Commission

November 1, 1995

ORDER authorizing an interexchange telephone carrier to extend its "Friends and Family" discounts to subscribers using text telephone equipment for the deaf and hearing-impaired as well as to third-party billings and credit card calls placed to a Friends and Family subscriber.

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### 1. RATES, § 582

[N.H.] Telephone rate design — Toll services — "Friends and Family" calling circle discounts — Broadening of eligibility — To include certain third-party and credit card billings — To include calls using telecommunications devices for the deaf — Interexchange carrier. p. 699.

### 2. RATES, § 572.1

[N.H.] Telephone rate design — Service to the deaf and hearing-impaired — Use of telecommunications devices for the deaf — Toll services — Eligibility for "Friends and Family" calling circle discounts — Interexchange carrier. p. 699.

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BY THE COMMISSION:

### ORDER

[1, 2] On October 3, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MCI Telecommunications Corporation of New Hampshire (MCI) requesting authority to introduce a Text Telephone Discount, make revisions to Friends & Family and introduce MCI Vision Power Rate for effect November 1, 1995.

The proposed text telephone discount is a reduced rate applied to MCI Friends and Family customers who have a certified hearing or speech impairment and who use a text telephone.

Revisions to the Friends and Family

Page 699

Program include the addition of third party billed calls placed to a member and billed to the subscriber's account, to the list of calls eligible for the discount; and a requirement that credit card calls will only receive the Friends and Family discount when the call is placed to the subscriber's phone number which is presubscribed to MCI. In addition, some of the discounts have been revised.

The MCI Vision Power rate is a new rate option offered under the MCI Vision program. It includes a rate for toll and 800 switched traffic, a rate for toll and 800 dedicated traffic and a calling card rate.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize MCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MCI's tariff, NHPUC No. 1 are approved for effect as filed:

42nd Revised Page 1  
 22nd Revised Page 2  
 22nd Revised Page 3  
 29th Revised Page 3.1  
 1st Revised Page 3.2  
 4th Revised Page 25.2  
 6th Revised Page 25.3  
 1st Revised Page 25.4  
 Original Page 25.5  
 3rd Revised Page 28  
 3rd Revised Page 53  
 14th Revised Page 54  
 3rd Revised Page 55  
 3rd Revised Page 55.1;

and it is

FURTHER ORDERED, that MCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this first day of November, 1995.

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NH.PUC\*11/01/95\*[81136]\*80 NH PUC 700\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81136]

80 NH PUC 700

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-296

Order No. 21,890

New Hampshire Public Utilities Commission

November 1, 1995

ORDER authorizing a local exchange telephone carrier to revise its tariffs so that local calls from a pay telephone to a telephone relay service (TRS) customer may be placed free of charge and so that toll TRS pay telephone calls can be charged to calling cards at standard calling card rates.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay station service — Calls placed to telephone relay service customer — No charge for local calls — Toll calls chargeable to calling cards — Local exchange carrier. p. 701.

2. RATES, § 572.1

[N.H.] Telephone rate design — Telephone relay service (TRS) for the deaf and hearing-impaired — Calls placed from pay or coin telephones to TRS customer — No charge for local calls — Toll calls chargeable to calling cards — Local exchange carrier. p. 701.

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BY THE COMMISSION:

ORDER

**Page 700**

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[1, 2] On October 23, 1995, the New England Telephone and Telegraph Company (NYNEX or Company) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking to revise its coin and Public Access Line (PAL) tariffs to provide local pay phone calls to a Telephone Relay Service (TRS) free of charge and to provide toll TRS pay phone calls chargeable to calling cards at the standard calling card rates, for effect November 22, 1995.

Title IV of the Americans with Disabilities Act of 1990 (ADA), required each common

carrier providing telephone voice transmission service to provide Telecommunications Relay Service (TRS), a telephone transmission service that allows persons with hearing and/or speech disabilities to use the telephone in a manner that is "functionally equivalent" to that of persons without such disabilities, throughout the area it serves. The FCC ruled that TRS should be able to handle any type of call. In response, carriers argued that technological limitations made it prohibitively expensive to provide coin sent paid service to TRS users and sought waivers from the rule. The FCC, however, stated that no basis existed to exclude coin sent paid calls from the requirements of the ADA.

In the transmittal letter accompanying its filing, NYNEX cited a Federal Communications Commission (FCC) order, issued August 25, 1995 in CC Docket No. 90-571, in which the FCC found that it was not yet technically possible to provide TRS coin sent paid service functionally equivalent to standard coin sent paid service. Consequently, the FCC suspended the requirement of "functional equivalence" for two years to allow carriers to resolve the existing technical problems. In the interim, an alternative plan was established. Under the alternative plan, TRS users could place local pay phone calls free of charge and toll TRS pay phone calls chargeable to calling cards, with rates not to exceed those that would apply to a similar non-TRS call made using coin sent paid service. The FCC required that this alternative plan be implemented by November 24, 1995.

The revisions proposed by NYNEX include changes to the coin and PAL tariffs to provide local service to a TRS free of charge. NYNEX does not propose revisions to its toll tariff because the surcharge for calling card calls is less than the surcharge for coin paid station to station calls.

Staff has reviewed the petition and recommended that the Commission approve the petition as filed.

We have reviewed the Petition and the Staff's recommendation and find that the proposed filing is in the public good.

Based on the foregoing, it is hereby

ORDERED, that the following pages of NYNEX's Tariff PUC No. 75 are approved:

Part A - Section 8

Fifth Revision of Page 1

Sixth Revision of Page 7

and it is

FURTHER ORDERED, that the above tariff pages shall be effective as of November 22, 1995; and it is

FURTHER ORDERED, that NYNEX file a compliance tariff with the Commission on or before November 15, 1995, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this first day of November, 1995.

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NH.PUC\*11/01/95\*[81137]\*80 NH PUC 701\*Ameritech PayPhone Service, Inc.

[Go to End of 81137]

80 NH PUC 701

**Re Ameritech PayPhone Service, Inc.**

DE 95-218

Order No. 21,891

New Hampshire Public Utilities Commission

November 1, 1995

ORDER authorizing a telecommunications carrier to provide service in correctional institutions, limited to coinless, collect-only calls.

**Page 701**

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1. RATES, § 565

[N.H.] Telephone rate design — Pay station service — In correctional institutions — Availability of coinless, collect-only calling capabilities. p. 702.

2. SERVICE, § 456

[N.H.] Telephone — Pay station service — In correctional institutions — Limitations — Coinless, collect-only calling capabilities. p. 702.

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BY THE COMMISSION:

**ORDER**

[1, 2] On August 4, 1995, Ameritech PayPhone Service, Inc. (APS), a Delaware corporation and wholly-owned subsidiary of the Ameritech Corporation, filed with the New Hampshire Public Utilities Commission (Commission) an Application for Authority to Provide Coin[less Collect] Telephone Service (Petition) and an Application for Waiver of Rules (Motion) seeking waivers of certain administrative rules, specifically N.H. Admin. Rule Puc 408.07(a) Dial tone, 408.07(c) Municipal Access, 408.08(a) Rates, 408.08(c) Access, 408.09 Call Receiving, 408.10 Identification, 408.11 Directory Assistance, and 408.12, both (a) Coin Return, and 408.12(b) Coin Acceptance. APS proposes to utilize coinless telephones in correctional institutions.

Limiting service to collect-only calling provides correctional facilities with the control they require over inmate calling, which is in the public good. In lieu of markings, APS proposes to utilize oral branding so that both the caller and the called party accepting the charges will know the identity of the carrier. In addition, the staff of correctional facilities is responsible for



administrative matters as well as reporting pay telephone service troubles.

APS bills for its timed services in full-minute increments, as is common in the telecommunications industry; however New England Telephone and Telegraph (NET) bills for its timed services, such as collect calling, in single-second increments. In order to effectively comply with the intent of Puc 408.08(a) *Rates* "APS proposes, therefore, to reduce its per-minute charges by \$.01 from New England Telephone and Telegraph's timed rates as ordered by the Commission for other companies offering similar services." [Petition at 3]. *See* Tele-Matic of New Hampshire, Corp., DE 94-079, Order No. 21,256 (June 7, 1994). NET's toll timed rates can be referenced at NET No. 75 Part A - Section 9, Page 7, Thirteenth Revision and its successors.

Our Staff has reviewed the petition and concludes that the waivers requested are reasonable in consideration of the circumstances. In particular, they noted that the adoption of a full-minute rate, decremented by \$.01 per minute, was found in DE 94-079 to yield the same effective rate on average as NET's single-second billing.

After reviewing the Motion for Waivers and the Application for Authority, we find the waivers and increased competition in the provision of telecommunication services to correctional facilities to be in the public good.

Based on the foregoing, it is hereby

ORDERED, that APS'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 APS's timed rates for services originated from pay telephones installed within correctional facilities shall be capped at \$.01 cent below the tariffed timed rates of NET until APS bills its timed services in single-second increments, and shall be capped at the NET timed rates after APS establishes single-second billing; and it is

FURTHER ORDERED, that APS is subject to all other Statutes, Rules and Orders of the Commission, including specifically N.H. Admin. Rule Puc 408.15 Application (Form E-29).

By order of the New Hampshire Public Utilities Commission this first day of November, 1995.

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#### EDITOR'S APPENDIX

##### Citations in Text

[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\*11/01/95\*[81138]\*80 NH PUC 703\*XIEX Telecommunications, Inc.

[Go to End of 81138]

80 NH PUC 703

**Re XIEX Telecommunications, Inc.**

DE 95-288

Order No. 21,892

New Hampshire Public Utilities Commission

November 1, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 703.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 703.

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BY THE COMMISSION:

ORDER

[1, 2] On October 17, 1995, XIEX Telecommunications, Inc. (XIEX), 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. XIEX has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies.

The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that XIEX is granted 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:

Page 703

1. The services shall be offered by approved tariffs.
2. The services shall be offered until the Commission orders otherwise.
3. XIEX 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, XIEX shall notify the Commission of the change.
5. XIEX 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. XIEX shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. XIEX 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. XIEX 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. XIEX shall compensate the appropriate Local Exchange Company for all originating and terminating access used by XIEX pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission orders otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow

XIEX to operate outside of the conditions set forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that XIEX shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than November 8, 1995, and an affidavit proving publication shall be filed with the Commission on or before November 15, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. XIEX 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 all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 22, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 29, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective Dec. 1, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that XIEX shall file a compliance tariff with the Commission on or before December 1, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1995.

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Notice of Conditional Approval of  
XIEX Telecommunications, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On October 17, 1995, XIEX Telecommunications, Inc. (XIEX), 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. 21,892, issued in Docket No. DE 95-288, the Commission granted XIEX conditional approval to operate as of December 1, 1995, subject to the right of the public and interested parties to comment on XIEX 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. Comments on XIEX's petition to do business in the State must be submitted in writing no later

than November 22, 1995, and reply comments no later than November 29, 1995, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*11/01/95\*[81139]\*80 NH PUC 705\*Caribbean Telephone and Telegraph, Inc.

[Go to End of 81139]

80 NH PUC 705

**Re Caribbean Telephone and Telegraph, Inc.**

DE 95-184  
Order No. 21,893

New Hampshire Public Utilities Commission

November 1, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 705.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 705.

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BY THE COMMISSION:

ORDER

[1, 2] On September 26, 1995, Caribbean Telephone and Telegraph, Inc. (CTT), a Michigan 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. CTT has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved

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numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that CTT is granted 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 until the Commission orders otherwise.
3. CTT 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, CTT shall notify the Commission of the change.
5. CTT 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. CTT shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. CTT 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. CTT 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. CTT shall compensate the appropriate Local Exchange Company for all originating and terminating access used by CTT pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission orders otherwise; and it is

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

FURTHER ORDERED, that CTT shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than November

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8, 1995, and an affidavit proving publication shall be filed with the Commission on or before November 15, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. CTT 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 all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than November 22, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than November 29, 1995; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective Dec. 1, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that CTT shall file a compliance tariff with the Commission on or

before December 1, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this first day of November, 1995.

Notice of Conditional Approval of  
CARIBBEAN TELEPHONE AND TELEGRAPH, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On September 26, 1995, Caribbean Telephone and Telegraph, Inc. (CTT), a Michigan 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. 21,893, issued in Docket No. DE 95-184, the Commission granted CTT conditional approval to operate as of December 1, 1995, subject to the right of the public and interested parties to comment on CTT 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. Comments on CTT's petition to do business in the State must be submitted in writing no later than November 22, 1995, and reply comments no later than November 29, 1995, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*11/03/95\*[81140]\*80 NH PUC 708\*Baldwin Hydroelectric Corporation

[Go to End of 81140]

80 NH PUC 708

### Re Baldwin Hydroelectric Corporation



Additional party: New Hampshire Electric Cooperative, Inc.

DR 95-260  
Order No. 21,894

New Hampshire Public Utilities Commission

November 3, 1995

ORDER granting a one-week extension of time for the submission of bids under an electric cooperative's competitive bidding program for determining avoided costs for purposes of pricing long-term purchases of power from qualifying small power production facilities.

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1. COGENERATION, § 30

[N.H.] Rates — Purchases of power from qualifying facilities — Methods and bases for pricing — Competitive bidding — As determinative of avoided costs — Electric cooperative — Extension of deadline for submission of bids. p. 708.

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BY THE COMMISSION:

ORDER

On September 9, 1995 Baldwin Hydroelectric Corporation (Baldwin Hydro) filed a petition for approval of a long term power purchase contract with the New Hampshire Electric Cooperative, Inc. (NHEC). An order addressing interventions, the scope of the docket and proposed procedural schedule will be issued in coming days. This order will address the single issue of the deadline for competitive bids now being taken by NHEC.

By Order No. 21,767 (July 31, 1995) NHEC was authorized to develop its avoided cost by means of taking competitive bids from qualifying facilities for up to 20 MW of power. By the terms of NHEC's request for proposals (RFP), bids must be received by NHEC no later than 3:00 p.m November 3, 1995. The RFP contains language allowing NHEC to amend the terms of the RFP as necessary.

At the November 2, 1995 prehearing conference, the issue arose of whether Baldwin Hydro has participated or should participate in NHEC's competitive bidding process. Baldwin Hydro stated it had not submitted a bid.

[1] Although we are not prejudging the issue, our initial evaluation of Baldwin Hydro's petition is that Baldwin Hydro has not followed the specific guidance contained in Order No. 21,767. Baldwin Hydro should review that order and determine if it wishes to submit a bid. To allow Baldwin Hydro the opportunity to make that determination, a limited extension of the bidding deadline is appropriate. We will order, therefore, an extension of seven days for bids to be received from all potential bidders. Baldwin Hydro is strongly encouraged to participate in the competitive bidding process. Bids already received by NHEC should be sealed and not divulged prior to the expiration of the extended bidding deadline on November 10, 1995.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's deadline for competitive bids be extended by seven days, until November 10, 1995.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 94-160, Order No. 21,767, 80 NH PUC 489, July 31, 1995.

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NH.PUC\*11/06/95\*[81141]\*80 NH PUC 709\*Guidelines for Economic Development and Business Retention Filings

[Go to End of 81141]

80 NH PUC 709

**Re Guidelines for Economic Development and Business Retention Filings**

DR 95-216  
Order No. 21,895

New Hampshire Public Utilities Commission

November 6, 1995

ORDER adopting as modified a set of guidelines for governing tariffed rate filings designed to promote economic development and load retention, which guidelines had been proposed in Order No. 21,777 (80 NH PUC 514). The guidelines address the state legislature's preference for tariffs as opposed to special rate contracts for attracting and retaining business. Standards and minimums are set as to usage, job impacts, and locations that will qualify for special economic development or business retention rates.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) rate proposals — Business retention rate proposals — No recovery from other ratepayers of lost revenue associated with ED discounts — But possible recovery of BR-related losses. p. 714.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Business retention rate proposals — Applicability only to customers that could relocate out-of-state — No applicability to customers with self-generation capabilities. p. 714.

3. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Customer eligibility — Limitations — Industrial customers engaged in manufacturing — Standard Industrial Classification Codes 20 to 39 as guideline. p. 715.

4. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Parameters — Creation of new or expanded load — Utility service costs as significant cost of production. p. 715.

5. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Parameters — Creation or saving of local jobs — Overall impact on employment within the state — Necessity of annual reports. p. 715.

6. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development rate tariffs — Business retention rate tariffs — Goals and standards — Prevention of relocation by large customers — Applicability to either out-of-state or out-of-territory moves. p. 716.

7. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) rate proposals — Business retention (BR) rate proposals — Customer eligibility — No prohibition on participation in conservation and load management programs concomitant with receiving ED or BR rate discounts — Encouragement of all conservation and energy-efficiency initiatives. p. 716.

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BY THE COMMISSION:

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ORDER

I. PROCEDURAL HISTORY

On August 7, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,777, an Order Proposing Guidelines for Economic Development and Business Retention Filings. Order No. 21,777 was issued in response to a legislative requirement to

establish procedures for the review and approval of economic development and business retention tariffs and sought comments on the proposed guidelines by September 6, 1995.

Timely comments were filed by the Office of Consumer Advocate (OCA), Public Service Company of New Hampshire (PSNH), the UNITIL Companies (UNITIL), New Hampshire Electric Cooperative, Inc. (NHEC), EnergyNorth Natural Gas, Inc. (ENGI), Save Our Homes Organization (SOHO), Business and Industry Association (BIA), Cabletron Systems, Inc. (Cabletron), Retail Merchants Association of New Hampshire (RMA), James T. Rodier (Mr. Rodier) and the Public Utility Policy Institute (PUPI). Late filed comments were received from Granite State Electric Company (GSEC), Connecticut Valley Electric Company, Inc. (CVEC) and Representative Jeb E. Bradley, Chairman of the House Committee on Science, Technology and Energy (Rep. Bradley). Unsolicited reply comments were received from PSNH on September 21, 1995. We address pertinent comments below.

## II. COMMENTS FILED

A number of parties commented on (1) the method used to establish the procedural and substantive guidelines for tariff filings and (2) the proposed method of treatment, or procedures, for reviewing the tariff filings.

### A. *Comments on Procedures*

#### 1. Guidelines versus Rules

PUPI and SOHO contend that guidelines should be established through a formal rulemaking proceeding.

#### 2. Due Process in Tariff Review

The OCA, SOHO, NHEC and Cabletron argue that the proposed expedited procedure for reviewing tariff filings was inadequate. The primary assertion is that the proposed guidelines do not provide adequate due process.

#### 3. Content of Filing

Various parties suggest departures from the proposed guidelines and urged us to be flexible in our review. ENGI and Mr. Rodier also specifically make recommendations regarding the appropriate term of tariff service. In addition, CVEC, SOHO and Cabletron express concern about revenue recovery and the rate treatment of "discounts".

#### 4. Context of Filing

A number of related comments from NHEC, ENGI, RMA, Cabletron and PUPI discuss tariff and special contract eligibility generally as well as the interplay between special contracts, the availability of tariffs and the retail competition pilot program.

### B. *Comments on Substantive Provisions*

Many parties comment on the 7 areas that the Commission is required by RSA 378:11-a to consider in a filing by a utility of an economic development and/or business retention tariff. In particular, the eligibility criteria we had defined and our position on material adverse competitive effects evoked many responses. The Commission's position on the structure of the discounted rates, Number 8, also received a number of comments. The comments of the parties

are summarized below by area of consideration.

### 1. Eligibility Criteria

BIA, GSEC, NHEC, RMA, and UNITIL state that the Commission's proposal to use *Standard Industrial Classification* (SIC) codes 20-39, Manufacturing, is too restrictive and needs to incorporate more flexibility. NHEC believes that commercial enterprises ought to be

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included for eligibility. BIA mentions the need to include all relevant customers, but does not expand upon what constitutes a relevant customer. UNITIL and GSEC both believe the Commission should focus on the potential for economic growth. GSEC would use criteria such as facility expansion or a defined number of jobs that would be created by a company receiving service under an economic development tariff. GSEC believes using SIC codes 20-39 is unintentionally unfair, does not reflect today's changing economy and specifically hurts GSEC because of the nature of its service territory and customer mix. UNITIL would add the same SIC codes that were included in docket no. DR 95-176, its "Energy Banking Service Rate" proposal. The additional codes would include SIC 40-49 (Transportation, Communications, Electric, Gas, and Sanitary Services), SIC 50-51 (Wholesale Trade), SIC 60-67 (Finance, Insurance and Real Estate) and SIC 73 (Business Services). UNITIL agrees generally with the 60-day requirement, but supports a flexible approach.

Both CVEC and PSNH support the Commission's use of SIC codes 20-39 as the basis for determining eligibility. Both believe it is important to minimize "free riders". CVEC states that it has operated under a 60 day rule in Vermont and that it has proved to be useful. PSNH would prefer to have customers verify that the discounted economic development rate was an essential component to their decision to locate or expand in New Hampshire.

### 2. The Effect on the Utility's Fixed and Variable Costs

ENGI and Mr. Rodier express concern over the length of time the tariff rates would be effective. Mr. Rodier believes that customer choice is vital and that in order to avoid an anti-competitive outcome the customer receiving the discounted economic development or business retention rate should not be forced to agree to a contractual timeframe specified by a utility. ENGI believes that the Commission should be concerned that some customers may retain the discounted economic development or business retention rate long after the need for the rate ceased to exist. ENGI requests that the Commission be specific on when the term ends for customers. Specifically, ENGI believes that customer eligibility for economic development and business retention rates should not be available without reconsideration after 5 years.

Cabletron questions the Commission's presumption of benefits to other ratepayers by spreading fixed costs over more kilowatt-hours, especially as it concerns PSNH during the fixed rate period. Cabletron believes the Commission should expand its requirement that a utility's filing show the effect on base rates to include the effects on wholesale transactions in PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC).

GSEC, CVEC, PSNH and NHEC generally support the Commission's original cost-related guidelines. CVEC would propose that any revenue effects other than lost revenue associated

with Conservation and Load Management (C&LM) should be included in the cost analysis required by the Commission.

### 3. The Amount of New Demand and Energy

CVEC disagrees with the Commission's position on minimum Kw and Kwh levels for eligibility. CVEC contends that the legislative intent suggests that the amount of new and expanded load is a valid concern and should be left to the discretion of the utility. CVEC agrees with the Commission that development rates should be based on the incremental amount of usage.

NHEC believes that a minimum of 200 Kw of billing demand or 100,000 Kwh of billed energy consumption per month is an appropriate threshold level for eligibility. NHEC agrees with CVEC on the importance of balancing legislative interests of economic development and business retention with administrative costs of the utility.

Mr. Rodier cautions that applying the economic development rate only to expanded load could be counter-productive. He further states that this guideline should allow flexibility for the customer to demonstrate that an economic development rate for expanded load is

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contingent on rate relief for the existing load of the customer.

UNITIL and GSEC agree with the Commission's position that economic development rates should only be available to new and expanding load.

### 4. The Effect on Employment within the State

GSEC, NHEC, Mr. Rodier, and UNITIL agree with the Commission's reporting requirement on jobs created or retained as a result of economic development or business retention rates. UNITIL urges the Commission not to impose lengthy reporting requirements. UNITIL also believes the reporting requirements should be simplified into a standard format.

### 5. Material Adverse Competitive Impact

Cabletron believes the Commission should strive to enhance customer choice and minimize customer restrictions as the industry moves toward a more competitive environment. The Commission is asked to make less restrictive its position on "poaching" while protecting the rights of non-utility suppliers. Cabletron urges the Commission to make guidelines that insure utilities will not "poach" customers from new power suppliers, municipal power companies, and other non-utility energy suppliers.

ENGI and Mr. Rodier believe the potential for abuse exists in extending similar rate discounts to competitors. Mr. Rodier asserts that PSNH will be disinclined as a matter of self-interest to qualify any other customer as a "direct" competitor. ENGI believes that before any customer is deemed to be a competitor and eligible for the discount it should satisfy the same criteria as the business retention customer. ENGI cautions the Commission to use discretion in determining what constitutes a "direct" competitor. ENGI is also concerned about the process of publicizing the availability of economic development and business retention rates within an industry as it may create tension between utilities and customers who previously had no need for

a discount.

SOHO questions the Commission's intent to extend business retention rates to competitors without defining how a determination that extending the rate is in the "public good". SOHO is concerned about minimizing "free riders" and the potential for causing other rate classes to be affected unfairly. SOHO also seeks clarification on what constitutes a "direct competitor" of customers receiving business retention rates. Furthermore, SOHO is requesting the Commission to clarify its statement that "We believe it was the also the Legislature's intent to afford the same treatment and protection to competitors of firms receiving economic development rates." (Order No. 21,777 at 7). SOHO states that SB 168 references only business retention rates concerning the effects on competitors and, therefore, SOHO believes competitors of customers receiving economic development rates are not eligible for similar rate treatment.

UNITIL argues that a blanket policy of allowing competitors of customers receiving business retention rates is contrary to SB 168 and that a determination of competitor eligibility must be made on a case-by-case basis. UNITIL believes flexibility is necessary especially as it concerns customers granted economic development or business retention rates located in other utility service territories. UNITIL is also concerned about the effects of the Commission's position to limit "poaching" as it may result in economic harm to existing New Hampshire customers. Finally, UNITIL proposes a simple report on customers served under economic development and business retention rates which would state on a regular basis the identity of the customer and the customer's SIC code.

Rep. Bradley argues that not allowing companies to avail themselves of rates in other utility service territories could lead to companies leaving New Hampshire, a result which is contrary to the purposes of the legislation.

CVEC, GSEC, NHEC and PSNH generally agree with the Commission's position on adverse competitive effects on other customers. CVEC shares the concerns of Rep. Bradley and UNITIL stated above on efforts to offer the business retention rate before the customer is lost to an out-of-state location. CVEC believes

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it may be worth considering a reciprocal state agreement as this concern has regional implications. CVEC urges the Commission to clarify what constitutes a "direct" competitor. CVEC believes it should be defined as 50% of a company's revenues generated from the same business activity at the three-digit SIC code level. Discounts to competitors should be proportional to the actual competitive impact. CVEC also seeks clarification on public availability of the list of customers receiving economic development or business retention rates. NHEC believes that its purchased power contract with PSNH essentially prevents it from being able to offer affected competitors business retention rates to keep them as NHEC customers unless PSNH agrees to amend its wholesale power contract to allow for such circumstances. NHEC asserts that if PSNH proposes economic development or business retention rates and does not grant NHEC the opportunity for economic development or business retention rate treatment through the wholesale power agreement it will constitute "poaching", which NHEC believes should not be permitted. PSNH urges the Commission to make clear that customers could qualify

for both a business retention rate for their existing load and an economic development rate if the customer is induced to expand the business or relocate operations to New Hampshire.

#### 6. End-User Participation in Conservation Programs

GSEC and NHEC support the Commission's position concerning conservation for economic development and business retention rate customers. UNITIL believes the Commission should encourage C&LM, but cautioned against the Commission requiring any specific eligibility criteria for C&LM programs. UNITIL does not support business retention or economic development customers receiving conservation funds that are paid for by the utilities' other customers. UNITIL argues those customers should meet standards of energy efficiency, but at their own cost.

#### 7. Other State Economic Development Programs

No one submitted comments in opposition to the Commission's statements in this area.

#### 8. Commission Position on Structure of Discounted Rates

CVEC understands the Commission's interest in sending clear and understandable tariff information to potential economic development and business retention customers, but CVEC believes it is impossible to keep it simple in a changing and complex time. CVEC believes that there should be a range of discounted rates available based on different uses of the system and that the discounted rates should be based on the standard tariff, presumably by using a percentage discount from the applicable tariff.

Cabletron, GSEC, NHEC, Mr. Rodier, PSNH and UNITIL believe the Commission's guideline regarding clearly understandable rate information and the level of the discount is important for both customers and others involved in economic development. Mr. Rodier believes such tariff information is vital for customers in order to avoid lengthy negotiations with the utility. Both UNITIL and PSNH caution the Commission not to be too rigid in this guideline and should allow utilities to recognize legitimate differences between customers and respond accordingly. Cabletron would add a prohibition against requiring any customer specific information as it may be used by the utility to justify the customer for an economic development or business retention discount. Cabletron appears concerned that information could be used in an anti-competitive manner and urges the Commission to guard against requirements which are anti-competitive.

### III. COMMISSION ANALYSIS

#### A. *Comments on Procedures*

##### 1. Guidelines versus Rules

We denied PUPI's petition for formal

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rulemaking to adopt guidelines in Order No. 21,852 (October 9, 1995). For analysis of that petition and our ruling, please consult Order No. 21,852.

##### 2. Due Process in Tariff Review



Although we believe the original proposal satisfied the requirements of administrative due process, we have concluded that it is reasonable and practical, while still within the bounds of the legislative directive regarding expedition, to augment the process to alleviate these concerns. Accordingly, we have added elements of discovery and cross examination as provided below.

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

#### Nominal Procedural Schedule

Day 1 T{  
Company files tariff and testimony;  
Company serves filing on  
interested parties; Rolling data requests initiated  
T}  
Day 3 T{  
Order of Notice issued  
T}  
Day 10 T{  
Commission accepts or rejects filing for compliance with  
guidelines  
T}  
Day 15 T{  
Final data requests due  
T}  
Day 22 T{  
Final data responses due  
T}  
Day 30 T{  
Responsive testimony due  
T}  
Day 35 T{  
Technical session/Settlement conference  
T}  
Day 40 T{  
Hearing on Merits  
T}  
Day 55 T{  
Final order  
T}

These "nominal" dates will be made more specific in an Order of Notice that we will issue within 3 days of the filing. Moreover, as another means of expediting the process we will require the utilities to notify potential intervenors by publishing a notice of an impending filing at least 14 days prior to filing. Such notice will require interested parties to contact the company for inclusion on the service list. Consequently, the utility will have available a service list so that it can provide copies of its filing to interested parties on Day 1. Subsequent intervenors will be required to accept the established procedural dates. Finally, in that time is of the essence, the parties are encouraged to use facsimile transmission, followed by hard copy mailing, to the fullest practicable extent and the Commission will do likewise.

### 3. Content of Filing

Each utility's filing shall address in detail all substantive areas as set forth in Order No. 21,777 and as may be amplified below. Testimony, exhibits and technical statements shall be complete and in the interests of expedition, should fully contemplate likely problem areas.

We remind the utilities that any departures from the guidelines, whether broadening or narrowing some aspect or addressing an issue such as the term of the tariff service, could result

in a more extended schedule.

[1] With respect to revenue recovery and rate treatment of discounts under economic development tariffs, the legislature's intent to prevent recovery of any discount is clear. As for business retention tariffs, the utility should make known its intention and proposal therefor. We do not intend to address the recovery issue in the expedited review of the tariff filing. Correspondingly, and subject to the discussion below, the utility's filing should specifically address its proposal for defining and treating the customer's "direct competitors".

#### 4. Context of Filing

[2] Regarding the relationship between special contracts, the availability of tariffs and the retail competition pilot program, we make the following observations:

a) Business retention tariffs may not be offered to customers in load retention situations, that is, situations where a customer is pursuing self generation rather than relocation to another state.

b) The special contract alternative set forth in RSA 378:18 remains effective "if special circumstances exist which render ... departure from the general schedules just and consistent with the public interest."

c) Customers that currently have special contracts will not as a matter of Commission policy be automatically eligible for a new tariff service nor will a utility be required to make such an offer.

d) A utility's participation in the pilot retail competition program, which is

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mandatory, has no bearing on a utility's opportunity to offer economic development and business retention tariffs.

#### B. *Comments on Substantive Provisions*

##### 1. Eligibility Criteria

[3] Many parties urged the Commission to make broader and more flexible the definition of what constitutes an industrial customer under SB 168. We appreciate their interest in the potential economic benefits that could accrue by expanding the eligibility criteria; however, we believe that the disadvantages of a broader and more flexible definition would outweigh the benefits.

We cannot support allowing utilities to offer economic development or business retention rates to those customers whose electric costs may have little or no effect on their location or expansion decision. We believe that expanding our definition of what constitutes an industrial customer could drive large numbers of existing competing businesses into financial hardship. Moreover, many of the SIC codes, such as SIC 50-51 (Wholesale Trade), SIC 60-67 (Finance, Insurance and Real Estate) and SIC 73 (Business Services), are normally thought of as commercial enterprises as opposed to industrial operations. While many of these sectors of the economy are at record high levels of employment and/or are expected to have high future rates of growth<sup>1(66)</sup>, employment in the manufacturing sector of the economy peaked in 1984 and is

expected to slowly decline over the next decade. We will continue the guideline that utilities offering economic development or business retention tariff rates restrict eligibility to customers whose primary business is classified as SIC codes 20-39.

We reiterate that special circumstances may still exist necessitating a special contract filing under 378:18, though by issuance of our guidelines for tariff rates we anticipate future economic development or business retention special contracts for industrial customers to occur infrequently in the future.

## 2. The Effect on the Utility's Fixed and Variable Costs

[4] We recognize that the terms contained in the economic development and business retention tariff could create situations that force otherwise eligible customers to confront options that are only marginally better than the prevailing standard tariff. We would encourage filings that offer options that encourage, not hinder, economic development and business retention. Our review of each filing will be with the goal of balancing the interests of economic development and business retention contained in SB 168 with the effects on other customers in both a short-term and long-term perspective as contained in our proposed guidelines.

We will monitor the benefits and costs from economic development and business retention rates. We will expect the utilities to include in their annual report on July 1 as described in number 4 below, the on-going effects of their economic development and business retention rates. We do not expect a continual annual customer-by-customer review. To do so could have a detrimental effect on economic development.

## 3. The Amount of New Demand and Energy

After review of the comments, we are satisfied that our initial proposed guidelines should remain as proposed. We believe that it was the legislative intent to make these rates available to industrial customers of all sizes and strongly encourage utilities to file rates that accomplish this goal. However, we are sensitive to some utilities' concern that economic development or business retention rates for small industrial customers may not be cost-effective to administer and we will consider this as we evaluate each filing.

## 4. The Effect on Employment within the State

[5] Based on the suggestions by UNITIL and SOHO, we will require utilities that have filed economic development and/or business

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retention filings to report annually with the Commission information that will be useful in gauging the effectiveness of the economic development or business retention tariff and to provide information to customers that may be adversely affected. In order to reduce the administrative burden of separate filings for economic employment effects and adverse competitive effects, we believe one report containing the following information should suffice for both areas of interest. The report, available at the utility and the Commission, should be made annually on July 1 and contain (1) the name of the company receiving service under either an economic development tariff or a business retention tariff, (2) the date service under the tariff commenced, (3) the date service under the tariff will terminate, (4) the four digit SIC code of the

customer, (5) the economic effects of the tariff on recipient customers and other utility customers, and (6) the number of jobs created directly as a result of receiving service under the tariff.

#### 5. Material Adverse Competitive Impact

[6] We received numerous comments concerning the potentially negative effect of a customer choosing not to re-locate in-State and thereby leaving New Hampshire because a business retention rate was either not offered by its utility or was inadequate to keep the customer from locating out of New Hampshire. We will amend Guideline 5 by allowing utilities to offer business retention rates that are applicable to its own customers as well as customers from other service territories. By our amendment, we are not in any way changing our position concerning "poaching" of other utility customers through the offer of economic development rates or business retention rates. The ability to attract a customer from another service territory should be viewed as a last step in keeping the customer in New Hampshire. Our interest in this matter is the welfare of the State, not any one particular service territory.

We do not find merit in Cabletron's position that we should adopt less restrictive language on "poaching" by utilities while at the same time protecting energy service companies and municipalities from utility "poaching". To do so would create an inequitable situation.

While we agree with SOHO that SB 168 does not explicitly extend consideration of the adverse competitive effects of economic development rates on competing customers, we believe that fairness and good public policy dictate equal treatment. If such rates are not offered to competitors we could create economically disastrous situations by giving a distinct and unfair advantage to a new business that is a direct competitor of an existing one. This would clearly not benefit our state's economy

#### 6. End-User Participation in Conservation Programs

[7] We appreciate and share UNITIL's concern for its customers who are not eligible for the economic development and business retention rates. We expect customers receiving such rates to meet all applicable energy efficiency standards. Nonetheless, we believe long-term benefits may be lost by a blanket policy that prohibits customers who receive an economic development or business retention rate from participating in utility C&LM programs. Our annual review of utility C&LM programs and the cost recovery mechanism associated with those programs, which often incorporate market-based financing approaches, is the appropriate forum to address lost revenues or ratepayer effects. We consider our proposed guidelines to be adequate in this area.

#### 7. Other State Economic Development Programs

Having received no comments in opposition to our proposed guideline on this issue, this guideline will remain unchanged.

#### 8. Commission Position on Structure of Discounted Rates

We agree with those commenters that some degree of flexibility is necessary and beneficial. We will allow utilities to develop individual discounted rates available to a limited number of subclasses of customers.

Notwithstanding CVEC's comments, we continue to expect tariff filings to contain sufficiently specific information to assist customers in determining whether the rates would benefit them. In an industry becoming more competitive and customer oriented, that requirement should be viewed as an opportunity and not a hindrance.

Unless otherwise noted in this order, we will retain the guidelines proposed in Order No. 21,777. We will specify that, pursuant to Laws of 1995, Chapter 272, Section 10, no rate shall remain effective after December 31, 2002.

Based upon the foregoing, it is hereby

ORDERED, that the Guidelines for Economic Development and Business Retention Filings as modified herein are adopted and appended as Attachment A.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

#### Attachment A

#### Guidelines for Economic Development and Business Retention Filings

#### PROCEDURAL GUIDELINES

Pursuant to RSA 378:11-a, a utility may file an economic development or business retention rate. A tariff filing under this statute shall comply with and be subject to the Commission's rules and filing requirements as set forth in Puc Parts 200 and 1600, except as modified.

Expedited treatment will be accorded economic development or business retention tariff filings. At least fourteen days prior to a tariff filing, the utility will publish notice of an impending filing and require interested parties to contact the utility for inclusion on the initial service list.

The Commission will issue an Order of Notice within three days of the filing and set a procedural schedule closely corresponding to the nominal schedule set forth below. Subsequent intervention will also be allowed as determined by the Commission.

Within 10 days of an economic development or business retention tariff filing, the Commission will review the filing for completeness and either accept or reject it for consideration.

If a filing is accepted, the Commission, through the Executive Director, will issue a letter notifying the parties of the acceptance for filing.

If a filing is rejected, the Commission will identify in a letter to the utility, issued by the Executive Director, the deficiencies in the filing. The utility may revise and refile its petition at any time and initiate a new proceeding.

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

Nominal Procedural Schedule

Day 1 T{  
 Company files tariff and testimony; Company serves filing on interested parties; Rolling data requests initiated  
 T}  
 Day 3 T{  
 Order of Notice issued  
 T}  
 Day 10 T{  
 Commission accepts or rejects filing for compliance with guidelines  
 T}  
 Day 15 T{  
 Final data requests due  
 T}  
 Day 22 T{  
 Final data responses due  
 T}  
 Day 30 T{  
 Responsive testimony due  
 T}  
 Day 35 T{  
 Technical session/Settlement conference  
 T}  
 Day 40 T{  
 Hearing on Merits  
 T}  
 Day 55 T{  
 Final order  
 T}

## SUBSTANTIVE CONSIDERATIONS

A utility filing an economic development or business retention tariff shall do so in conformance with the following Commission guidelines.

### 1. *Eligibility Criteria*

RSA 378:11-a clearly mandates that economic development and business retention rates are for industrial customers. Industrial customers for the purposes of economic development and business retention filings shall be defined as those establishments whose primary activity is classified by the *Standard Industrial Classification Manual, 1987* as Manufacturing, with a primary SIC code of SIC 20 through SIC 39.

Customers who have made commitments to locate or expand in New Hampshire before

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seeking service under the economic development tariff will not be eligible for the economic development rate. Customers should apply for service under the utility's economic development tariff at least 60 days prior to the date upon which service is to begin.

Utilities offering a business retention rate should ascertain, and the recipient companies should be willing to verify, that a discounted electric rate is an essential component of the decision to remain in New Hampshire.

### 2. *The Effect on the Utility's Fixed and Variable Costs*

All utility filings will be expected to demonstrate that the proposed rates are above the utility's incremental costs of capacity and energy for each year the economic development or business retention rates are effective. We will not specify how long the term of the economic

development or business retention rate should be, as that will be dependent upon a number of utility specific factors, including the utility's current capacity situation and purchased power agreements. We will expect support for each utility's filing on how the discounted rates will benefit the different customer classes both in the short-term as well as in the long-term. Effects on fuel or purchased power adjustment clauses should be addressed, including for PSNH the effects on combined system savings. We will also expect an analysis of the effects on base rates. The proposed filings should also indicate how any additional costs for distribution or transmission, if required by the new or expanded industrial load, will be recovered.

### *3. The Amount of New Demand and Energy*

We will expect utilities that choose some minimum level of load to be able to justify it based on cost.

Economic development rates for existing customers that are committed to expansion should be based on the incremental amount of usage associated with the expanded load. Therefore, the economic development rate will apply only to the expanded load of existing manufacturing businesses.

### *4. The Effect on Employment within the State*

Utilities shall report annually the number of jobs directly created or retained as a result of their economic development or business retention tariffed schedules. The utility may supplement this reporting requirement with information regarding other direct or indirect effects on employment. This filing will be made on July 1 of each year as part of the utilities' other filing requirements as specified under Reporting Requirements below.

### *5. Material Adverse Competitive Impact*

Manufacturing firms adversely affected by a customer receiving a discounted economic development or business retention rate may petition the Commission for equitable treatment.

Any utility offering a business retention tariff for its own customers may make available a business retention rate to eligible customers of other New Hampshire public utilities provided the customer is willing to locate to the utilities' service territory and will be rendered service under the same rates and terms as the utilities' own eligible business retention customers. Business retention tariffs targeted specifically toward customers of other New Hampshire utilities will not be approved.

A list of customers served under economic development and business retention rates shall be filed with the Commission on a quarterly basis. The list shall include the name of the customer, its four-digit SIC code, the location of the business and the date service commenced. This filing will be in addition to the filing requirements discussed below.

### *6. End-User Participation in Conservation Programs*

We expect that any new or expanded load would conform with the New Hampshire Commercial Energy Code, RSA 155-D. Customers taking service under a tariff for business

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retention shall pursue and undertake all cost effective measures available to them to remain

in New Hampshire. Economic development and business retention customers should be eligible for utility conservation programs.

#### *7. Other State Economic Development Programs*

Customers served under discounted tariff rates should avail themselves of whatever applicable programs are offered by other agencies and the utilities should assist them in that pursuit.

#### *8. Commission Position on Structure of Discounted Rates*

We expect utility filings for economic development to contain rate information so customers will understand clearly the type of economic development rate available as well as the level of discount should they choose to take service from a specific New Hampshire electric utility. The same tariff information is required for business retention customers.

We believe some filing flexibility is necessary and beneficial, therefore, utilities may file individual discounted rates that are available to a limited number of subclasses of customers.

#### *9. Reporting Requirements*

Each utility with an economic development and/or business retention tariff on file with the Commission shall file on July 1 of each year the following: (1) the name of the company receiving service under either the economic development tariff or the business retention tariff, (2) the date service under the respective tariff commenced, (3) the date service under the respective tariff will terminate, (4) the four digit SIC code of the customer, (5) the economic effects of the tariff on recipient customers and other utility customers, (6) the number of jobs created directly as a result of receiving service under the tariff.

This report shall also be available for public review at the main office of the utility.

### FOOTNOTES

<sup>1</sup>See *New Hampshire Employment Projections By Industry and Occupation*. State of New Hampshire, Department of Employment Security. August 1995.

### EDITOR'S APPENDIX

#### Citations in Text

[N.H.] Re Guidelines for Economic Development and Business Retention Filings, DR 95-216, Order No. 21,777, 80 NH PUC 514, Aug. 7, 1995. [N.H.] Re Guidelines for Economic Development and Business Retention Filings, DR 95-216, Order No. 21,852, 80 NH PUC 632, Oct. 9, 1995.

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NH.PUC\*11/06/95\*[81142]\*80 NH PUC 719\*Public Service Company of New Hampshire

[Go to End of 81142]



80 NH PUC 719

**Re Public Service Company of New Hampshire**

DE 95-194

Order No. 21,896

New Hampshire Public Utilities Commission

November 6, 1995

ORDER initiating a formal investigation into an electric utility's deteriorating service reliability, including a review of the utility's tree-trimming practices as a possible cause.

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## 1. ELECTRICITY, § 4

[N.H.] Operating practices and efficiency — Degradation in distribution service reliability — Tree-trimming practices as a possible cause — Formal investigation. p. 720.

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BY THE COMMISSION:

ORDER

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On July 12, 1995, the Staff of the New Hampshire Public Utilities Commission Staff (Commission) forwarded to the Commission a memorandum which cited its concern over a marked degradation in Public Service Company of New Hampshire (PSNH) distribution reliability indices. The memorandum noted the Commission Staff's (Staff) unsuccessful attempts to resolve its concerns informally with PSNH. In response, the Commission issued an Order of Notice on July 14, 1995, providing for a Prehearing Conference which was ultimately held on October 13, 1995.

*Motions to Intervene*

At the Prehearing Conference, the Commission considered motions to intervene from the City of Dover (Dover) and the Public Utility Policy Institute (PUPI). The Commission granted PUPI's motion for limited intervention, which was unopposed. PSNH opposed Dover's motion for full party status and recommended that Dover only be allowed to participate as a limited intervenor.

PSNH was primarily concerned that Dover's interests in municipalization would result in undue discovery burdens. Dover argued that its substantial interests may be affected by this proceeding and, moreover, it agreed that it would limit its participation to specific interests of the City. Accordingly, Dover was made a full party to this proceeding. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

*Summary of Positions*

Staff explained that it has not formulated a definitive conclusion as to the reasons for the degradation in PSNH's distribution reliability indices. Rather, it reaffirmed its position that PSNH's Quarterly Reliability Reports revealed a potential problem that should be investigated more fully. Towards that end, Staff stated that it may be necessary to engage the services of an expert consultant.

PSNH argued that this was not a situation of reliability degradation and that a proceeding was unnecessary. It contended, among other things, that the poorer reliability indices were a two-year weather anomaly and not a trend and that the 1993 and 1994 reliability indices, though worse than 1991 and 1992, were better than the 1988 and 1989 indices. PSNH also pointed out that it has recently increased its annual tree trimming budgets for 1995 and 1996 by over \$1 million to approximately \$4.3 million per year. Finally, it opined that its reliability is better than or equivalent to other New Hampshire electric utilities.

Dover and PUPI explained that they did not have a preliminary position to state for the record. The OCA, however, expressed its concern about reliability generally and noted its interest in investigating the issue.

#### *Reliability Standard*

PSNH argued that Staff has set forth a reliability standard which goes beyond the usual statutory requirement to provide safe and reliable service. PSNH states further that the Rate Agreement imposes no additional burden on PSNH beyond the controlling statutory burden and that it should be evaluated in regard to the benchmarks set by comparison to other utilities in the state.

Staff does not dispute the applicability of the statutory standard to provide safe and reliable service pursuant to RSA 374:1. It does, however, question the value of comparisons to other utilities; it argues that the relevant PSNH comparison is to PSNH's own historical results. Furthermore, Staff views testimony offered by Northeast Utilities in Docket No. DR 89-244 as creating a specific representation which defines PSNH's reliability obligation.

#### *Commission Analysis*

[1] We agree with Staff that PSNH's Quarterly Reliability Reports indicate the existence of a potential problem which merits further investigation. We also accept Staff's contention that in this instance a formally sanctioned proceeding is the necessary vehicle to determine, to the extent applicable: the source of the problem, either past or present; the remedy for past degradation in reliability; and the steps

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necessary to correct the problem going forward. Accordingly, we approve Staff's and Dover's request to proceed with discovery and we direct PSNH to cooperate with that discovery. In addition, we waive the requirement of N.H. Admin. Rule Puc 204.06 (a)(3) regarding objections to data requests.

As for Staff's retention of a consultant, while the use of a consultant may be appropriate at some point, there is no specific request now pending. If Staff believes its investigation indicates

the need for a consultant in the future, we will entertain the request at that time and we indicate here our predisposition to grant such a request. According to Staff, it is too early to develop a detailed procedural schedule.

Finally, with respect to standards governing and defining PSNH's reliability obligations, we find the issue is premature. Staff made clear that it has developed no irrevocable position and that further investigation on that and other issues is necessary.

Based upon the foregoing, it is hereby

ORDERED, that the City of Dover's and PUPI's respective motions to intervene are granted as explained above; and it is

FURTHER ORDERED, that Staff's request to conduct a formally sanctioned investigation is granted; and it is

FURTHER ORDERED, that PSNH shall comply with the parties' reasonable data requests; and it is

FURTHER ORDERED, the requirements of N.H. Admin. Rule Puc 204.06(a)(3) are hereby waived; and it is

FURTHER ORDERED, that Staff shall report to the Commission upon completion of its investigation, at which time the Commission will determine whether further action is warranted.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

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NH.PUC\*11/06/95\*[81143]\*80 NH PUC 721\*Northern Utilities, Inc.

[Go to End of 81143]

80 NH PUC 721

**Re Northern Utilities, Inc.**

DE 95-225

Order No. 21,897

New Hampshire Public Utilities Commission

November 6, 1995

ORDER authorizing a natural gas local distribution company to recover certain unbilled revenues that resulted from its failure to bill customers at new approved tariff rates during a prior period. The commission staff is directed to develop uniform procedures applicable to backbillings associated with uncollected, but approved, revenues.

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1. REVENUES, § 16

[N.H.] Uncollected or unbilled revenues — Backbilling authority — When utility fails to bill using approved new rate schedules — Procedures for governing recovery. p. 724.

## 2. PAYMENT, § 23

[N.H.] Metering and billing — Incorrect billing — Resulting from utility's failure to bill using approved new rate schedules — Backbilling authority — Procedures for governing recovery. p. 724.

## 3. PAYMENT, § 16

[N.H.] Liability for payment — Effect of undercharges — Resulting from utility's failure to bill using approved new rate schedules — Corrective backbilling authority — Duty of utility to collect tariffed rates in effect as of the time of service — Procedures for governing recovery of unbilled revenues. p. 724.

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APPEARANCES: LeBoeuf, Lamb,

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Greene & MacRae by Paul B. Dexter, Esq. on behalf of Northern Utilities, Inc.; Victor D. Del Vecchio, Esq. on behalf of New England Telephone & Telegraph Company, Inc.; Lisa M. Vazza, Esq. on behalf of Public Service Company of New Hampshire; McLane, Graf, Raulerson & Middleton by Steven E. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc.; Karen M. Asbury on behalf of UNITIL Service Corp.; Devine, Millimet & Branch by Anu R. Mullikin, Esq. on behalf of Granite State Telephone Inc., Merrimack County Telephone Company, Contoocook Valley Telephone Company, Inc., Dunbarton Telephone Company Inc., Wilton Telephone Company Inc., Hollis Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company; Honorable Kenneth Malcolm; Randy Lyman for Tamworth Water Works, Inc.; Michael W. Holmes, Esq. of the Office of Consumer Advocate for residential ratepayers; Robert J. Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

### ORDER

#### I. PROCEDURAL HISTORY

By Order of Notice dated August 18, 1995, the New Hampshire Public Utilities Commission (Commission) opened this docket to consider utility authority to bill customers retroactively. The issue arose when, on July 18, 1995, Northern Utilities (Northern) filed with the Commission an explanation of a June billing adjustment by which Northern billed residential customers for an undercollection of \$129,000 (approximately \$4.15 per customer). The undercollection occurred because Northern's Rate Department had inadvertently failed to change billing rates on the January 1, 1995 effective date the Commission had authorized Northern to collect the Business Profits Tax in its rates.

The Order of Notice invited interested parties to file written comments by September 7,

1995, on the issues of utility authority to bill customers retroactively and the appropriateness of a rulemaking to impose standards and procedures for such billing, with responsive comments due by September 28, 1995. The following parties filed comments: Northern; Public Service Company of New Hampshire (PSNH); New England Telephone & Telegraph Company (NYNEX); EnergyNorth Natural Gas, Inc. (ENGI); Granite State Telephone Inc.; Merrimack County Telephone Company; Contoocook Valley Telephone, Inc.; Dunbarton Telephone Company Inc.; Wilton Telephone Company, Inc.; Hollis Telephone; Bretton Woods Telephone; and Dixville Telephone Company (collectively, the Independent Telephone Companies); UNITIL Service Corp. (UNITIL), and from Randy Lyman, on behalf of Tamworth Water Works, Inc.

With the exception of UNITIL and Ms. Lyman, all those filing written comments appeared and spoke at the duly noticed hearing on October 3, 1995. Representative Kenneth Malcolm of Hampton, New Hampshire, did not file written comments but presented oral comments at the hearing.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. *Northern*

Northern argued that New Hampshire statutes require utilities to collect exactly the rates authorized by the Commission, nothing more and nothing less. Therefore, both under- and over-collections must be permitted. Northern cited RSA 378:14 as mandating that utilities collect the rates set forth on rate schedules approved by the Commission. Northern interprets that statute to mean that a utility must necessarily bill to correct for under- or overbilling.

While denying that retroactive billing occurred in this case, Northern suggested that in the future the Commission should be notified of billing corrections when errors affect a large segment of a utility's customer base.

### B. *NYNEX*

NYNEX asserts that whether or not an error has occurred, because utilities bill for

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service after the service has been used by the customer, all utilities bill in arrears at the tariffed rate in effect at the time of service. In addition, NYNEX bills customers in arrears as a result of interLATA billing arrangements with interexchange carriers. Thus, NYNEX argued, there can be no proscription against corrective billing in arrears at the tariffed rate in effect at the time service was used. Such a proscription would not only contravene tariffs but also: constitute undue preference, thus violating RSA 378:10; and interfere with statutory limitations of actions under RSA 508:4,I. Further, NYNEX argued billing in arrears is not retroactive billing as understood by the New Hampshire Supreme Court in *Appeal of Pennichuck Water Works*, 120 NH 562 (1980). In that case the Court prohibited a utility from billing customers at a rate higher than that "which was in effect at the time service was rendered, pointing out that "customers of a utility have a right to rely on rates which are in effect at the time they consume the services..." *Id.* at 566.

NYNEX recommended that the Commission not initiate a rulemaking on this issue.

### C. PSNH

PSNH agreed with NYNEX that tariffs and rate schedules bind both the utility and its customers in the same manner as a contract. Retroactive corrective billing to collect the approved rates in effect at the time of service consumption does not create a new obligation; it merely secures payment on a debt already due and owing.

PSNH opined that a rulemaking on the issue would be unnecessary but suggested certain guidelines if a rule were promulgated. PSNH supported a rule requiring only that utilities notify the Commission prior to corrective billing, when unintentional billing errors occur which affect a significant number of customers. A rule should require notification to and approval by the Commission when undercollection occurs deliberately or when a utility is proposing to collect charges which are not clearly authorized by tariff or Commission order.

### D. ENGI

Although ENGI agreed with NYNEX that utilities may recover uncollected but approved revenues, ENGI argued that recovery is permitted even in instances where a utility does not implement an approved charge in the timeframe authorized. ENGI conditioned recovery on whether management imprudence or negligence caused the failure to implement the charge.

ENGI suggested that, in either case, the mechanism or charge by which recovery is achieved must first be properly authorized by the Commission. However, because each situation will be highly individual, ENGI recommended against undertaking a rulemaking.

### E. Independent Telephone Companies

The Independent Telephone Companies agreed that utilities may bill retroactively for uncollected, approved revenues, regardless of the length of time elapsing between accrual and billing and regardless of whether the failure to bill was a deliberate management decision or simple error. The Independent Telephone Companies stated that the Commission may wish to obtain information as to a utility's rationale for not billing at the authorized time, but urged the Commission not to adopt a blanket rule.

### F. UNITIL

UNITIL asserted that utilities are not prohibited from collecting inadvertently unbilled revenues but that a utility should have the discretion to seek less than 100% recovery in order to avoid strongly negative customer reaction. UNITIL urged that utilities should be given flexibility to design equitable solutions for each particular situation. In all cases where a utility seeks recovery, an explanation of the error and actions should be given to the Commission and to customers. A utility which purposely fails to bill at approved rates should not be permitted to recover the unbilled revenues.

### G. OCA

Consumers have a right to rely on the Commission's own publication, "Consumers' Rights and Responsibilities," the OCA declared,

which states that billing must occur at regular intervals and bills must contain information from which the bill may be readily computed. The OCA argued that the reason for such obligations is to insure consumers can make financial plans and budget decisions. The Commission publication also provides that a bill may be based upon an estimate of consumption but not upon an estimate of price. The OCA argued that Northern's attempt to collect incorrectly billed (unbilled) revenues amounts to claiming the right to bill by price estimate and should not be permitted.

The OCA argued that Northern breached its contractual obligations to consumers by failing to bill correctly. Harm inflicted on consumers includes the inability to make financial plans or budget correctly, but damages would be difficult to calculate. The OCA suggested that some kind of penalty might be invoked on the basis of gross negligence for failure to bill correctly.

The OCA proposed that the Commission establish a process by which a utility must seek Commission approval to impose a surcharge for the collection of unbilled revenues.

#### *H. Staff*

Although there is authority in other jurisdictions to deny recovery, Staff argued that utilities may collect unbilled revenues depending on the circumstances of each case. The Consumer Assistance Department suggested a rulemaking docket to establish rules and policies for dealing with billing errors. The current rulemaking docket DRM 93-221, Uniform Administration of Utility-Customer Relations, would be an appropriate vehicle for such a rulemaking.

#### *I. Others*

Prior to the hearing, the Commission received a letter from Ms. Lyman arguing that prohibiting a utility from rectifying its billing error would be tantamount to requiring the utility to provide free services. At the hearing, Representative Kenneth Malcolm of Hampton, who spoke for Representative Dube as well, stated that he had received several complaints on the subject from constituents. Representative Malcolm agreed that a utility should be required to seek approval from the Commission before attempting to recover unbilled revenues.

### III. COMMISSION ANALYSIS

**[1-3]** We find that utilities are entitled to collect their tariffed rates though they ought to collect them in a timely manner. When a utility erroneously fails to bill the tariffed rates on the effective date authorized, then, depending on the circumstances, corrective billing is the appropriate remedy, in an amount and manner approved by the Commission. Requiring prior approval of the amount and manner of collection will provide an opportunity to tailor the remedy to fit each situation.

We find merit in the suggestion by the OCA and Staff that we establish a process whereby a utility which discovers its erroneous failure to bill approved rates shall notify the Commission and seek approval to remedy its error. Although we expect these situations to arise only infrequently, in order to provide clear guidelines we will order Staff to draft an appropriate rule for inclusion in the DRM 93-221 rulemaking.

Based upon the foregoing, it is hereby

ORDERED, that Staff shall prepare a draft rule under which a utility may seek Commission

approval for recovering inadvertently unbilled revenues; and it is

FURTHER ORDERED, that Staff shall submit its draft for comment and review as part of DRM 93-221.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

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NH.PUC\*11/06/95\*[81144]\*80 NH PUC 725\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81144]

80 NH PUC 725

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-283

Order No. 21,898

New Hampshire Public Utilities Commission

November 6, 1995

ORDER authorizing an interexchange telephone carrier to revise its "800 Plan P" service offerings, to eliminate a customer's ability to retain the same 800 number when moving or changing services.

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1. SERVICE, § 455

[N.H.] Telephone — Numbers — Assignment and retention — 800 calling — Special "Plan P" service — Inability to retain 800 number upon moves or changes in service — Interexchange carrier. p. 725.

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BY THE COMMISSION:

ORDER

[1] On October 11, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire Inc., (AT&T) requesting authority to revise AT&T 800 Plan P, for effect November 10, 1995.

The proposed revision removes the ability for 800 Plan P customers to retain the 800 number when moving to another location or changing to an alternate AT&T 800 service. AT&T Plan P customers will share access to an 800 number with other customers and will acquire service based on a two-digit security code assigned to the customer by AT&T.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire



intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1, are approved for effect as filed:

- Table of Contents*
- 4th Revised Page 15
- Section 13*
- 1st 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 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

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NH.PUC\*11/06/95\*[81145]\*80 NH PUC 725\*Sprint Communications Company of New Hampshire, Inc.

[Go to End of 81145]

80 NH PUC 725

**Re Sprint Communications Company of New Hampshire, Inc.**

DR 95-279

Order No. 21,899

New Hampshire Public Utilities Commission

November 6, 1995

ORDER authorizing an interexchange telephone carrier to introduce intrastate resale services and to offer prepaid calling cards for purchase at automatic teller machines. The carrier also is allowed to offer customers the option of charging nighttime collect calls to 800 access numbers.

**Page 725**

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1. SERVICE, § 171

[N.H.] Resale of services — Intrastate toll telephone services — Mirroring of interstate

wholesale services — Interexchange carrier. p. 726.

## 2. RATES, § 582

[N.H.] Telephone rate design — Toll services — Prepaid calling card services — Purchase of cards at automatic teller machines — Placement of nighttime collect calls — Via 800 access numbers. p. 726.

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BY THE COMMISSION:

### ORDER

[1, 2] On October 6, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Sprint Communications Company of New Hampshire, Inc., (Sprint) requesting authority to introduce Resale Solutions, Moonlight Madness Collect, ATM Prepaid Calling Card Service and Real Solutions Option A and to make various other revisions, for effect November 5, 1995.

Resale Solutions is a wholesale product which includes outbound, inbound and calling card capabilities available for resellers. Sprint provides resellers with a call detail media containing the service usage of the reseller's end users in order for the reseller to bill its customers. This service is an add-on to Sprint's Resale Solutions interstate product.

Moonlight Madness Collect allows subscribers to place collect calls using a Sprint 800 access number.

ATM Prepaid Calling Card Service allows customers to purchase prepaid calling cards through automated teller machines (ATM). ATM screens will be programmed to offer \$10, \$20 and \$50 long distance vouchers. Customers request the vouchers just as they request cash and the ATM debits the customer's account for the purchase amount. The ATM will print out two receipts: the first will include the transaction information and the second will include the 800 access number, the customer's personal identification number and expiration date.

Real Solutions Option A is a discount option available to Real Solutions subscribers. The discount is based on term commitment coupled with a monthly spending level commitment.

The various other changes include adding Stand-Alone Travel Card text, textual changes to the Affinity Member Program and Sprint Sense, footnotes to Sprint Sense and Wholesale Communications Service which reflect that these services will no longer be available to new subscribers after November 6, 1995, and usage rate changes for Collector's Prepaid FONCARD.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Sprint to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Sprint's tariff, NHPUC No. 4 are approved for effect as filed:

18th Revised Page 1  
3rd Revised Page 2  
1st Revised Page 13  
3rd Revised Page 22  
1st Revised Page 23  
3rd Revised Page 24  
3rd Revised Page 28  
3rd Revised Page 31  
3rd Revised Page 34  
2nd Revised Page 44  
3rd Revised Page 47  
3rd Revised Page 49  
1st Revised Page 59  
1st Revised Page 61  
2nd Revised Page 71-A  
Original Page 71-C  
4th Revised Page 72  
2nd Revised Page 73-B  
3rd Revised Page 73-C  
1st Revised Page 76-A  
3rd Revised Page 89

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Original Page 89.1  
2nd Revised Page 103-A  
3rd Revised Page 103-B  
2nd Revised Page 103-C  
4th Revised Page 103-D  
Original Page 103-D-1  
2nd Revised Page 103-E  
2nd Revised Page 103-F  
2nd Revised Page 103-G  
3rd Revised Page 103-H  
Original Page 103-I  
Original Page 103-J  
Original Page 103-K;

and it is

FURTHER ORDERED, that Sprint file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

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NH.PUC\*11/06/95\*[81146]\*80 NH PUC 727\*Corporate Telemanagement Group, Inc.

[Go to End of 81146]

80 NH PUC 727

**Re Corporate Telemanagement Group, Inc.**

Additional applicant: Bottom Line Telecommunications, Inc.

DE 95-226

Order No. 21,900

New Hampshire Public Utilities Commission

November 6, 1995

ORDER authorizing a large telecommunications parent company, LCI Telemanagement Corporation, as successor in interest to Corporate Telemanagement Group, Inc., to acquire certain assets, including customer lists, records, and contracts, of Bottom Line Telecommunications, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Acquisition of customer lists and service contracts — Factors affecting approval — Corporate efficiencies — Proven abilities of purchasing utility — Compliance with standard of no net harm — Telecommunications carriers. p. 728.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to sensitive financial and operational information — As part of purchase and sale transaction — Benefits of nondisclosure as outweighing those of disclosure — Telecommunications carriers. p. 728.

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BY THE COMMISSION:

**ORDER**

On August 17, 1995, Bottom Line Telecommunications, Inc. (BLT) and Corporate Telemanagement Group, Inc. (CTG), filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of the sale of certain BLT assets to CTG (Petition). Since the filing of the Petition, the Commission approved the sale of CTG's assets to LCI Telemanagement Corp. (LCI). *See* Order No. 21,793 (August 22, 1995). We will refer to the Petition, therefore, as if it requested approval of sale of certain BLT assets to LCI, and BLT and LCI will be collectively referred to as the Applicants.

The Commission, by Order No. 21,364 (September 20, 1994), granted BLT, a Washington

corporation, authority to operate in the State of New Hampshire. BLT wishes to retain its authority and tariffs as not all of its assets are to be conveyed to LCI, and BLT intends to continue to provide some services in New Hampshire.

BLT seeks to sell to LCI the following assets: customer contracts and sales agent contracts and all rights, lists, records, billing and other information pertaining thereto. The sale is

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described in the Petition's Exhibit 1, titled Agreement for Purchase and Sale of Customer Rights and Sales Agent Rights.

LCI anticipates a transition period of approximately six months to integrate BLT's customers into its existing operation. LCI will continue billing BLT's former customers under BLT's tariff, with bills that identify both BLT and LCI. During the transition, LCI will migrate these customers to its tariff rates and products as filed with the Commission. LCI will notify all customers in advance regarding any change in their long distance rates or products.

The Applicants filed a Motion for Confidential Treatment (Motion) simultaneously with their Petition of August 17, 1995. The motion sought confidential treatment of Exhibit 1, described above, and also Exhibit 2, BLT's financial statements. Following discussions with Staff, on August 21, 1995 the Applicants filed an Amended and Restated Motion for Confidential Treatment (Amended Motion). The Amended Motion narrowed the requested confidential treatment to Exhibit 1. The original Motion properly filed both redacted, public copies and unredacted copies afforded interim confidential treatment, pending the Commission's ruling.

Staff, after review of the Amended Motion and redacted materials, concludes that the material redacted is the minimum necessary to protect the confidential, commercial or financial material governed by RSA 91-A:5,V and N.H. Admin. Rule, Puc 204.08. *See* Order No. 21,731 (July 10, 1995). Given the Amended Motion, the narrowly tailored redaction of Exhibit 1, as well as the evidence of harm cited in the Amended Motion, Staff concludes the benefits of limited non-disclosure outweigh the benefits of disclosure.

Staff noted its objection to one of the Applicants' arguments, that there is no public interest served by divulging the sensitive information, particularly if no other party intervenes in the proceeding. (Amended Motion at page 2.) Staff contends that intervention by others is not relevant to the analysis of a Right to Know request under RSA 91-A and the Commission's rules. Notwithstanding this point, however, Staff concludes that the material redacted fits within the standards of RSA 91-A and Puc 204.08 and recommends approval of the Amended Motion and Petition.

[1, 2] After review of the Petition, Amended Motion and Staff recommendation, we find that the transfer of certain assets from BLT to LCI will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of assets may in fact produce net benefits to BLT's affected customers. We will, therefore, approve the Petition.

We find that the confidential treatment requested by the Amended Motion is narrowly tailored to withhold from public disclosure the minimum information necessary to balance

disclosure and non-disclosure. We will, therefore, approve the Amended Motion.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval for the sale of certain BLT assets, as described in Exhibit 1 to the Petition, to LCI is GRANTED; and it is

FURTHER ORDERED that the Amended Motion seeking confidential treatment of the redacted portions of Exhibit 1 is GRANTED; and it is

FURTHER ORDERED that BLT shall otherwise continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bottom Line Telecommunications, Inc., DE 94-168, Order No. 21,364, 79 NH PUC 513, Sept. 20, 1994. [N.H.] Re Corporate Telemanagement Group, Inc., DE 95-164, Order No. 21,793, 80 NH PUC 540, Aug. 22, 1995. [N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*11/06/95\*[81147]\*80 NH PUC 729\*Corporate Telemanagement Group, Inc.

[Go to End of 81147]

80 NH PUC 729

**Re Corporate Telemanagement Group, Inc.**

Additional applicant: WorldTel Services, Inc.

DE 95-229

Order No. 21,901

New Hampshire Public Utilities Commission

November 6, 1995

ORDER authorizing a large telecommunications parent company, LCI Telemanagement Corporation, as successor in interest to Corporate Telemanagement Group, Inc., to acquire certain assets, including customer lists, records, and contracts, of WorldTel Services, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Acquisition of customer lists and service contracts — Factors affecting approval — Corporate efficiencies — Proven abilities of purchasing utility — Compliance with standard of no net harm — Telecommunications carriers. p. 730.

## 2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to sensitive financial and operational information — As part of purchase and sale transaction — Benefits of nondisclosure as outweighing those of disclosure — Telecommunications carriers. p. 730.

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BY THE COMMISSION:

### ORDER

On August 18, 1995, WorldTel Service, Inc. (WorldTel) and Corporate Telemanagement Group, Inc. (CTG), filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of the sale of certain WorldTel assets to CTG (Petition). Since the filing of the Petition, the Commission approved the sale of CTG's assets to LCI Telemanagement Corp. (LCI). *See* Order No. 21,793 (August 22, 1995). We will refer to the Petition, therefore, as if it requested approval of sale of certain WorldTel assets to LCI, and WorldTel and LCI will be collectively referred to as the Applicants.

The Commission, by Order No. 21,528 (February 8, 1995), granted WorldTel, a California corporation, authority to operate in the State of New Hampshire. WorldTel wishes to retain its authority and tariffs as not all of its assets are to be conveyed to LCI, and WorldTel intends to continue to provide some services in New Hampshire.

WorldTel seeks to sell to LCI the following assets: (a) substantially all customer contracts and sales agent contracts and all rights, lists, records, billing and other information pertaining relating to the Express® customers of WorldTel; (b) substantially all sales agents contracts, rights, lists, records, payments and other information relating to sales agents for the Express customers; (c) the non-exclusive right to use the trademark "Express" until December 31, 1995. The sale is described in the Petition's Exhibit 1, titled Agreement for Purchase and Sale of Assets.

LCI anticipates a transition period of approximately six months to integrate WorldTel's customers into its existing operation. LCI will continue billing WorldTel's former customers under WorldTel's tariff, with bills that identify both WorldTel and LCI. During the transition, LCI will migrate these customers to its tariff rates and products as filed with the Commission. LCI will notify all customers in advance regarding any change in their long distance rates or products.

The Applicants filed a Motion for Confidential Treatment (Motion) simultaneously with their Petition of August 18, 1995. The motion sought confidential treatment of Exhibit 1, described above, and also Exhibit 2, WorldTel's financial statements. Following discussions with Staff, on August 21, 1995 the Applicants filed an Amended and Restated

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Motion for Confidential Treatment (Amended Motion). The Amended Motion narrowed the requested confidential treatment to Exhibit 1. The original Motion properly filed both redacted, public copies and unredacted copies afforded interim confidential treatment, pending the Commission's ruling.

Staff, after review of the Amended Motion and redacted materials, concludes that the material redacted is the minimum necessary to protect the confidential, commercial or financial material governed by RSA 91-A:5,V and N.H. Admin. Rule, Puc 204.08. *See* Order No. 21,731 (July 10, 1995). Given the Amended Motion, the narrowly tailored redaction of Exhibit 1, as well as the evidence of harm cited in the Amended Motion, Staff concludes the benefits of limited non-disclosure outweigh the benefits of disclosure.

Staff noted its objection to one of the Applicants' arguments, that there is no public interest served by divulging the sensitive information, particularly if no other party intervenes in the proceeding. (Amended Motion at page 2.) Staff contends that intervention by others is not relevant to the analysis of a Right to Know request under RSA 91-A and the Commission's rules. Notwithstanding this point, however, Staff concludes that the material redacted fits within the standards of RSA 91-A and Puc 204.08 and recommends approval of the Amended Motion and Petition.

[1, 2] After review of the Petition, Amended Motion and Staff recommendation, we find that the transfer of certain assets from WorldTel to LCI will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NHPUC 236 (1991). The transfer of assets may in fact produce net benefits to WorldTel's affected customers. We will, therefore, approve the Petition.

We find that the confidential treatment requested by the Amended Motion is narrowly tailored to withhold from public disclosure the minimum information necessary to balance disclosure and non-disclosure. We will, therefore, approve the Amended Motion.

Based upon the foregoing, it is hereby

ORDERED that the Petition for approval for the sale of certain WorldTel assets, as described in Exhibit 1 to the Petition, to LCI is GRANTED; and it is

FURTHER ORDERED that the Amended Motion seeking confidential treatment of the redacted portions of Exhibit 1 is GRANTED; and it is

FURTHER ORDERED that WorldTel shall otherwise continue to operate under its current tariff, until ordered otherwise.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] *Re Corporate Telemanagement Group, Inc.*, DE 95-164, Order No. 21,793, 80 NH PUC 540, Aug. 22, 1995. [N.H.] *Re New England Teleph. & Teleg. Co.*, DR 95-069, Order No.



21,731, 80 NH PUC 437, July 10, 1995. [N.H.] Re WorldTel Services, Inc., DE 94-205, Order No. 21,528, 80 NH PUC 72, Feb. 8, 1995.

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NH.PUC\*11/06/95\*[81148]\*80 NH PUC 730\*Northern Shores Water Company, Inc.

[Go to End of 81148]

80 NH PUC 730

**Re Northern Shores Water Company, Inc.**

DR 95-223

Order No. 21,902

New Hampshire Public Utilities Commission

November 6, 1995

ORDER establishing a procedural schedule for conferences and hearings relative to a water utility's application for authority to increase rates by 124%. Commission also directs Tilton-Northfield Aqueduct Company, Inc., to participate in the proceedings, given that the applicant operates within Tilton-Northfield's franchise and the two may merge at some point.

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1. RATES, § 649

[N.H.] Procedure — Hearings and conferences — Establishment of schedule — Water rate case. p. 731.

2. PARTIES, § 16

[N.H.] Necessary parties — Mandatory participation — Factors — Holder of franchise in which applicant operates — Possible merger or purchase and sale transactions — Water rate case. p. 731.

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BY THE COMMISSION:

**ORDER**

On August 14, 1995, Northern Shores Water Company, Inc. (Northern Shores) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules. On September 22, 1995, Northern Shores filed supporting testimony and exhibits for a proposed 124% increase in rates.

The Commission issued Order No. 21,861 (October 13, 1995) suspending the proposed permanent rate schedule, scheduling a prehearing conference for November 3, 1995 at which the Parties and Commission Staff (Staff) should set forth their initial positions or the issues to be addressed in the proceeding, setting a deadline for intervention requests, and proposing a procedural schedule. Order No. 21,861 also required Northern Shores to serve a copy of the Order upon each of its customers, Tilton-Northfield Aqueduct Company, Inc. (Tilton-Northfield), and the Tilton Town Clerk.

At the November 3, 1995 prehearing conference, no parties sought intervention. The Office of Consumer Advocate (OCA), a statutorily recognized intervenor, did not appear.

[1] At the prehearing conference Northern Shores and Staff agreed to the following modifications to the proposed procedural schedule:

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

Last Rolling Data Requests November 27, 1995  
by Staff and Intervenors  
Company Data Responses December 1, 1995  
Technical Session December 5, 1995

We find the proposed changes in procedural schedule to be reasonable and will approve it for the remainder of the proceeding.

Northern Shores stated that it believed the significant issues to be addressed in this proceeding are: 1) the need to increase the rate set five years ago from \$80 per year to \$190 per year; 2) its proposed change in the billing period from an annual to a semi-annual billing period; 3) the granting of a permanent franchise; and 4) its request to bill six months in arrears as of January 1, 1996 because the Company was not seeking temporary rates.

In response to an issue raised by Staff, Northern Shores stated that it had recently spoken with Tilton-Northfield, which may be interested in purchasing Northern Shores at some time in the future.

Staff stated that it has no formal position at this time regarding the reasonableness of the proposed increase in rates because an audit was still in process.

[2] Staff did, however, set forth a number of issues relative to the granting of a permanent franchise. Those issues included a question as to who should be operating the water distribution system which is located in Tilton-Northfield's franchise area, whether a contamination plume identified in an aquifer in the area in which the system is located could potentially contaminate Northern Shores' well, and whether the distribution system could be interconnected with the Lochmere Village Water District which is as close as fifty feet to Northern Shores' distribution system. In light of these concerns, Staff requested that Tilton-Northfield be made a mandatory party to this proceeding and that the Lochmere Village Water District be requested to participate in this proceeding.

We further find that the participation of Tilton-Northfield in this proceeding is necessary to fully serve the public interest and we will make it a mandatory party to the proceeding. We also believe the Lochmere Village District should be involved in this process.

Furthermore, because the Department of Environmental Services (DES) controlled the funds used to construct the Lochmere Village District and its water distribution system, we believe DES should also be invited to provide its input into the resolution of the issues raised herein. *See, Re Tilton Northfield Aqueduct Company, Inc.*, DE 89-197.

Based upon the foregoing, it is hereby

ORDERED, that the proposed modifications to the procedural schedule delineated above are approved; and it is

FURTHER ORDERED, that Tilton-Northfield is made a mandatory party to this proceeding; and it is

FURTHER ORDERED, that the Lochmere Village District and DES be invited by letter of the Executive Director and Secretary to participate in this proceeding in order to ensure the public interest is protected.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1995.

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NH.PUC\*11/09/95\*[81149]\*80 NH PUC 732\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81149]

80 NH PUC 732

### **Re New Hampshire Electric Cooperative, Inc.**

Additional applicant: Granite State Electric Company

DE 95-290

Order No. 21,905

New Hampshire Public Utilities Commission

November 9, 1995

ORDER approving a proposed service territory amendment, to allow an electric utility to serve two customers located within the service area of an electric cooperative. Because the customers require three-phase service which the cooperative cannot provide in that area economically, and because the utility had closer facilities already in place, it is deemed in everyone's best interests to authorize the modification in service area. However, any further customer transfers are held in abeyance.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Service area agreements — Territorial modifications — Factors affecting approval — Mutual agreement of affected utilities — Proximity of service facilities — Small number of customers being transferred — Electric service. p. 733.

## 2. FRANCHISES, § 53

[N.H.] Amendment — Territorial modifications — Factors affecting approval — Mutual assent of affected utilities — Inability of one to serve its customers — Special service needs — Proximity of service facilities operated by other utility — Small number of customers being transferred — Electric service. p. 733.

## 3. SERVICE, § 140

[N.H.] Factors affecting duty to serve — Inability to serve — Special service requirements of customers — Nonexistence of plant and facilities to meet that demand — Transfer of customers to utility with proximate plant — Electric service. p. 733.

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BY THE COMMISSION:

### ORDER

On October 18, 1995, New Hampshire Electric Cooperative, Inc. (NHEC) and Granite State Electric company (GSEC), referred to jointly as the Companies, filed with the New Hampshire Public Utilities Commission (Commission) a joint petition pursuant to RSA 374:22, 374:26 and 374:28 for approval to transfer a certain portion of service territory in Enfield, New Hampshire in the vicinity of Interstate 89, from NHEC to GSEC. On October 26, 1995, NHEC filed additional information and

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revised maps of the proposed Enfield service territory transfer.

In the original joint petition, the Companies described the requested service territory change, and proposed to accomplish the transfer in two phases. Phase I would involve GSEC providing three-phase service immediately to two existing NHEC customers, Ski Whaleback, Ltd., (Whaleback) and Johnson & Dix Exit 16 Mobil Oil/Burger King (Johnson & Dix). NHEC cannot provide such service from its existing facilities in the area and cannot economically extend the requested three-phase service; GSEC can do so from its nearby facilities. Whaleback is in need of the requested service to meet its snow making and ski lift operating needs. Johnson & Dix has requested three-phase service to improve service reliability.

The Companies also request that the Commission authorize the pursuit of Phase II, which would, at a later date, transfer additional service territory from NHEC of approximately 38 additional accounts receiving single-phase service in the same area of Enfield, New Hampshire. The Companies jointly request the combined Phase I and Phase II service territory transfer to improve service and mutual operating benefits to the Companies.

In the October 26, 1995, submittal, the Companies further explained that the requested GSEC three-phase facilities to be constructed for Phase I service to the two customers will physically

lie within NHEC's service territory until the territory is transferred under Phase II. NHEC suggests and GSEC concurs that it would be appropriate for the Commission to authorize GSEC to serve any new requests for three-phase service within the subject territory, described as the Designated Service Territory on Exhibit 3, pending completion of the proposal of Phase II.

**[1-3]** The investigation by the Commission Staff (Staff) confirms that it would be more reasonable for GSEC to extend its three-phase service and provide the requested service only to the two identified customers. Staff acknowledges that NHEC, GSEC, Whaleback and Johnson & Dix are in agreement to have GSEC serve the two customers as being in the best interest of all parties involved. Staff notes that no other parties are affected by Phase I.

Phase II involves a more complex and comprehensive situation. In Phase II, the Companies propose to establish mutually agreeable compensation for NHEC's existing facilities in the Designated Service Territory. The Companies also propose to provide the remaining 38 NHEC members in the affected territory with notice and information pertaining to the change in service from NHEC to GSEC as of a date to be established by the Companies, but no later than six months from the effective date of the Commission order.

Staff notes that the joint petition does not indicate that any of the remaining 38 members have requested a transfer of service companies, and also, that none of the members have been made aware of the proposed transfer. Therefore, Staff believes that setting a time table to affect a transfer is not appropriate for Phase II. Moreover, as the ski season is about to begin, Staff recommends that the Commission approve Phase I in order for the construction of three-phase facilities to start immediately, and hold any authorization of Phase II in abeyance. Any future requests for three-phase service during the completion of Phase II can be remedied by separate petitions.

The Commission finds that the requested revision of Phase I would be in the public good and, furthermore, the above evidence justifies granting permission without hearing pursuant to RSA 374:26.

The Commission also finds that the requested relief under Phase II is not ripe for consideration at this time and recommends that when Phase II activities have been completed, the Companies file a joint petition for authority to effect the transfer of the Designated Service Territory from NHEC to GSEC.

Based upon the foregoing, it is hereby

ORDERED, that authority be, and hereby is, granted, pursuant to RSA 374:22, RSA 374:26, and RSA 374:28 to New Hampshire Electric Cooperative, Inc. and Granite State Electric Company for the extension of service in the Town of Enfield, New Hampshire as described in Phase I of the subject petition, such authority to be effective immediately; and it is

FURTHER ORDERED, that each

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company file two revised Commission Service Territory Maps, in size and scale compatible with those on file, within sixty days from the effective dates of this order, reflecting the above change in service territory indicating the location of the two requesting customers, and

specifying thereon that the maps are effective on the date hereof by authority of the above NHPUC order number.

By order of the Public Utilities Commission of New Hampshire this ninth day of November, 1995.

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NH.PUC\*11/14/95\*[81150]\*80 NH PUC 734\*MFS Intelenet of New Hampshire, Inc.

[Go to End of 81150]

80 NH PUC 734

**Re MFS Intelenet of New Hampshire, Inc.**

DR 95-287

Order No. 21,906

New Hampshire Public Utilities Commission

November 14, 1995

ORDER approving an interexchange telephone carrier's proposal for introducing "Total Solutions" service, which allows subscribers to choose a service commitment level and then receive proportionate discounts and peak and off-peak pricing accordingly.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Package plans — For shared and dedicated outbound toll and inbound 800 calling — Presubscription to usage commitment levels — Proportional discounts and pricing periods — Interexchange carrier. p. 734.

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BY THE COMMISSION:

**ORDER**

[1] On October 17, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from MFS Intelenet of New Hampshire, Inc., (MFS) requesting authority to introduce Total Solution Series 100 Service for effect November 16, 1995.

Total Solutions Series 100 Service is a product that allows customers to select a commitment level and shared and dedicated outbound toll and inbound 800 service arrangements, obtain term plan discounts and receive peak and off-peak pricing.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of Total Solutions Series 100 Service.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of MFS' tariff, NHPUC No. 1 are approved for effect as filed:

- 6th Revised Page 1
- 2nd Revised Page 2
- 1st Revised Page 24.1
- 1st Revised Page 24.2
- 1st Revised Page 24.3
- 1st Revised Page 24.4
- Original Page 24.5
- Original Page 24.6
- Original Page 24.7
- Original Page 24.8
- Original Page 24.9
- Original Page 24.10
- Original Page 24.11
- 4th Revised Page 25
- 2nd Revised Page 26
- 1st Revised Page 27.1
- 1st Revised Page 27.2
- Original Page 27.3;

and it is

FURTHER ORDERED, that MFS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05

**Page 734**

(k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1995.

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NH.PUC\*11/14/95\*[81151]\*80 NH PUC 735\*UniDial Inc.

[Go to End of 81151]

80 NH PUC 735

**Re UniDial Inc.**

DR 95-286  
Order No. 21,907

New Hampshire Public Utilities Commission

November 14, 1995

ORDER approving an interexchange telephone carrier's proposals for introducing "American Business Network" service for commercial affinity groups and for offering aggregator operator service for facilitating special billing or call placement arrangements.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Special rate plans for commercial affinity groups — For outbound toll and inbound 800 services — Minimum membership and usage requirements — Operator-assisted calling — New aggregator operator service — Interexchange carrier. p. 735.

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BY THE COMMISSION:

ORDER

[1] On October 16, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from UniDial Incorporated (Unidial) requesting authority to introduce American Business Network and Aggregator Operator Services for effect November 16, 1995.

American Business Network is a product offered to affinity groups for their associated members that provides both outbound toll and inbound 800 capabilities. Each affinity group must commit to a two year term and a minimum membership of 2,500 commercial accounts. Each commercial account must use \$100 in Unidial services a month.

Aggregator Operator Service offers operator assisted (0+) calling for specialized billing or call placement arrangements. The proposed operator service calls include collect calls, calling card calls, third number billing and originating number billing capabilities.

We find the proposed changes to be in the public good. New services expand the choice of telephone services and foster competition in the New Hampshire intrastate toll market which allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize the introduction of American Business Network and Aggregator Operator Services.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Unidial's tariff, NHPUC No. 1 are approved for effect as filed:

3rd Revised Page 1  
Original Page 24.2  
Original Page 24.3  
Original Page 33  
Original Page 34;



and it is

FURTHER ORDERED, that Unidial file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1995.

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NH.PUC\*11/14/95\*[81152]\*80 NH PUC 736\*EnergyNorth Natural Gas, Inc.

[Go to End of 81152]

80 NH PUC 736

**Re EnergyNorth Natural Gas, Inc.**

DR 92-044

Order No. 21,908

New Hampshire Public Utilities Commission

November 14, 1995

ORDER approving a natural gas local distribution company's plan for increasing rebates associated with certain demand-side management pilot programs, so as to encourage greater participation. The higher rebates will be available for domestic hot water, attic insulation, space heating, and low-income weatherization projects.

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1. CONSERVATION, § 1

[N.H.] Demand-side management programs — Residential components — Hot water heater, space heating, and attic insulation projects — Necessity of promoting greater customer participation — Via higher rebates — Local gas distribution company. p. 736.

2. GAS, § 7

[N.H.] Operational practices — Demand-side management programs — Availability of increased rebates — To encourage greater program participation — Domestic heating and insulation projects — Local gas distribution company. p. 736.

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BY THE COMMISSION:

ORDER

[1, 2] On November 1, 1994, the New Hampshire Public Utilities Commission (Commission) in Order No. 21,403 approved the Pilot Demand-Side Management Program of EnergyNorth

Natural Gas, Inc. (ENGI) for the program year January 1, 1995 through December 31, 1995. The Domestic Hot Water/Attic Insulation and Efficient Space Heat Programs (collectively referred to as ENERGYWISE) were designed to assess, among other things, the need for energy saving measures or technical potential and the necessary incentives required to motivate customers to purchase energy efficiency services and equipment.

ENGI contracted with Conservation Services Group (CSG) and Proctor Engineering Group to conduct a six month evaluation of ENERGYWISE. A copy of that report was filed with the Commission on October 6, 1995. In brief, the report stated that in addition to identifying demand-side management (DSM) energy savings potential, the evaluation provided insightful information regarding customer attitudes about home efficiency, reasons for participation and non-participation, cost of efficiency improvements, and overall satisfaction with ENGI.

However, participation to date in ENERGYWISE has been below expectations. CSG concluded that the marketing of different incentive levels in ENGI's northern and southern divisions contributed to customer and trade ally confusion. In order to improve participation and meet the aforementioned pilot objectives, ENGI proposed the following revisions:

1. Increase the rebate for Domestic Hot Water measures from 33% to 50% of the measure cost.
2. Increase the rebate for Attic Insulation from 33% to 50% of the total insulation cost.
3. Increase the rebate for Efficient Space Heat to 75% of the incremental cost of the efficiency upgrade.
4. Offer the incentives listed above systemwide for the six month revised pilot period.
5. Change the eligibility criteria for attic insulation from inches to effective R-value.
6. Continue to use Weatherization Assistance personnel to service low income customers but provide the higher rebates.
7. Make the existing loan incentive (i.e.,

**Page 736**

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0% interest for 24 months) the lead offer before marketing the rebates for Attic Insulation or Efficient Space Heat measures.

8. Develop a separate Efficient Space Heat marketing campaign targeting contractors and trade allies.

According to ENGI, the existing surcharge is expected to be adequate to meet the expenses of the revised program. However, if the expenses and surcharge move out of balance during the remainder of the pilot period, ENGI proposes to adjust the surcharge at the same time a full-scale DSM program is filed.

Finally, in order to provide customers with ENERGYWISE continuity following the end of the pilot period but prior to implementation of a full-scale DSM program, ENGI proposes to service any additional participants using the revised ENERGYWISE program and incentives.

On November 7, 1995, Staff filed a memo with the Commission supporting the proposed revisions. Staff noted that the revisions should improve participation and assist ENGI in determining the DSM potential of its customers. However, Staff also recommended that if expenditures for the revised pilot exceed the existing budget by 25%, ENGI should be required to inform the Commission and explain the financial impact of the cost overrun on future full-scale program surcharges.

After reviewing ENGI's proposed revisions to the ENERGYWISE pilot programs and Staff's memo, we find that the revisions are reasonable and will benefit ENGI's customers by offering cost effective opportunities to purchase DSM measures. We are encouraged that ENGI has taken the time to thoughtfully reassess these program designs prior to termination of the pilot period. We will approve the changes as requested.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's proposed revisions to the Domestic Hot Water/Attic Insulation and Efficient Space Heat Pilot DSM programs are APPROVED; and it is

FURTHER ORDERED, that ENGI inform Staff if expenditures for the revised pilot program exceed the approved budget by more than 25% and to illustrate the impact of such an overrun on future full-scale surcharges; and it is

FURTHER ORDERED, that ENGI continue to comply with all monitoring and evaluation requirements for ENERGYWISE.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 92-044, Order No. 21,403, 79 NH PUC 605, Nov. 1, 1994.

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NH.PUC\*11/15/95\*[81153]\*80 NH PUC 737\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81153]

80 NH PUC 737

### **Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-010

Order No. 21,909

New Hampshire Public Utilities Commission

November 15, 1995

ORDER approving a special rate contract executed by a local exchange telephone carrier and

The Hitchcock Clinic, for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — As alternative to private branch exchange — Special contract treatment — Basic commitment amount — Monthly service charge — Competition as a factor — Local exchange carrier and business customer. p. 738.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — As alternative to private branch exchange — Multiline business customers — Use of special contract arrangements — Factors affecting

Page 737

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approval — Overall reasonableness — Contribution to fixed costs — Local exchange carrier. p. 738.

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BY THE COMMISSION:

ORDER

The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed Special Contract No. 94-3 for Centrex service between NYNEX and The Hitchcock Clinic (Hitchcock) on January 20, 1995. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. Also on January 20, 1995, NYNEX filed a motion seeking protective treatment of its filing.

On January 23, 1995, the Commission issued Order No. 21,505 granting NYNEX's motion for proprietary treatment. On March 3, 1995, the Commission received, from Mr. Joseph Scotti of Auditel, a motion seeking removal of proprietary treatment of all contracts filed by NYNEX, including the proposed contract with Hitchcock, and to deny proprietary treatment of all future contracts. On March 16, 1995, the Commission opened docket DR 95-069 to address the issues raised in the Auditel motion. On July 10, 1995, the Commission issued Order No. 21,731 approving in part and denying in part Auditel's motion to remove confidential treatment of special contracts. On September 11, 1995, NYNEX submitted a copy of the filing package, including Special Contract No. 94-3, redacted to comply with Order No. 21,731.

[1, 2] As a large purchaser of local service, Hitchcock has available competitive substitutes in the form of customer owned private branch exchanges (PBX). Permitting NYNEX to go off tariff and to offer Centrex service to Hitchcock under special contract, allows NYNEX to respond to competitive pressures. NYNEX's proposed contract includes a two element price structure including a commitment amount and a monthly service charge. In addition, Hitchcock must pay the Federal Communications Commission mandated End User Common Line charge.

Staff believes that the proposed special contract provides benefits to the general body of ratepayers in New Hampshire by providing contribution to fixed costs.

Having reviewed the petition and the Staff recommendation, the Commission finds the proposed special contract to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 94-3 with The Hitchcock Clinic is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 94-3, 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 Hitchcock Clinic in Special Contract No. 94-3; 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 November 22, 1995 and to be documented by affidavit filed with this office on or before November 29, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 13, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 15, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

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By order of the Public Utilities Commission of New Hampshire this fifteenth day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*11/15/95\*[81154]\*80 NH PUC 739\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81154]

80 NH PUC 739

### Re New England Telephone and Telegraph Company dba NYNEX

DR 95-097  
Order No. 21,910

New Hampshire Public Utilities Commission

November 15, 1995

ORDER approving a special rate contract executed by a local exchange telephone carrier and the Bank of New Hampshire, for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — As alternative to private branch exchange — Special contract treatment — Basic commitment amount — Monthly service charge — Tariffed local usage charges — Local exchange carrier and business customer. p. 739.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — As alternative to private branch exchange — Multiline business customers — Use of special contract arrangements — Factors affecting approval — Overall reasonableness — Cost/revenue analyses on disaggregated basis — Local exchange carrier. p. 739.

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BY THE COMMISSION:

ORDER

The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed Special Contract No. 95-01 for Centrex service between NYNEX and Bank of New Hampshire (BNH) on April 7, 1995. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. Also on April 7, 1995, NYNEX filed a motion seeking protective treatment of its filing.

On March 3, 1995, the Commission received, from Mr. Joseph Scotti of Auditel, a motion seeking removal of proprietary treatment of all contracts filed by NYNEX and to deny proprietary treatment of all future contracts. On March 16, 1995, the Commission opened docket DR 95-069 to address the issues raised in the Auditel motion. On April 25, 1995, Auditel amended its motion and specified that it also objected to NYNEX's motions for confidentiality in DR 95-079, DR 95-097 and DR 95-102 which had been held in abeyance pending the determination of the Auditel motion.

On July 10, 1995, the Commission issued Order No. 21,731 approving in part and denying in part Auditel's motion to remove confidential treatment of special contracts. On July 17, 1995, the Commission issued Order No. 21,748 identifying the specific information in this filing to which the public should have access. On July 28, 1995, NYNEX submitted a copy of the filing package, including Special Contract No. 95-01, redacted to comply with Order No. 21,748.

[1, 2] As a large purchaser of local telecommunications service, BNH has available

competitive substitutes in the form of customer owned private branch exchanges (PBX). Permitting NYNEX to go off tariff and to offer Centrex service to BNH under special contract, allows NYNEX to respond to competitive pressures. NYNEX's proposed contract includes a two element price structure including a commitment amount and a monthly service charge for exchange access and system features. Exchange usage charges are subject to regulations and rates as specified in the tariff. In addition, BNH must pay the Federal Communications Commission mandated End User Common Line charge.

Staff believes that, when examined in its entirety, the proposed special contract provides benefits to the general body of ratepayers in New Hampshire by providing contribution to fixed costs. However, NYNEX has not provided its cost/revenue analysis on a level disaggregated to show the price-cost relationship between the individual services covered by the proposed contract. On November 8, 1995, Staff and the Company agreed upon a methodology to demonstrate the level of contribution provided by the proposed rates when examined on a more disaggregated basis. NYNEX agreed to submit the disaggregated contribution analysis within two weeks. Consequently, Staff recommends that the Commission approve the special contract based on its totality.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. We also believe that NYNEX should provide its cost/revenue analysis on a disaggregated basis demonstrating that each of the proposed services cover not only their incremental costs but also provide a contribution towards common overhead costs.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 95-01 with Bank of New Hampshire is approved; and it is

FURTHER ORDERED, that NYNEX submit the cost/revenue analysis disaggregated to reflect individual services by November 30, 1995; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 95-01, 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 Bank of New Hampshire in Special Contract No. 95-01; 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 November 22, 1995 and to be documented by affidavit filed with this office on or before November 29, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 13, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 15, 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 fifteenth day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*11/15/95\*[81155]\*80 NH PUC 741\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81155]

80 NH PUC 741

### **Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-140

Order No. 21,911

New Hampshire Public Utilities Commission

November 15, 1995

ORDER approving a special rate contract executed by a local exchange telephone carrier and First New Hampshire Bank, for the provision of Centrex service.

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#### 1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — As alternative to private branch exchange — Special contract treatment — Basic commitment amount — Monthly service charge — Tariffed local usage charges — Local exchange carrier and business customer. p. 741.

#### 2. SERVICE, § 463

[N.H.] Telephone — Centrex service — As alternative to private branch exchange — Multiline business customers — Use of special contract arrangements — Factors affecting approval — Overall reasonableness — Cost/revenue analyses on disaggregated basis — Local exchange carrier. p. 741.

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BY THE COMMISSION:

ORDER

The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed Special Contract No. 95-05 for Centrex service between NYNEX and First NH Bank (FNHB) on May 22, 1995. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure.

On March 3, 1995, the Commission received, from Mr. Joseph Scotti of Auditel, a motion seeking removal of proprietary treatment of all contracts filed by NYNEX and to deny proprietary treatment of all future contracts. On March 16, 1995, the Commission opened docket DR 95-069 to address the issues raised in the Auditel motion. On April 25, 1995, Auditel amended its motion and specified that it also objected to NYNEX's motions for confidentiality in DR 95-079, DR 95-097 and DR 95-102 which had been held in abeyance pending the determination of the Auditel motion.

On July 10, 1995, the Commission issued Order No. 21,731 approving in part and denying in part Auditel's motion to remove confidential treatment of special contracts. On July 17, 1995, the Commission issued Order No. 21,751 granting in part and denying in part NYNEX's Motion for Proprietary Treatment. On September 11, 1995, NYNEX submitted a copy of the filing package, including Special Contract No. 95-05, redacted to comply with Order No. 21,751.

[1, 2] As a large purchaser of local telecommunications service, FNHB has available competitive substitutes in the form of customer owned private branch exchanges (PBX). Permitting NYNEX to go off tariff and to offer Centrex service to FNHB under special contract, allows NYNEX to respond to competitive pressures. NYNEX's proposed contract includes a two element price structure including a commitment amount and a monthly service charge for exchange access and system features. Exchange usage charges are subject to regulations and rates as specified in the tariff. In addition, FNHB must pay the Federal Communications Commission mandated End User Common Line charge.

Staff believes that, when examined in its entirety, the proposed special contract provides benefits to the general body of ratepayers in

Page 741

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New Hampshire by providing contribution to fixed costs. However, NYNEX has not provided its cost/revenue analysis on a level disaggregated to show the price-cost relationship between the individual services covered by the proposed contract. On November 8, 1995, Staff and the Company agreed upon a methodology to demonstrate the level of contribution provided by the proposed rates when examined on a more disaggregated basis. NYNEX agreed to submit the disaggregated contribution analysis within two weeks. Consequently, Staff recommends that the Commission approve the special contract based on its totality.

We have reviewed the petition and the Staff recommendation and find the proposed special

contract to be in the public interest. We also believe that NYNEX should provide its cost/revenue analysis on a disaggregated basis demonstrating that each of the proposed services cover not only their incremental costs but also provide a contribution towards common overhead costs.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 95-05 with First NH Bank is approved; and it is

FURTHER ORDERED, that NYNEX submit the cost/revenue analysis disaggregated to reflect individual services by November 30, 1995; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 95-05, 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 First NH Bank in Special Contract No. 95-05; 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 November 22, 1995 and to be documented by affidavit filed with this office on or before November 29, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 13, 1995, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 15, 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 fifteenth day of November 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*11/15/95\*[81156]\*80 NH PUC 742\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81156]

80 NH PUC 742

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-168

Order No. 21,912

New Hampshire Public Utilities Commission

November 15, 1995

ORDER approving a special rate contract executed by a local exchange telephone carrier and Autofair Ford, Inc., for the provision of Centrex service.

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## 1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — As alternative to private branch exchange — Special contract treatment — Basic commitment amount — Monthly service charge — Tariffed local usage charges — Local exchange carrier and business customer. p. 743.

## 2. SERVICE, § 463

[N.H.] Telephone — Centrex service — As alternative to private branch exchange — Multiline business customers — Use of special contract arrangements — Factors affecting approval — Overall reasonableness — Cost/revenue analyses on disaggregated basis — Local exchange carrier. p. 743.

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BY THE COMMISSION:

## ORDER

The Petitioner, New England Telephone and Telegraph Company (Company or NYNEX) filed Special Contract No. 95-06 for Centrex service between NYNEX and Autofair Ford, Inc. (Autofair) on June 3, 1995. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure.

On March 3, 1995, the Commission received, from Mr. Joseph Scotti of Auditel, a motion seeking removal of proprietary treatment of all contracts filed by NYNEX and to deny proprietary treatment of all future contracts. On March 16, 1995, the Commission opened docket DR 95-069 to address the issues raised in the Auditel motion. On April 25, 1995, Auditel amended its motion and specified that it also objected to NYNEX's motions for confidentiality in DR 95-079, DR 95-097 and DR 95-102 which had been held in abeyance pending the determination of the Auditel motion.

On July 10, 1995, the Commission issued Order No. 21,731 approving in part and denying in part Auditel's motion to remove confidential treatment of special contracts. On July 17, 1995, the Commission issued Order No. 21,752 granting in part and denying in part NYNEX's Motion for Proprietary Treatment. On September 11, 1995, NYNEX submitted a copy of the filing package, including Special Contract No. 95-06, redacted to comply with Order No. 21,752.

[1, 2] As a large purchaser of local telecommunications service, Autofair has available competitive substitutes in the form of customer owned private branch exchanges (PBX). Permitting NYNEX to go off tariff and to offer Centrex service to Autofair under special contract, allows NYNEX to respond to competitive pressures. NYNEX's proposed contract includes a two element price structure including a commitment amount and a monthly service charge for exchange access and system features. Exchange usage charges are subject to regulations and rates as specified in the tariff. In addition, Autofair must pay the Federal Communications Commission mandated End User Common Line charge.

Staff believes that, when examined in its entirety, the proposed special contract provides benefits to the general body of ratepayers in New Hampshire by providing contribution to fixed costs. However, NYNEX has not provided its cost/revenue analysis on a level disaggregated to show the price-cost relationship between the individual services covered by the proposed contract. On November 8, 1995, Staff and the Company agreed upon a methodology to demonstrate the level of contribution provided by the proposed rates when examined on a more disaggregated basis. NYNEX agreed to submit the disaggregated contribution analysis within two weeks. Consequently, Staff recommends that the Commission approve the special contract based on its totality.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. We also believe that NYNEX should provide its cost/revenue analysis on a disaggregated basis

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demonstrating that each of the proposed services cover not only their incremental costs but also provide a contribution towards common overhead costs.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Special Contract No. 95-06 with Autofair is approved; and it is

FURTHER ORDERED, that NYNEX submit the cost/revenue analysis disaggregated to reflect individual services by November 30, 1995; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 95-06, 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 Autofair in Special Contract No. 95-06; 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 November 22, 1995 and to be documented by affidavit filed with this office on or before November 29, 1995; 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 6, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 13, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 15, 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 fifteenth day of November 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-069, Order No. 21,731, 80 NH PUC 437, July 10, 1995.

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NH.PUC\*11/20/95\*[81157]\*80 NH PUC 744\*Union Telephone Company

[Go to End of 81157]

80 NH PUC 744

### **Re Union Telephone Company**

DR 95-177

Order No. 21,913

New Hampshire Public Utilities Commission

November 20, 1995

ORDER finding that a local exchange telephone carrier unilaterally, and unlawfully, ceased applying credits to intraLATA toll customers in violation of an approved settlement agreement. The carrier is directed to reinstate the credit mechanism, which had been implemented in the first place as a remedy for excess earnings, and to make restitution to its customers for its overcollections. Commission rejects the carrier's arguments that when it ceased functioning as a joint toll provider and became only an access provider, its duties vis-a-vis the intraLATA toll credit also ceased. Commission notes that noncompliance with a commission-approved settlement is tantamount to violation of a commission order, subject to the same remedies, such as refunds and civil penalties.

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## 1. PROCEDURE, § 31

[N.H.] Settlements — Effect of commission approval — Binding nature — Force and effect of a commission order — Necessity of compliance — Applicability of sanctions for noncompliance. p. 748.

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## 2. RATES, § 158

[N.H.] Factors affecting reasonableness — Past profit or loss — Impact of excess earnings — Customer credits as a remedy — Local exchange telephone carrier — Applicability of credit to intraLATA toll traffic served by the carrier — Regardless of carrier's status as a joint toll provider or access provider. p. 748.

## 3. RATES, § 582

[N.H.] Telephone rate design — Toll service — IntraLATA toll traffic carried by local exchange carrier — Effect of carrier's excess earnings — Credit to intraLATA toll charges — Settlement provisions — Ongoing duty to abide by credit mechanism — Regardless of carrier's status as a joint toll provider or access provider. p. 748.

## 4. PROCEDURE, § 31

[N.H.] Commission-approved settlements — Principles of interpretation and enforcement — Akin to basic tenets of contract law — Necessity of obtaining commission approval prior to modification or waiver. p. 749.

## 5. REPARATION, § 11

[N.H.] Commission jurisdiction — To order refunds — Of revenues collected via unlawful charge or in improper manner — Authority to add interest. p. 750.

## 6. REPARATION, § 21

[N.H.] Grounds for allowing — Damage through overcharge — Unlawful discontinuation of mandatory credit mechanism — Noncompliance with approved settlement — Remedies — Reinstatement of credit mechanism — Refunds of improper collections — Interest requirement — Local exchange telephone carrier — Credits and refunds for intraLATA toll service. p. 750.

## 7. FINES AND PENALTIES, § 6

[N.H.] Grounds for assessing — Violation of commission order — Noncompliance with commission-approved settlement — Unauthorized discontinuation of required credit mechanism — Imposition of \$500 civil penalty — Nonrecovery of penalty from ratepayers — Local exchange telephone carrier. p. 750.

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APPEARANCES: Martin C. Rothfelder, Esq., of The Rothfelder Law Offices, on behalf of

Union Telephone Company; Victor D. DelVecchio, Esq. on behalf of New England Telephone Company; James R. Anderson, Esq., of the Office of Consumer Advocate on behalf residential ratepayers; Amy L. Ignatius, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

This proceeding was initiated by a Show Cause Order dated June 21, 1995 issued by the New Hampshire Public Utilities Commission (Commission) in order to investigate, *inter alia*, whether Union Telephone Company (Union) was in violation of Commission Orders No. 20,328 and 20,916 arising out of dockets DR 90-220 and DE 90-002, respectively. Before recounting the complete procedural history of this proceeding, it is appropriate to provide an overview of those two dockets as they relate to the instant proceeding.

#### A. DR 90-220

DR 90-220 was initiated in order to investigate whether Union's earnings were exceeding its authorized rate of return. Staff and Union reached a settlement whereby Union agreed to a 12.69% reduction in its basic exchange rates and a 12.69% credit on end-user intrastate toll rates. At the time of this settlement, Union was a joint provider of IntraLATA toll with New England Telephone (NYNEX). According to Staff it was necessary to reduce both basic

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exchange and IntraLATA toll because the impact on basic exchange rates would have been too extreme if all of Union's overearnings were reduced solely through adjustment of that rate. Tr. Day 1, p. 56.

The Commission directed Union to implement these stipulated revenue reducing mechanisms effective December 1, 1991, and to continue such reductions until such time as the Commission ordered otherwise. *See*, Order No. 20,328 (December 9, 1991). It was anticipated that the 12.69% reduction in the basic exchange rate would result in an annual revenue reduction in the amount of \$87,059, and the 12.69% credit on IntraLATA toll would result in an annual revenue reduction of \$148,475. Tr. Day 1, p.57; *See*, DR 90-220, Exhibit 7. The combined effect of these Commission directives yielded an anticipated annual revenue reduction in the amount of \$235,534. *Id.*

#### B. DE 90-002

DE 90-002 was a generic docket in which the Commission evaluated the benefits of IntraLATA toll competition and restructured many aspects of IntraLATA toll service and rates. *See*, Order No. 20,916 (August 2, 1993). The proceeding was resolved through a Modified Stipulation and Agreement (Modified Stipulation) reached among the parties, including Union and over 15 other independent telephone companies and intervenor groups, which the Commission subsequently approved in Order No. 20,916. Under the Modified Stipulation, all of the independent telephone companies, including Union, elected to cease serving as joint



providers of IntraLATA toll with NYNEX, and instead became access providers. According to the Modified Stipulation, Union agreed to file tariffs that were designed to comport with its revenue requirement established in DR 90-220.

When Union elected to become an access provider rather than a joint provider of toll, it designated NYNEX as its toll provider. The practical effect of this decision was that NYNEX carried nearly all the IntraLATA toll traffic of Union's ratepayers; however, Union's customers were billed for IntraLATA toll in the same manner they had been billed for IntraLATA toll when Union was a joint provider with NYNEX. Union became an access only provider on October 1, 1993 at which time it ceased applying the 12.69% toll credit. On October 31, 1993, Union filed compliance tariffs that rescinded its toll tariff and IntraLATA toll credit<sup>1(67)</sup>. Union thereafter provided its customers with written notification that it had designated NYNEX as the IntraLATA toll provider, but this notice omitted any reference to the rate impact of this change.

### *C. Show Cause Order*

The Show Cause Order in this proceeding directed Union to appear before the Commission on July 20, 1995 for the purpose of investigating whether Union violated the Commission's Orders relative to the toll credit.

On June 26, 1995, Union requested that the full Commission hear the case. The Commission granted that request at its public meeting on July 10, 1995. On July 3, 1995, Union notified the Commission in writing that it believed it was in compliance with Order Nos. 20,328 and 20,916, and on the same date, Union filed a Motion for Protective Treatment which the Commission subsequently granted. Order No. 21,732 (July 11, 1995).

NYNEX filed a Motion to Intervene on July 7, 1995, which the Commission granted at its July 10, 1995 public meeting.

On July 18, 1995, Union filed a Motion for Designation of Employees as Staff Advocates and Decisional Employees to which Staff filed a timely objection.

Duly noticed hearings on this matter were held on July 20 and August 2, 1995. At the beginning of the hearing, the Commission orally decided that although Union had failed to establish adequate grounds RSA 363:32,I for its request to bifurcate certain Staff members, the Commission had elected to exercise its discretionary authority to designate certain staff members as advocates in this proceeding (hereinafter such Staff members will be referred to as "the Staff Advocates.").

During the hearing, the Staff Advocates presented the oral testimony of ChristiAne G. Mason, Utility Analyst within the

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Commission's Finance Department; Union presented the testimony of James A. Sanborn, Union's Controller; and the Office of Consumer Advocate (OCA) presented the testimony of Kenneth Traum, OCA's Finance Director.

Post-hearing briefs were filed by the OCA, Union, and Staff Advocates on August 28, 1995. Reply briefs were filed by OCA, Union, and Staff Advocates on September 8, 1995. NYNEX



filed a letter replying to the OCA brief. The Commission deliberated this matter at our October 2, 1995 public meeting.

## II. POSITIONS OF THE PARTIES AND STAFF ADVOCATES

### A. *Union*

Union asserts that it consistently charged lawful rates according to its Commission-approved tariffs, and that it was bound by statute to charge the rates in its tariffs. It argues further that it complied with all requirements of all Commission Orders in DR 90-220 and DE 90-002.

According to Union, it sought to remain revenue neutral when it became an access provider and ceased providing IntraLATA toll service.

Union also argues that the Commission cannot impose a refund based on the period during which it ceased applying the toll credit, as recommended by Staff Advocates, because to do so would constitute retroactive ratemaking which is prohibited by the New Hampshire and United States Constitutions.

According to Union, Commission Order No. 20,916, which approved the Modified Stipulation in DE 90-002, also approved Union's revised toll tariff. Union argues that it relied upon the Tariff Administrator's letter dated October 27, 1993 which confirmed Union's compliance with Order No. 20,916.

Union acknowledges that the immediate impact on its local exchange customers was that IntraLATA toll rates increased by 12.69%. Union argues, however, that its customers are better off with initially higher toll rates due to the loss of the toll discount, because in the long term its customers could potentially receive lower rates. Tr. Day 1, p.154.

### B. *OCA*

The OCA argues that Union violated Order No. 20,328 when it eliminated the 12.69% toll credit, and that it was obligated to maintain that credit irrespective of whether it was a toll or access provider. Moreover, according to the OCA, Union violated the Commission's Order in DE 90-002 which required it to file tariffs designed to adjust its revenue requirement pursuant to its rate case in DR 90-220. The OCA also argues that Union violated Puc Rule 1601.05(i) because the tariff sheets it filed at the conclusion of DE 90-002 failed to include a Letter of Transmittal which contained a tabulation of the annual increase or decrease in revenues by rates. According to the OCA, the replacement tariff in DE 90-002 was also defective because it failed to notify customers that NYNEX was the designated provider of toll service within Union's franchise territory. The OCA recommends that the Commission (a) impose a fine in the amount of \$25,000, (b) refund past credits with interest past (at the credit card rate), (c) reinstate the 12.69% discount of toll by Union's designated instate toll provider, and (d) open a separate proceeding to investigate Union's current earnings.

### C. *NYNEX*

NYNEX offered no testimony at the hearing but did appear and conduct limited examination of OCA witness Kenneth Traum. Following the hearing NYNEX filed a letter in which it disputes the OCA's assertion that Union and NYNEX continue to jointly provide IntraLATA toll service much as they did before DE 90-002. NYNEX contends that the Commission approved an access arrangement in DE 90-002 which eliminated the " `toll settlement' process resulting from

the joint provision of toll service by NYNEX and the independent telephone companies."

#### *D. Staff Advocates*

The Staff Advocates contend that Union violated the Commission's order in DE 90-002 by unilaterally terminating the 12.69%

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IntraLATA toll credit, and that by so doing, it "altered the Commission's approved 'just and reasonable' rates and rate of return set in DR 90-220." Staff Advocates's Brief, p. 10. The Staff Advocates argue that Union should be required to (a) reinstate the 12.69% credit on IntraLATA toll despite the fact that Union is now only an access provider, (b) refund to customers the amount of toll credit which they contend should have been provided from October 1, 1993 to the present, and (c) absorb all costs associated with this proceeding consistent with the objectives of RSA 365:41. Staff Advocates further recommend that a docket be initiated to investigate Union's overearnings and to audit fully its accounting procedures and practices to determine whether Union is compliance with RSA 374 *et seq.* *Id.* at 7-20.

With respect to Union's assertion that it could not legally continue to apply the IntraLATA toll credit because to do so would have deviated from its tariff, the Staff Advocates argue that Union had other options including seeking guidance from the Commission or from Staff. Staff Advocates Reply Brief, p. 2. The Staff Advocates also contend that, by discontinuing the toll credit, Union violated the same legal standards which it cites as a defense and that in so doing Union "usurped the Commission's authority to ensure that these basic principles of determining just and reasonable rates are met." *Id.* at 3-4.

### III. COMMISSION ANALYSIS

[1] The resolution of this matter turns to some degree on the parties' opposing interpretations of the settlement agreement which we approved in DR 90-220. We want to note at the outset that when we "approve" a settlement consistent with our statutory responsibilities, the rights and obligations created thereunder carry the legal authority of this Commission. Accordingly, a violation of the settlement is tantamount to a violation of the Commission order approving it. We accord the obligations created under settlement agreements the same degree of weight and authority as other Commission orders and we will enforce settlement with the same vigor that we enforce other Commission rules and decisional decrees. It is with these considerations in mind that we evaluate the circumstances of the instant case.

[2, 3] The central issue in this case is whether Union violated the DR 90-220 settlement agreement and our order which approved it when it discontinued the IntraLATA toll credit without Commission approval. For the reasons that follow, we conclude that Union did violate Order No. 20,328, and accordingly, we will fashion the appropriate relief.

The essence of Union's position is that it never committed to continue the IntraLATA toll credit if it ceased serving as a joint toll provider; hence, Union claims that when it ceased providing that service, so did its obligation to credit IntraLATA toll charges as a means to reduce its overearnings which were identified in DR 90-220. This argument fails because its essential premise is flawed. The issue here is not whether Union expressly agreed to continue the toll

credit if it became an access provider. The relevant inquiry is whether the Commission relieved Union of its obligation to apply the toll credit, irrespective of its status as joint intrastate toll provider or as only an access provider. Nothing in the DR 90-220 settlement or our order approving it conditions the toll credit on Union's decision to continue providing joint IntraLATA toll as opposed to access only service. In fact, at the time the order was issued in DR 90-220 it could not reasonably have been anticipated that Union would have a choice of being either a toll provider or an access provider. Additionally, it is undisputed that our order in the Generic Competition Docket in no way expressly suspended or modified the revenue adjustments which were ordered in DR 90-220. Accordingly, our order requiring Union to implement the stipulated toll credit in DR 90-220 remains in full force and effect until otherwise modified. RSA 365:26.

The fact that Union elected to become an access provider, a choice we made available to Union by our order in DE 90-002, in no way vitiated the ongoing obligation mandated by our previous order in DR 90-220 and incorporated in Union's tariff that requires: "In addition, Union Telephone Company discounts end user

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toll rates by 12.69% via a credit on customer bills." Exhibit 2, Tab C. Maintaining the credit on toll bills is entirely consistent with the course Union took, that of becoming an access provider.

[4] Likewise, we reject Union's contention that it could not lawfully apply the toll credit because to do so would have deviated from the terms of its revised tariff. This argument again misses the point. The issue is not whether Union was in technical compliance with its filed tariff; the issue is whether Union's conduct constitutes a violation of the settlement and our orders in DR 90-220 and DE 90-002. Ultimately, the issue is whether Union had an obligation to affirmatively seek a modification of the order in DR 90-220 before eliminating the credit. We believe that Union clearly had such an obligation and that it failed to fulfill that obligation.

The record shows that Wilton was in a position similar to that of Union as a result of its over-earnings docket in DR 90-221. Both Union and Wilton settled the overearnings by revenue reduction mechanisms which included an intraLATA toll discount. The overearnings settlements of both Union and Wilton are expressly cited in the 90-002 Stipulation. Exhibit 2, Tab D. p.12-13. Both elected NYNEX as their 1+ toll carrier. As was the case with Union, at the conclusion of DE 90-002, Wilton transferred from joint provision of toll with NYNEX to access-only. Unlike Union, Wilton continued the toll discount consistent with its obligations under DR 90-221, and it did so without any additional Commission directive. We believe that it is particularly telling that another independent telephone company, which was essentially in the same position as Union, understood that it was required to continue the toll discount.

Similarly, we reject Union's argument that we are precluded from questioning Union's conduct because Staff and the Commission failed to detect the elimination of the toll credit in the compliance tariff pages which Union filed in DE 90-002. The record supports a conclusion that Union utilized DE 90-002 as a means to mitigate the revenue reductions which we ordered in DR 90-220. In fact, Union's own witness acknowledged that the opportunity to avoid the toll credit "was a factor" in its decision to become an access only provider. Tr. Day 1, p. 153, ln. 17-21. As

part of the settlement in DR 90-220, Union "agreed to keep the staff informed as to the detail of all reductions and refunds." 76 NH PUC 759, 760 (Order No. 20,328). Union's compliance tariff pages and accompanying Transmittal Letter failed to satisfy this requirement.

Moreover, as the OCA points out, Union's tariff filing in DE 90-002 was invalid because its Letter of Transmittal failed to include a tabulation of the annual increase or decrease in revenues by rates. *See*, N.H. Admin. R., Puc 1601.05(i). Likewise, we find merit in the OCA's argument that Union's revised tariff is legally defective because it failed to provide notice that it had the effect of increasing customers' toll rates<sup>2(68)</sup>. *See*, N.H. Admin. R., Puc 1601.05(i). The tariff filing which dropped the IntraLATA toll credit resulted in an immediate quantifiable toll rate increase for Union's customers. Tr. Day 1, p. 155. We believe that these arguments set forth by the OCA provide an independent basis to support our holding.

Our conclusion is supported not only by a common sense interpretation of the relevant Commission orders, but by general principles relating to the enforcement of settlement agreements. Settlement agreements are generally interpreted according to basic principles of contract law. *See, Stebbins v. Stebbins*, 121 N.H. 1060, 1064 (1981) ("In determining the nature of provisions within a stipulated agreement, we must consider the intent of the parties"); *See also, Arapage v. Odell*, 114 N.H. 684 (1974); *c.f. Bossi v. Bossi*, 131 N.H. 262 (1988). Under New Hampshire law, every contract has an implied obligation of good faith and fair dealing. *Centronics Corp. v. Genicom Corp.*, 132 N.H. 133 (1989):

... when an agreement appears by word or silence to invest one party with a degree of discretion in performance sufficient to deprive another party of a substantial proportion of the agreement's value, the parties' intent to be bound by an enforceable contract raises an implied obligation of good faith to

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observe reasonable limits in exercising that discretion, *consistent with parties' purposes or purposes in contracting*.

*Centronics*, 132 N.H. at 143 (emphasis added).

In this case, it is clear that the purpose of the settlement agreement in DR 90-220 was to remedy Union's overearnings through the application of two revenue reducing mechanisms: the 12.69% reduction in Union's basis exchange rate and the 12.69% credit on IntraLATA toll rates. Although the agreement is silent on how long these mechanisms would remain in place, it is undisputed that the Staff and Union understood that they would remain in place until the Commission ordered otherwise<sup>3(69)</sup>. When it eliminated the toll credit, Union effectively avoided the revenue reductions contemplated by the parties and the Commission in DR 90-220. Although Union's decision to cease providing IntraLATA toll service in and of itself was neither unlawful nor expressly prohibited by the DR 90-220 settlement, when it eliminated the toll credit it deprived customers of a "substantial proportion of the agreement's value". *Centronics*, 133 N.H. at 143<sup>4(70)</sup>.

Moreover, in order to adopt Union's position we would have to find that the parties to the settlement agreement intended that Union should have the authority to unilaterally modify the

level of revenue reductions which were the very subject of that settlement. This interpretation of the settlement agreement leads to unreasonable results. *See, Griswold v. Heat, Inc.*, 108 N.H. 119 (1967) (interpretation of contract that places one party at the mercy of another should be avoided); *Thiem v. Thomas*, 119 N.H. 598 (1979) (Court will avoid interpretation that leads to unreasonable results or which places one party at the mercy of other).

Accordingly, we direct Union to immediately reinstate the 12.69% credit on the IntraLATA toll charges of its customers, irrespective of whether it continues to be an access provider. This obligation shall continue until further order of this Commission.

**[5, 6]** The next issue is whether Union should be required to refund to customers the revenues which it collected after it improperly eliminated the IntraLATA toll credit on October 1, 1993. This Commission has clear authority to order a utility to refund revenues to customers, with interest, when we find that such revenues were collected pursuant to an illegal rate or charge. RSA 365:29. In addition to our express statutory authority to order refunds, we have equitable powers to order restitution when a utility collects revenues under authorized rates which are found later to have been collected improperly. *Appeal of Granite State Electric Co.*, 120 N.H. 536, 540 (1980). The rates which Union collected were improper not only because they were inconsistent with its obligations under the settlement agreement in DR 90-220, but also because they were collected pursuant to a legally defective tariff filing. Under the circumstances of this case, we believe that it is appropriate to adopt Staff Advocates' recommended relief and order Union to refund to its customers those revenues which it would not have collected had it continued to apply the toll credit after becoming an access only provider. We also believe that it is appropriate to apply interest in the same manner as authorized by RSA 365:29 and as set forth in N.H. Admin. R., Puc 403.04. That is, interest should be accrued monthly at the applicable prime rate for the period during which the toll credit was eliminated. We will require Union to calculate these revenues, with accrued interest, and to file a schedule setting forth such calculations by December 15, 1995. The calculation should cover the entire period during which the toll credit was eliminated, beginning with the date that Union dropped the toll credit and continuing to the date that Union reinstates the credit pursuant to this Order. In the event that Union appeals this order, interest shall continue to accrue until the order becomes final by judicial decree at which time it shall reinstate the toll credit, unless otherwise ordered by the Court.

**[7]** Based on our finding that Union violated Order No. 20,328 in DR 90-220, we believe it is appropriate to impose a civil penalty against Union in the amount of Five-Hundred Dollars (\$500). RSA 365:41. In addition to the violation of that order, we believe a fine is justified on the grounds that Union failed to comply with N.H. Admin. R., Puc 1601.05(i). It is difficult to believe that Union merely

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inadvertently failed to mention the rate impact of the tariff in its Transmittal Letter, particularly in light of the fact that it was one of the factors which prompted the revised filing.

Based upon the foregoing civil penalty, we hold that no portion of such fine, nor any costs associated with this proceeding, shall be considered by this Commission in establishing any of

Union's future rates or charges. RSA 365:41.

Finally, we note that the record fails to support Union's contention that it has remained revenue neutral since it eliminated the toll credit and became an access only provider. Based on Staff Advocates's recommendation, we have opened a separate docket to investigate Union's current earnings.

Based upon the foregoing, it is hereby

ORDERED, that Union shall immediately reinstate and continue until further order a credit in the amount of 12.69% on the IntraLATA toll which it charges and collects irrespective of whether it actually provides the toll service or if it serves as an access only provider; and it is

FURTHER ORDERED, that Union shall file with the Commission by December 15, 1995 a schedule in the manner described above which sets forth the amount of revenues, with interest, which shall be refunded to customers based upon the 12.69% IntraLATA toll credit which it improperly terminated on October 1, 1993; and it is

FURTHER ORDERED, that the foregoing schedule shall be afforded protective treatment consistent with the Commission's existing rules; and it is

FURTHER ORDERED, that Union is assessed a civil penalty in the amount of Five-Hundred Dollars (\$500) which shall be paid as set forth above no later than December 15, 1995; and it is

FURTHER ORDERED, that no portion of said fine, nor any costs associated with this proceeding shall be used by Union in any future rate proceeding.

By order of the Public Utilities Commission of New Hampshire this twentieth day of November, 1995.

#### FOOTNOTES

<sup>1</sup>Union filed its compliance tariffs with a cover letter which omitted any reference to the fact that it had discontinued the intrastate toll credit. *See*, Exhibit 2; Transcript Day 1, pp. 63-64.

<sup>2</sup>Not only did Union fail to inform its customers that their effective rates would increase, it failed to clearly advise its local exchange customers that NYNEX would become the customer's intraLATA toll provider. This defective notice deprived Union's customers of their opportunity to be heard on the increase in effective toll rates and on the selection by Union of NYNEX as the 1+ intraLATA toll carrier for Union's local exchange customers.

<sup>3</sup>Union's own witness, Mr. Sanborn, acknowledged that Union would still be obligated today under the settlement agreement to continue to apply the toll credit if it had not elected to become an access only provider. Tr. Day 1, p.156. Moreover, if it elected to remove NYNEX as its designated IntraLATA toll carrier and provide such service itself, Union acknowledges that it would be required under DR 90-220 to reinstate the credit. *Id.* at 157-58.

<sup>4</sup>The fact that the settlement agreement was entered into by Union and Staff does not change this analysis. It is clear that the revenue reducing mechanisms were intended to benefit ratepayers; thus, Union cannot argue that no such obligation attaches because ratepayers were not a party to the agreement.

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 Union Teleph. Co., DR 90-220, Order No. 20,328, 76 NH PUC 759, Dec. 9, 1991.

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NH.PUC\*11/21/95\*[81158]\*80 NH PUC 752\*Concord Electric Company

[Go to End of 81158]

80 NH PUC 752

**Re Concord Electric Company**

Additional applicant: Exeter and Hampton Electric Company

DR 95-020

Order No. 21,914

New Hampshire Public Utilities Commission

November 21, 1995

ORDER approving, on a one-year trial basis, the alternative financing options proposed by two affiliated electric utilities in their 1995-96 demand-side management plans, which financing would be available to large commercial and industrial customers that participate in various conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Electric utilities — Demand-side management plans — Conservation and load management programs — Targeting of large commercial and industrial customers — Via alternative financing measures — One-year trial period — Reporting, monitoring, and evaluation requirements. p. 752.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management plans — Conservation and load management projects — Alternative financing components — One-year trial period — To target larger consumers — Mitigation of impacts on nonparticipants. p. 752.

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BY THE COMMISSION:

ORDER



[1, 2] On June 28, 1995, the New Hampshire Public Utilities Commission (Commission) in Order No. 21,714 approved the Demand-Side Management Programs of Concord Electric Company and Exeter & Hampton Electric Company (the Companies). However, the Commission rejected the Companies' initial proposed alternative financing mechanism and required the Companies, Staff and OCA together to develop a revised financing proposal within 60 days. Following a meeting on July 27, 1995, the initial design summary was filed on August 14, 1995. On August 23, 1995 Staff filed a memo with the Commission summarizing the progress to date and a schedule requiring the Companies to file a revised proposal on or before October 28, 1995 with an implementation target date of January 2, 1996. The Companies submitted their filing on October 25, 1995. Attachment I details the primary components of the proposed two year pilot loan offering. Staff filed its comments in a memo to the Commission dated November 15, 1995.

Staff supported the concept of an interest rate buydown and stated that this approach was consistent with other approved alternative financing mechanisms. Staff's primary concern related to the lack of a detailed monitoring and evaluation component. Staff recommended that monthly and quarterly reports be filed with the Commission. The monthly reports would parallel the existing format used for other approved conservation and load management (C&LM) programs. Due to the lack of quantitative and qualitative alternative financing data, Staff also recommended that the Companies submit quarterly reports. These company specific reports should include, at a minimum, the following data: a description of any marketing efforts conducted during the period, the number and dollar value of any approved loans, the type of measures for which loans were granted, and an assessment of program implementation efforts and customer attitudes toward the financing option.

However, given the Companies' lack of experience with alternative financing mechanisms, Staff recommended that program approval be limited to one year. According to Staff, the Companies should be prepared to use the results of their monitoring and evaluation

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efforts to support their request for continued implementation in 1997.

After reviewing the Companies' proposed alternative financing program and Staff's memo, we find that the program will benefit eligible large commercial and industrial customers by offering cost effective opportunities to make energy conservation investments while mitigating the C&LM rate impact on non-participants. We adopt the Staff recommendation that the program length be limited to one year and will expect the Companies to use the results of their monitoring and evaluation efforts to justify continued implementation in 1997.

Based upon the foregoing, it is hereby

ORDERED, that the Companies' proposed Comprehensive Efficiency Alternative Financing Pilot Program for large commercial and industrial customers is reasonable and consistent with Commission Order No. 21,714 requiring the Companies to develop and implement such an offering, and it is

FURTHER ORDERED, that the program be approved with a budget of \$364,806 for the



period January 2, 1996 through December 31, 1996, and it is

FURTHER ORDERED, that the Companies implement the monitoring and evaluation plan described above.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1995.

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

Attachment I

Comprehensive Efficiency Alternative Financing Pilot Program (CEAFPP)

Customer Eligibility: T{  
Commercial and industrial customers with  
average annual electric demand greater than 30 kW.  
T}

Eligible Measures: T{  
Cost-effective, energy-efficient electricity  
improvements including lighting, insulation, HVAC, refrigeration,  
motors, process equipment, building shell improvements and custom  
electric conservation measures. (The same measures are eligible  
under the existing CEP.)  
T}

Project Feasibility: T{  
The Companies will determine that proposed  
conservation projects meet program guidelines.  
T}

Utility Incentives: T{  
- The Companies will provide a direct rebate of  
25% of total project costs for cost-effective electric  
conservation projects.  
- The Companies will buy down 4 percentage points (400 basis  
points) on a low interest loan option through First NH Bank.  
- The Companies will provide the cost of loan application fees up  
to \$300.  
T}

Customer T{  
- The customer is responsible for 75% of total  
T}

Contribution: T{  
project costs for eligible projects.  
- Low interest loan option available from First NH to finance the  
customers' share of project costs.  
• The customer is responsible for repayment of the loan  
principle.  
• The customer is responsible for the balance of the interest  
payments net of the Companies' buy down.  
T}

Technical Energy T{  
- For customers with average annual demands between  
T}

Audits: T{  
30-200 kW, the Companies will fund 100% of the cost of the  
audit. (The same arrangement is available under the existing CEP  
program.)

T}

Financing Source: T{  
 - First NH Bank.  
 T}

Type of Loan: T{  
 - Installment loan.  
 T}

Amount: T{  
 - To be determined based upon customer need.  
 - Minimum amount of financing is expected to be \$10,000 although smaller, cost-effective projects will be considered, if requested.  
 - Maximum amount of financing per participant will be determined as a function of the Companies' rebate budgets.  
 T}

Term of Loan: T{  
 - Maximum four year term.  
 T}

Interest Rate: T{  
 - The interest rate will be fixed at the time the loan is made based upon the anticipated term and credit quality. The pricing schedule will be as follows based on today's prime rate\* of 8.75%, including the impact of the Companies' interest buy down of 4.0%:

1 Year: Prime\* + 1.5% - 4.0% = 6.25%  
 2 Year: Prime + 2.0% - 4.0% = 6.75%  
 3 Year: Prime + 2.5% - 4.0% = 7.25%  
 4 Year: Prime + 3.0% - 4.0% = 7.75%

\*Prime Rate as reported in the *Wall Street Journal*.

- The Companies' buy down costs will be the present value of the difference in interest paid discounted at the prime rate current at the time the loan is made.  
 - First NH will attempt to hold the interest rates for up to 90 days, with changes to occur on the first of each quarter (January, April, July and October).  
 T}

Fees: T{  
 - \$200 plus standard legal or other bank fees at cost incurred. Most loan documentation done internally by First NH at no additional cost.  
 - The Companies will provide the cost of the loan application fees up to \$300.  
 - The customer will assume any fees over \$300 unless a prior agreement has been reached between the customer and the Companies arrangement.  
 T}

Collateral: T{  
 Collateral and/or personal guarantee of the borrower may be required if deemed appropriate. First NH Bank will advance up to 75% of the cost of the improvement. The Companies will provide the additional 25% of the cost of qualifying projects in direct rebates. For projects that do not meet program guidelines for full rebate from the Companies, higher advance rates are available (up to 100%) through First NH's leasing affiliate.  
 T}

Qualification: T{  
 First NH Bank will determine the credit worthiness of applicants. All credit decisions will be made based on current bank credit granting policies. UNITIL Corporation and its subsidiaries will not guarantee customer loans.  
 T}

Process: T{  
 1. The bank will be contacted by the Companies' Program Administrator or Energy Services Manager. A specific lending officer will be designated depending on the location of the applicant. A customer may initiate contact directly with the bank, however, the Companies will make final program participation determination.  
 2. The lending officer will contact the customer within 24 hours and an appointment will be made with the applicant to file the application along with supporting

information. Included in the application will be an analysis of the energy savings profile of the proposed conservation project.  
 3. The completed application is reviewed and a decision made within two business days.  
 4. The borrower and the Companies will be notified by telephone of the loan decision with a formal Commitment Letter to follow shortly thereafter. The Companies will be advised as to the specific amount needed for the interest rate buy down.  
 5. Once the Commitment Letter is accepted, closing documents will be ordered and a closing date set.  
 6. Funds will be disbursed upon written verification by the Companies that the project has been completed.  
 T}

Conditions: T{  
 - No rebates will be issued until project completion.  
 - In the case of longer term projects, pre-determined milestones will be met prior to issuance of rebates.  
 T}

Program Cost T{  
 All cost incurred by the Companies related to the  
 T}

Recovery: T{  
 CEAFPP program will be recoverable through the applicable Conservation Charges. Recoverable costs include direct program costs such as design, administration, marketing, and monitoring and evaluation costs, in addition to the cost of direct rebates, the Companies portion of the technical energy audit costs, the loan application fees, and the buy down on the interest (i.e., the NPV of the 4% interest charge over the term of the loan).  
 T}

## EDITOR'S APPENDIX

### Citations in Text

[N.H.] Re Concord Electric Co., DR 95-020, Order No. 21,714, 80 NH PUC 399, June 28, 1995.

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NH.PUC\*11/21/95\*[81159]\*80 NH PUC 756\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81159]

80 NH PUC 756

## Re AT&T Communications of New Hampshire, Inc.

DR 95-292  
Order No. 21,915

New Hampshire Public Utilities Commission

November 21, 1995

ORDER authorizing an interexchange telephone carrier to revise the billing increment applicable to "Clear Advantage" service, from a six-second interval to a one-second increment after an initial 30 seconds.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "Clear Advantage" service — Minimum billing increment — Initial 30-second charge — Increments of one second thereafter — Replacement of six-second increments — Interexchange carrier. p. 756.

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BY THE COMMISSION:

ORDER

[1] On October 20, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications of New Hampshire, inc. (AT&T) requesting authority to revise the timing increment of AT&T Clear Advantage Service for effect November 20, 1995.

In this filing AT&T proposes to change the additional 6 second increment to an additional 1 second increment after the initial 30 seconds for AT&T Clear Advantage Service. The timing change for interstate service was implemented on September 12, 1995. The proposed revision will allow intrastate minutes to be timed the same as interstate minutes.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

*Section 24*

1st Revised Page 4

2nd Revised Page 5;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1995.

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NH.PUC\*11/21/95\*[81160]\*80 NH PUC 756\*Startel Communications, Inc., dba Telstar Long Distance

[Go to End of 81160]

80 NH PUC 756

**Re Startel Communications, Inc., dba Telstar Long Distance**

DE 95-293

Order No. 21,916

New Hampshire Public Utilities Commission

November 21, 1995

ORDER authorizing an interexchange telephone carrier to introduce special promotional coupon offers as well as special outbound toll/inbound 800 rate package plans, based on the length of a call, the time of day a call is placed, and minimum monthly usage volumes. The carrier also is allowed to implement a reconnection fee for those customers whose

**Page 756**

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service had been disconnected for nonpayment of bills.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll services — Promotional coupon offers — Special package plans for outbound toll/inbound 800 calling — Rates based on call duration, time of day, and monthly usage levels — Monthly recurring charge — Interexchange carrier. p. 757.

2. RATES, § 312

[N.H.] Reconnection fees — Interexchange telephone carrier — Disconnection for nonpayment of bills — Authority for new reconnection charge. p. 757.

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BY THE COMMISSION:

ORDER

[1, 2] On October 20, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Startel Communications, Inc., d/b/a Telstar Long Distance (Telstar) requesting authority to introduce Telstar Across America II, Telstar Across America 800 II, a reconnection charge, Coupon Programs, and an Association Program.

Telstar Across America II is an outbound toll product which uses a rate structure with charges based on call duration, time of day and monthly volume of usage. There is a \$5.00 monthly recurring fee for this service.

Telstar Across America 800 II is an inbound 800 product which uses a rate structure with charges based on call duration and monthly volume of usage. There is a \$5.00 monthly recurring fee for this service.

A reconnection charge of \$20.00 is being introduced that will apply to customers whose service is disconnected for nonpayment and who wish to reestablish service with Telstar.

The Coupon Programs will be used to attract new customers. Two Coupon Programs are being introduced: Telstar Credit and One Month Free. Telstar Credit credits a percentage of actual usage back to customers in the 2nd, 6th, 18th and 24th month of service with Telstar. The percentage increases the longer a customer remains with Telstar. One Month Free gives Telstar customers one month of free service after twelve months of use. The amount of credit is limited to an average of the three previous months usage.

The Association Program is available to organizations who choose Telstar service and make it available to its members. The association receives a residual reimbursement based on the usage of its members.

Finally, Telstar is adding a \$5.00 monthly recurring charge to several of its existing services.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Telstar to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Telstar's tariff, NHPUC No. 2 are approved for effect as filed:

1st Revised Page 1  
 Original Page 1-A  
 1st Revised Page 4  
 1st Revised Page 6  
 1st Revised Page 7  
 Original Page 7-A  
 Original Page 17-A  
 1st Revised Page 19  
 Original Page 19-A  
 Original Page 19-B  
 1st Revised Page 20  
 1st Revised Page 21  
 1st Revised Page 22  
 Original Page 23;

and it is

FURTHER ORDERED, that Telstar file

Page 757

properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1995.

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NH.PUC\*11/21/95\*[81161]\*80 NH PUC 758\*Integrated Water Systems, Inc.

[Go to End of 81161]

80 NH PUC 758

**Re Integrated Water Systems, Inc.**

DF 95-316

Order No. 21,917

New Hampshire Public Utilities Commission

November 21, 1995

ORDER authorizing a water utility to take out a commercial mortgage loan in the amount of \$210,000, so as to consolidate and refinance other debt.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Commercial mortgage loan — Consolidation and refinancing of other debt — To take advantage of lower interest rates — Water utility. p. 758.

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BY THE COMMISSION:

ORDER

[1] On November 9, 1995, Integrated Water Systems, Inc. (Integrated or the Company), a public utility providing water service in the portion of the Town of Barnstead, New Hampshire known as Locke Lake Colony, filed a petition with the New Hampshire Public Utilities Commission (the Commission) seeking authority, pursuant to RSA 369, to accept the terms and conditions of a Commercial Mortgage Loan (the Loan) from Community Bank & Trust Company (the Bank) of Wolfeboro, New Hampshire.

The Loan is for \$210,000 at a rate of interest of 4.75% over the two year Certificate of Deposit rate of the Bank. The rate of interest can be adjusted biennially with changes in the

Certificate of Deposit rate, with an initial interest rate of 11.25%. The term of the Loan is ten years, with initial monthly payments of principal and interest of \$2,923.83.

The Loan will be secured by a first mortgage on land and improvements located in the Company's franchise area in Barnstead, NH, first lien on all equipment, inventory, and accounts receivable of the Company, and an assignment of all Integrated stock.

The Loan contemplated herein is a financing of the current Commercial Mortgage Loan and the current Line of Credit of the Company, and does not involve Integrated borrowing additional funds. Upon its acquisition of the former Locke Lake Water Company in 1993, the Company borrowed \$125,000 for use toward the purchase. This financing was approved by the Commission in its Order No. 20,897 issued July 1, 1993. The principal balance of this note at this time totals \$110,545. On May 8, 1995, in its Order No. 21,645, the Commission approved the Company's request to borrow up to \$100,000 in a Commercial Line of Credit to facilitate its completion of the installation of water meters in its franchise area. The Company has completed metering its customers, and now seeks to refinance both obligations into a single debt.

Having reviewed the petition, the Commission determines this financing is in the public good since it will provide for a consolidated loan with a 10 year amortization. We find that the rate, terms and conditions of the Loan are also consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that, pursuant to RSA 369:1, Integrated is granted authorization to accept the terms and conditions of a Commercial Mortgage Loan, as detailed above, with Community Bank & Trust, in the principal amount of \$210,000; and it is

**Page 758**

FURTHER ORDERED, that, pursuant to RSA 369:2, the Company is authorized to grant the Security Interests; and it is

FURTHER ORDERED, that the Company file with this Commission within ten days of the loan closing copies of all of the final documents pursuant to the Loan.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Integrated Water Systems, Inc., DF 93-129, Order No. 20,897, 78 NH PUC 334, July 1, 1993. [N.H.] Re Integrated Water Systems, Inc., DF 95-117, Order No. 21,645, 80 NH PUC 257, May 8, 1995.

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NH.PUC\*11/22/95\*[81162]\*80 NH PUC 759\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81162]



80 NH PUC 759

**Re New England Telephone and Telegraph Company dba NYNEX**

DR 95-325  
Order No. 21,919

New Hampshire Public Utilities Commission

November 22, 1995

ORDER approving an updated replacement agreement for a previously accepted special rate contract executed by a local exchange telephone carrier and Cabletron Systems, Inc., for fiber distributed data interface service.

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1. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Service terms and pricing via special contract — Replacement contract. p. 759.

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BY THE COMMISSION:

ORDER

[1] On August 4, 1995, the New England Telephone and Telegraph Company (NYNEX) petitioned the New Hampshire Public Utilities Commission (Commission) for approval of special contract number 95-08 to provide Cabletron Systems, Inc. (Cabletron) with Fiber Distributed Data Interface (FDDI) service, a standard for fiber optical Local Area Networks (LANs). In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed contract. The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure.

The proposed contract replaces Special Contract No. 95-01, authorized by Order No. 21,541 and No. 21,816 in DR 95-039. In DR 95-039, NYNEX responded to a request from Cabletron for expedited installation of one segment of a larger FDDI special contract that was under negotiation. The current petition addresses the larger contract and replaces in its entirety the Agreement executed by NYNEX and Cabletron on February 17, 1995.

Commission Staff has reviewed this special contract and the material filed in support of the petition. NYNEX has provided an analysis of the costs and revenues associated with this contract which demonstrates that the proposed rates provide revenues which exceed the capital investment and expected maintenance costs. Consequently, Staff has recommended the contract be approved.

We have reviewed the Petition and the Staff's recommendation and find that the proposed petition is in the public interest.

Based on the foregoing, it is hereby

ORDERED, that NYNEX's special contract 95-08 for FDDI service with Cabletron Systems, Inc. is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that NYNEX's

Page 759

Motion for Proprietary Treatment is granted, consistent with similar rulings on requests by NYNEX, including for example, DR 95-211; and it is

FURTHER ORDERED, that NYNEX file with the Commission redacted copies of special contract 95-08 which conform to the guidelines applied in Order No. 21,845, issued October 3, 1995, granting in part and denying in part NYNEX's request for protective treatment of a special contract with Quest Technologies, Inc.; 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, 1995 and to be documented by affidavit filed with this office on or before Dec. 15, 1995; 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 15, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 22, 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 twenty-second day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 95-039, Order No. 21,541, 80 NH PUC 84, Feb. 17, 1995. [N.H.] Re New England Teleph. & Teleg. Co., DR 95-039, Order No. 21,816, 80 NH PUC 573, Sept. 6, 1995. [N.H.] Re New England Teleph. & Teleg. Co., DR 95-211, Order No. 21,845, 80 NH PUC 611, Oct. 3, 1995.

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NH.PUC\*11/27/95\*[81163]\*80 NH PUC 760\*Granite State Electric Company

[Go to End of 81163]

80 NH PUC 760

**Re Granite State Electric Company**

DR 95-276

Order No. 21,920

New Hampshire Public Utilities Commission

November 27, 1995

ORDER noting interventions and adopting a procedural schedule for addressing an electric utility's proposed 1996-97 conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Procedural schedule — Issues to be addressed — Alternative financing components. p. 760.

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BY THE COMMISSION:

ORDER

[1] On October 2, 1995, Granite State Electric, Inc., (GSE) filed with the New Hampshire Public Utilities Commission (Commission) a proposed Conservation and Load Management Program for 1996-1997 (C&LM) and supporting testimony and exhibits.

In an Order of Notice issued on October 31, 1995 the Commission set a prehearing conference for November 21, 1995, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

Conservation Law Foundation (CLF) filed a motion to intervene. At the prehearing conference neither GSE nor Staff objected to the motion. The Office of Consumer Advocate (OCA), a statutorily recognized intervenor, did not appear.

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At the prehearing conference GSE, CLF, and Staff agreed to the proposed procedural schedule set forth below:

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

Data Requests by Staff and Intervenor	November 21, 1995
Company Data Responses	December 7, 1995
Testimony by Staff and Intervenor	December 14, 1995
Hearing	December 21, 1995

In accordance with the Order of Notice, GSE stated that it was its position that the filing be

approved as filed with minor modifications.

CLF, stated that they support the filing and intend to participate fully in this docket.

Staff stated that it supported the filing with the exception that additional information was necessary before stating a position on a proposed alternative financing program.

We will grant CLF's request for full intervention. We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case.

Based upon the foregoing, it is hereby

ORDERED, that CLF is granted full intervention in this case; and it is

FURTHER ORDERED, that the proposed procedural schedule set forth above is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of November, 1995.

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NH.PUC\*11/28/95\*[81164]\*80 NH PUC 761\*Allnet Communication Services, Inc., dba Frontier Communications Services

[Go to End of 81164]

80 NH PUC 761

**Re Allnet Communication Services, Inc., dba Frontier Communications Services**

DE 95-305

Order No. 21,925

New Hampshire Public Utilities Commission

November 28, 1995

ORDER acknowledging a change in the corporate name appearing on an interexchange telephone carrier's filed tariffs, following a transfer of control of Allnet Communication Services, Inc., to Frontier Communications Services.

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1. RATES, § 234

[N.H.] Schedules and procedure — Revisions to approved tariffs — Form versus substance — Revisions to reflect transfer of control and change in operating name — Interexchange telephone carrier. p. 761.

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BY THE COMMISSION:

ORDER

[1] On November 1, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from Allnet Communication Services, Inc., (Allnet) requesting authority to revise its tariff to reflect that Allnet will be doing business as Frontier Communications Services.

The Commission approved transfer of control of Allnet to Frontier Corporation in Order No. 21,758 (July 18, 1995). This filing revises Allnet's tariff NHPUC No. 1 to reflect that Allnet is doing business as Frontier Communications Services and makes other various changes. The proposed new tariff is Allnet Communication Services, Inc., d/b/a Frontier Communications Services NHPUC No. 2.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize Allnet d/b/a Frontier Communications Services to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of Allnet Communications Services, Inc., d/b/a Frontier Communications Services tariff,

**Page 761**

NHPUC No. 2, are approved for effect as filed:

Original Title Page  
 Original Pages 1-39  
 1st Revised Page 40 in lieu of Original  
 Original Pages 41-49  
 1st Revised Page 50 in lieu of Original  
 Original Pages 51-90;

and it is

FURTHER ORDERED, that Allnet d/b/a Frontier Communications Services file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of November, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Frontier Corp., DE 95-138, Order No. 21,758, 80 NH PUC 479, July 18, 1995.

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NH.PUC\*11/28/95\*[81165]\*80 NH PUC 762\*Business Telecom, Inc., dba BTI Telecommunications Services

[Go to End of 81165]

80 NH PUC 762

**Re Business Telecom, Inc., dba BTI Telecommunications Services**

DE 95-242

Order No. 21,926

New Hampshire Public Utilities Commission

November 28, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 762.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 762.

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BY THE COMMISSION:

ORDER

[1, 2] On August 31, 1995, Business Telecom, Inc, d/b/a BTI Telecommunications Services (BTI), a North Carolina 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. BTI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we

specifically modify or revoke that

authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that BTI is granted 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 until the Commission orders otherwise.
3. BTI 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, BTI shall notify the Commission of the change.
5. BTI 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. BTI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.
7. BTI 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. BTI 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. BTI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by BTI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.
10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission ordered otherwise; and it is

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

FURTHER ORDERED, that BTI shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than December 5, 1995, and an affidavit proving publication shall be filed with the Commission on or before December 12, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. BTI 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 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 19, 1995; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 26, 1995; and it is

FURTHER ORDERED, this Order *Nisi*

**Page 763**

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shall be effective December 28, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it is

FURTHER ORDERED, that BTI shall file a compliance tariff with the Commission on or before December 28, 1995, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of November, 1995.

Notice of Conditional Approval of  
BTI Telecommunications, Inc.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 31, 1995, Business Telecom, Inc. d/b/a BTI Telecommunications, Inc. (BTI), a North Carolina 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. 21,926, issued in Docket No. DE 95-242, the Commission granted BTI conditional approval to operate as of December 28, 1995, subject to the right of the public and interested parties to comment on BTI 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. Comments on BTI's petition to do business in the State must be submitted in writing no later than December 19, 1995, and reply comments no later than December 26, 1995, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*12/01/95\*[81166]\*80 NH PUC 764\*Public Service Company of New Hampshire

[Go to End of 81166]

80 NH PUC 764

**Re Public Service Company of New Hampshire**

DR 95-261  
Order No. 21,927

New Hampshire Public Utilities Commission

December 1, 1995

ORDER authorizing an electric utility to increase the nuclear decommissioning charge associated with the Seabrook plant by 0.006 cents per kilowatt-hour, in accordance with depreciation schedules represcribed by the Nuclear Decommissioning Financing Committee.

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1. NUCLEAR PLANT DECOMMISSIONING, § 22

[N.H.] Rate-making considerations — Increase in nuclear decommissioning charge — To reflect depreciation represcriptions — Seabrook plant. p. 765.

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BY THE COMMISSION:

ORDER

*I. PROCEDURAL HISTORY*

On September 15, 1995, Public Service Company of New Hampshire (PSNH) filed a technical statement and attachments supporting its calculation of the Nuclear Decommissioning Charge (NDC) and the portion of the NDC that is above the base level assumptions contained in the Rate Agreement in Docket No. DR 89-244. The filing was made to reflect the revised nuclear decommissioning funding schedule approved by the Nuclear Decommissioning Financing Committee (NDFC) issued on July 24, 1995 as the Third Supplemental Order in Docket No. NDFC 93-1. The First Supplemental Order issued on March 24, 1995, included preliminary findings by NDFC including a revised decommissioning cost estimate. PSNH sought Commission approval to implement the revised decommissioning costs effective June 1, 1995, but was denied pending a final order of the NDFC. Instead, the Commission granted PSNH's request for temporary continuance of the existing NDC until a final order of the NDFC in NDFC 93-1.

PSNH proposes to collect a NDC of \$0.00045 per kWh effective for the period December 1, 1995 through May 31, 1996, of which \$0.00027 per kWh is included in base rates and \$0.00018 per kWh represents the incremental amount needed to fully fund PSNH's portion of the decommissioning levels approved in the NDFC's Third Supplemental Order in NDFC 93-1. The NDC of \$0.00018 per kWh represents an increase of \$0.00006 per kWh over the current NDC above base nuclear decommissioning levels. For residential customers using 500 kWh per month, the \$0.00006 per kWh increase represents a \$0.03 increase in their monthly bill.

*II. COMMISSION ANALYSIS*

[1] Based upon the terms of the Rate Agreement, any additional nuclear decommissioning funding levels approved by the NDFC for PSNH are recoverable in retail rates. On March 9, 1992, the NDFC approved increased funding levels for decommissioning Seabrook. Sixth Supplemental Order of NDFC. The increased levels were reflected in PSNH's rates beginning April 1992. Effective December 1, 1995, the new schedule of funding will replace the funding schedule approved in the Sixth Supplemental Order. North Atlantic Energy Corporation's new monthly contribution, recoverable through retail rates by PSNH pursuant to the Rate Agreement, is shown in Attachment 5 of PSNH's filing. Our review of the reconciliation of base amounts in Attachment 2 of PSNH's filing with the amounts necessary to fully fund NAEC's portion of nuclear decommissioning costs indicates the incremental amount of \$0.00006 per kWh is appropriate, in the public good and consistent with the provisions of RSA 162-F:19,III.

Based upon the foregoing, it is hereby

ORDERED, that the revised nuclear decommissioning charge of \$0.00045 per kWh, representing an increase in the above base nuclear decommissioning charge of \$0.00006 per kWh, become effective December 1, 1995 and continue in effect through May 31, 1996, or until the Commission orders otherwise.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1995.

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NH.PUC\*12/01/95\*[81167]\*80 NH PUC 765\*Public Service Company of New Hampshire

[Go to End of 81167]

80 NH PUC 765

## Re Public Service Company of New Hampshire

DR 95-220

Order No. 21,928

New Hampshire Public Utilities Commission

December 1, 1995

APPLICATION by electric utility for authority to implement a fuel and purchased power adjustment clause (FPPAC) rate of 0.198 cents per kilowatt-hour for the period commencing December 1, 1995; denied, with a rate of zero

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established instead. Commission rejects the utility's suggestion that it be allowed to overcollect in this period so as to provide rate stability in light of an expected significant increase in FPPAC costs in the period commencing June 1, 1996, where the most recent price forecasts show far lower supply costs than originally projected. Pending a ruling to the contrary in an ongoing docket, and subject to refund, the utility is allowed to reflect in its FPPAC the costs of complying with Clean Air Act Amendment requirements as well as costs associated with planned refueling outages at the Seabrook nuclear power plant.

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### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Electric utility — Rate of zero — Factors — Lower-than-expected costs — Unlawfulness of overcollecting in current period in anticipation of higher costs in next period — Necessity of rate stability and prevention of rate shock notwithstanding. p. 768.

### 2. AUTOMATIC ADJUSTMENT CLAUSES, § 17

[N.H.] Indirect energy costs — Reflected in fuel and purchased power adjustment clause rate — Planned refueling outages at generating plant — Costs of complying with Clean Air Act Amendments — Pending resolution of associated generic dockets — True-up and refund provisions — Electric utility. p. 768.

### 3. ELECTRICITY, § 4

[N.H.] Generating plant — Operating practices — Planned refueling outages — Compliance plans vis-a-vis Clean Air Act Amendments — As affecting fuel and purchased power adjustment

clause rates. p. 768.

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APPEARANCES: Gerald M. Eaton, Esq., on behalf of Public Service Company of New Hampshire; Dean, Rice & Howard by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; Office of the Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; and Eugene F. Sullivan III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On August 10, 1995 Public Service Company of New Hampshire (PSNH) petitioned the New Hampshire Public Utilities Commission (Commission) to open a docket to determine pursuant to RSA chapter 378 and the Rate Agreement a rate for its Fuel and Purchased Power Adjustment Clause (FPPAC) for effect from December 1, 1995 through May 31, 1996.

PSNH filed supporting testimony and exhibits on September 15, 1995. PSNH's proposed FPPAC rate was \$0.00198 per kWh, a reduction from the current FPPAC rate of \$0.00335 per kWh. The change would have resulted in an approximately 1% reduction in bills to customers. PSNH also requested that the Commission defer ruling on a number of nuclear outages for various reasons.

On September 19, 1995 the Commission issued an Order of Notice setting a prehearing conference for September 26, 1995, setting a deadline for intervention requests, proposing a procedural schedule and calling for initial positions of the Parties and Commission Staff (Staff).

The New Hampshire Electric Cooperative, Inc. (NHEC), a wholesale customer of PSNH, sought intervention, without objection. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

On October 3, 1995 the Commission issued Order No. 21,849 granting NHEC full intervenor status, approving the procedural schedule, granting PSNH's request to defer consideration of the prudence of two nuclear

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outages in Connecticut, and ordered PSNH to submit a forecast of FPPAC rates and base rate increases for FPPAC periods through June of 1997.

### II. POSITIONS OF THE PARTIES AND STAFF

There were three issues raised in this proceeding: 1) PSNH's proposal to collect more than it acknowledges it is entitled to in order to maintain rate stability; 2) the OCA's contention that PSNH's current recovery of costs required by the Clean Air Act Amendments of 1990 (CAAA) is illegal; and 3) the appropriate estimation of the length of the current refueling outage at the

Seabrook Station nuclear power plant (Seabrook).

A. PSNH

PSNH initially took the position that although the appropriate FPPAC rate for this period is \$0.00009 per kWh, it should be allowed to collect \$0.00198 per kWh in order to maintain rate stability because it anticipated an FPPAC rate of \$0.00169 kWh in the FPPAC period commencing June 1, 1996. PSNH believed that it would be in the best interest of ratepayers not to subject them to "roller coaster" rates that would result from a large rate reduction in this FPPAC period followed by a large rate increase in the next FPPAC period which will result from the projected FPPAC rate in the next period on top of the final 5.5% increase to base rates under the Rate Agreement. \$0.00009 per kWh is based on a 58 day refueling outage at Seabrook. PSNH used the 58 days to correspond to the New England Power Exchange (NEPEX) maintenance schedule.

After conclusion of the hearings in this matter, PSNH lowered its projected FPPAC rate for the June 1996 period from \$0.00169 kWh to \$0.00029 kWh. See PSNH response to Record Request Staff-003 dated November 17, 1995 and attached to Staff's Brief. This lower projection was the result of a correction in Seabrook operating costs, which reduced those costs by \$4.589 million.

In its post hearing memorandum, PSNH maintained its position that the appropriate FPPAC rate for this period is \$0.00169 per kWh because it provides the Commission with the maximum flexibility in controlling rate volatility while at the same time providing ratepayers with a modest decrease in rates. PSNH argued that FPPAC rates are always based on projections and may increase, which will be a burden on ratepayers at a time when it is known that base rates will increase by 5.5% on June 1, 1996.

PSNH suggested, as an alternative to the \$0.00198 per kWh rate, an FPPAC rate of \$0.00038 per kWh in this FPPAC period that would also result in an over-collection this period. This over-collection would be used to offset the \$0.00029 per kWh rate projected for the June, 1996 period, thereby resulting in a projected \$0.00 per kWh FPPAC rate for the June, 1996 period. The overall increase to ratepayers bills, therefore would be no more than a 5.5% increase on June 1, 1996.

In response to the position taken by the Staff and the OCA that the Rate Agreement may not allow the Commission to permit PSNH to over-collect FPPAC rates from customers, PSNH relies upon the rate stability provisions of paragraph 6 (ii) of the Joint Recommendations of the State and Northeast Utilities adopted by the Commission as part of its approval of the Rate Agreement.

In response to the OCA's assertion that inclusion of CAAA costs in FPPAC rates prior to a Commission finding of prudence is illegal, PSNH contends that because it has made a *prima facie* showing that it is entitled to recover these funds through the FPPAC "EA" factor the Commission has not acted illegally. PSNH argues that because these funds are subject to reconciliation they are akin to temporary rates under RSA 378:27 and should be analyzed pursuant to the less stringent analysis applied to such rates.

B. OCA

The OCA takes the position that the CAAA costs currently collected through FPPAC are being collected illegally because the Commission has not yet ruled on the prudence

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of these expenditures in docket DR 95-068. Thus, it concludes that PSNH has illegally billed ratepayers \$4.0 million, which should be returned to ratepayers<sup>1(71)</sup>.

The OCA also contends in its brief that the Seabrook refueling outage currently in progress will probably only last 45 days, but supported a more conservative figure of 50 to 51 days for the development of an FPPAC rate.

Based on these positions, the OCA believes the appropriate FPPAC rate is a negative \$0.00137 per kWh, calculated by taking PSNH's \$0.00009 per kWh rate and reducing it by the savings realized from exclusion of CAAA costs and 50 to 51 day Seabrook refueling outage.

The OCA believes that the Commission does not have the authority to approve an admitted over-collection of revenues by PSNH for rate stability purposes without a valid waiver of rights by its client, residential ratepayers.

The OCA further contends that the Commission has the authority to authorize a negative FPPAC rate under paragraph B. K of Exhibit C to the Rate Agreement. Therefore, the OCA does not support Staff's recommended FPPAC rate of \$0.00 per kWh because its testimony supports a negative FPPAC rate.

#### C. NHEC

NHEC contends that the record evidence does not support PSNH's argument for rate stability because NHEC's calculations for the December 1, 1995 FPPAC based on PSNH's revised projections are \$0.00 per kWh and the projection for the June 1, 1996 FPPAC period is also \$0.0 per kWh.

NHEC further contends that the Commission is without the authority to approve a deliberate over-collection to offset the June 1, 1996 5.5% base rate increase. NHEC notes that PSNH's assertion that it has a "contractual right" under the Rate Agreement to collect all projected FPPAC costs on a current basis would, if correct, mean that the State of New Hampshire would have a concomitant contractual right, which it has not waived.

#### D. Staff

In its prefiled testimony, Staff initially took the position that, for the purposes of rate stability, the Commission should set the FPPAC rate for the next three FPPAC periods at \$0.00 per kWh. Staff relied on PSNH's FPPAC projections for the next three periods and its belief that the Seabrook refueling outage should only last 45 days.

Subsequent to the hearing on the merits and PSNH's November 15 and November 17, 1995 responses to record requests, Staff now recommends that the projected FPPAC rate for the period beginning June 1, 1996 would be \$0.00 per kWh if the Commission accepted a one day reduction in PSNH's projected 58 day Seabrook refueling outage, and, therefore, there is no need to allow PSNH to over-collect in this FPPAC period.

Staff took no position on CAAA cost recovery.

### III. COMMISSION ANALYSIS

[1-3] As was set forth above, the principal issues presented in this proceeding for our consideration are: 1) whether the FPPAC rate should be set in accordance with projected costs for the FPPAC period commencing December 1, 1995 or, as requested by PSNH, we should consider projected FPPAC costs for subsequent periods and the final 5.5% increase in base rates under the Rate Agreement and attempt to "smooth" or "stabilize" rates by allowing PSNH to over-collect in this FPPAC period; 2) the legality of the collection of CAAA costs prior to a determination of prudence; and 3) the appropriate estimation of the length of the Seabrook refueling outage.

With regard to the OCA's contention that inclusion of CAAA costs in FPPAC rates prior to an ultimate determination of prudence and compliance with the Rate Agreement is illegal, we disagree. The June 1, 1995 FPPAC rate proposed and agreed to by the Parties and Staff included CAAA compliance costs. Prior to that agreement and approval, however, we had transferred CAAA cost recovery issues to DR 95-068 to provide the Parties, including the

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OCA, and our Staff a sufficient opportunity to investigate the significant issues raised by these costs. We do not believe PSNH should be penalized while this investigation proceeds. Furthermore, the OCA did not object to the inclusion of these costs in DR 95-058.

Any funds collected are subject to refund with interest should the Commission determine PSNH's actions relative to CAAA compliance were imprudent. Thus, the standard of analysis for inclusion in rates in this case is analogous to that of temporary rates pursuant to RSA 378:27. We will allow PSNH to continue to collect these funds, subject to refund, until a final decision is rendered in DR 95-068.

With regard to the length of the Seabrook refueling outage, we will use the 56 days used by North Atlantic to calculate the length of the outage for NEPEX purpose. Because NEPEX only accepts weekly increments rounded to the following business day, and the 56th day of the projected outage falls on a Friday, North Atlantic reported 58 days to NEPEX to account for the weekend. PSNH has used this 58 day figure to calculate the FPPAC rate. We will use the 56 day figure as the 58 days used by PSNH in computing FPPAC is an artificial inflation of the actual projection of the length of the refueling outage. *See*, Transcript, November 7, 1995 at p. 141.

While we cannot conclude that this is the only reasonable estimate for a refueling outage, we believe it is an appropriate estimate to use at this time in Seabrook's operational life because of the limited data available. Because this is only the fourth refueling outage since Seabrook commenced operation, it is difficult to estimate the prudent amount of time needed to refuel the plant. No Seabrook refueling outage has been completed in less than 68 days. Thus, we conclude that 56 days is the appropriate estimate of time for this refueling outage.

We also note that PSNH failed to reflect the fact that Vermont Yankee's and Seabrook's operational ratings have been increased by the New England Power Pool (NEPOOL) in estimating its projected FPPAC costs. We will use the new ratings in calculating the FPPAC

rate. We will also use the revised unit availabilities for PSNH's nuclear entitlements supplied subsequent to the hearings because they are the proper computations for FPPAC purposes.

The result of these revisions and our decisions relative to CAAA costs and the length of the Seabrook refueling outage is an FPPAC rate of \$0.00 per kWh for the period commencing December 1, 1995. We also conclude that the most reliable estimate of an FPPAC rate for the period commencing June 1, 1996 currently appears to be \$0.00025 per kWh.

Based on these findings, we turn to the rate smoothing or rate stability issue. Because the projected FPPAC rate for the period commencing June 1, 1996 is now significantly lower than PSNH originally projected, PSNH's argument for rate smoothing as it relates to FPPAC costs is less persuasive.

Because of this significantly lower projection for the FPPAC rate commencing on June 1, 1996, the real rate smoothing that would result from allowing PSNH to over-collect in this FPPAC period would be to soften the impact of the final 5.5% base rate increase. We do not believe this is an appropriate use of the FPPAC adjustment and will set the FPPAC rate pursuant to the methodology set forth in the Rate Agreement.

Moreover, the FPPAC component of the Rate Agreement and the base rate adjustments contained in the Rate Agreement are unrelated and must be viewed separately. FPPAC should, absent compelling circumstances, reflect actual and expected costs in the relevant period, and should not be used to offset projected future rate increases or decreases. Therefore, we will maintain the traditional approach to FPPAC applied by this Commission.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire shall apply an FPPAC rate of \$0.00 per kWh from December 1, 1995 to May 31, 1996; and it is

FURTHER ORDERED, that the short term avoided costs set forth in Exhibit 14 are adopted for effect from December 1, 1995 to May 31, 1996.

By order of the Public Utilities Commission of New Hampshire this first day of December, 1995.

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#### FOOTNOTES

<sup>1</sup>It is not clear from the OCA's brief whether the \$4.0 million referred to includes rates already collected, or proposed to be collected. Nevertheless, this does not affect its position on the legality of collection of these funds.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-220, Order No. 21,849, 80 NH PUC 617, Oct. 3, 1995.



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NH.PUC\*12/04/95\*[81168]\*80 NH PUC 770\*Public Service Company of New Hampshire

[Go to End of 81168]

80 NH PUC 770

## Re Public Service Company of New Hampshire

DR 95-149

Order No. 21,929

New Hampshire Public Utilities Commission

December 4, 1995

ORDER granting final approval to an electric utility's special rate contract with Nashua Foundries, Inc., which contract had been approved on an interim basis in Order No. 21,782 (80 NH PUC 526, *supra*). The contract provides for economic development and business retention incentives, and is deemed not to be anticompetitive, despite provisions prohibiting the customer from establishing generation facilities of its own.

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### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development incentives for retaining industrial demand — Special rate contracts — Electric utility — Final approval. p. 772.

### 2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Provisions encumbering customer's property — Prohibitions on customer's self-generation activities — Acquiescence by customer as a factor — Contract as part of economic development measures as a factor — Determination of no anticompetitive effects — Electric utility. p. 772.

### 3. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development (ED) and business retention (BR) initiatives — Special rate contracts versus tariffed rates — Enactment of guidelines for ED/BR tariffs as a factor — No automatic preclusion of special contract measures — Review of special contracts filed before enactment of guidelines using pre-guideline standards — Review of special contracts filed after enactment of guidelines using the new standards. p. 772.

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APPEARANCES: Gerald M. Eaton, Esquire, on behalf of Public Service Company of New Hampshire; James Rodier, Esquire, on behalf of Freedom Energy Company; Jacqueline Lake

Killgore, Esquire on behalf of the Public Utility Policy Institute; James Monahan on behalf of Cabletron Systems; William Pillsbury on behalf of the Department of Resources and Economic Development, Office of Business & Industrial Development; Michael Mayo on behalf of Teradyne Connection Systems; William Myers on behalf of the New Hampshire Electric Cooperative, Inc.; Office of Consumer Advocate by Michael W. Holmes, Esquire on behalf of residential ratepayers; and Eugene F. Sullivan III, Esquire on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

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### *PROCEDURAL HISTORY*

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on May 30, 1995, a ten year special contract, Special Contract No. NHPUC-115, between PSNH and Nashua Foundries, Inc. (NFI or Customer), a New Hampshire corporation. NFI manufactures gray iron castings, such as manhole covers, at its facility located in Nashua, New Hampshire.

On August 14, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,782, granting PSNH interim approval of its Special Contract No. NHPUC-115 (NHPUC-115) with NFI until such time as the Commission approves Business Retention and Economic Development tariffs for PSNH. The order further provided that upon such tariff filing the Commission would reconsider the special circumstances that justify the contract. The order also provided that comments or a request for hearing be filed no later than September 8, 1995. PSNH submitted to the Commission a letter requesting a hearing or, in the alternative, clarification regarding interim effectiveness. Freedom Energy Company, LLC (Freedom Energy) submitted comments as well.

In its letter, PSNH pointed out that Article 12 of NHPUC-115 states that the agreement is "subject to approval without conditions by the Commission." The Company averred that the agreement by its own terms is therefore not operative since the parties agreed that the contract would be in effect for ten years. PSNH, additionally, sought clarification as to the nature of the review the Commission indicated it would conduct at the time it approved a Business Retention tariff for PSNH. PSNH also noted that in Docket No. DR 95-180 the Commission expressly stated its position that the Company is not precluded from filing special contracts pursuant to RSA 378:18. The Company asserted as well that under interim approval it has no assurance that NHPUC-115 will provide any benefit to PSNH and its customers and it offers a plea on its Customer's behalf that NFI has an immediate need for the benefits provided by NHPUC-115. PSNH complained also that the possible shortened term of the agreement disturbs the balance that has been achieved by the parties through negotiation. Finally, PSNH stated that if a hearing were held it would explain the necessity for approving all the restrictive provisions of Article 9 of NHPUC-115.

Freedom Energy commented that the Commission was properly concerned about the proliferation of anti-competitive provisions in special contracts. It contended, moreover, that PSNH has disproportionate bargaining power and can therefore extract from customers

concessions that may not be in the public interest.

In response to the written comments, on October 10, 1995, an Order of Notice was issued which established a hearing for October 30, 1995. The Order of Notice stated that the issues to be discussed would include, but not be limited to, (1) the propriety of the restrictive clauses in Article 9 of NHPUC-115, which was discussed in detail in Order No. 21,782, (2) the effect of Economic Development and Business Retention tariffs on approved special contracts and (3) the status of special contracts filed before the approval of tariffs.

Subsequent to issuance of the Order of Notice, the Office of Consumer Advocate (OCA) and the Public Utility Policy Institute (PUPI), on October 13, 1995 and October 24, 1995, respectively, filed letters regarding process. OCA, among other things, contended that a prehearing conference was required to determine the issues while PUPI highlighted among its concerns a need for broader public input. In separate letters issued October 24, 1995, the Commission denied requests for expanded schedule but delineated the opportunities for public input.

#### *POSITION OF THE PARTIES*

At the hearing of October 30, 1995, PSNH, Freedom Energy, PUPI, Cabletron Systems, the Department of Resources and Economic Development, Office of Business and Industrial Development (DRED), Teradyne Connection Systems (Teradyne), NFI, OCA and Commission Staff presented comments on NHPUC-115.

Speaking for PSNH, Gary Long, Vice President for Customer Services, reiterated points made in the Company's September 8,

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1995 letter. Among other things, he argued that Article 9 of NHPUC-115 is not anti-competitive and does not restrict NFI's ability to sell its property. In addition, he contended that PSNH and NFI bargained fairly and that the inclusion of Article 9 was an important part of PSNH's overall decision to enter the agreement. Finally, Mr. Long urged the Commission to consider all contracts filed before final approval of an Economic Development or Business Retention tariff out of fairness to the customers that had been engaged in the process of negotiations prior to the approval of Economic Development and Business Retention Guidelines.

Freedom Energy opposes Article 9 restrictions in special contracts and contends they are a clear violation of anti-trust law and an effort to prevent competition. With respect to special contract filings which are pending, Freedom Energy suggests that when a tariff is approved that the Commission revisit the non-price terms of the contracts but leave the pricing intact.

PUPI raised concerns about the potential anti-trust ramifications of Article 9 and the contract approval process. It particularly noted that it considers the inferior bargaining position held by a PSNH customer when negotiating with PSNH.

Cabletron Systems noted its concern about the proliferation of special contracts and the effects on other customers like itself. It argues that the process is being used in an anti-competitive manner and is a "drag on the evolution of retail competition." (Transcript, October 30, 1995, p.58)

DRED highlighted the recent uncertainty over the status of pending special contract filings, expressed the need in the business community for predictability of outcome and recommended that the Commission continue to review pending filings. As for the propriety of Article 9 type restrictions, it said the issue was a business decision for the parties.

Teradyne, which has a pending special contract request, set forth its position that the customer should be allowed to determine which restrictions it is willing to accept as part of its special contract. It did not find the restrictions of Article 9 onerous but simply a choice it was presumably compensated for through negotiations.

NFI commented that it needs a discounted rate to remain competitive and that the Article 9 constraint on its property was not a problem. Its President, Peter Lyons, represented that because of the residential character of its neighborhood, noise and emission problems, and the lack of a steam use for cogeneration that the site did not lend itself to such development. He thus argued that NHPUC-115 should be approved.

The OCA renewed its procedural arguments and contended that PSNH should have filed a motion for rehearing or some other appropriate motion to initiate the hearing and that PSNH's letter was insufficient. In addition, OCA argued that the special contract, because of the anti-competitive effects of Article 9, failed to meet the requirements of the Checklist set out in DR 91-172.

Staff opposed inclusion of Article 9 in NHPUC-115 because of the effects of the provision on third parties and the negative impact on competition. It also stated its belief that similar special contracts filed after the passage of the legislation requiring the Commission to adopt procedures for Economic Development and Business Retention tariffs should be viewed by the Commission in terms of their effect on competition.

#### *COMMISSION ANALYSIS*

**[1-3]** We remain concerned as a matter of policy, as we explained in Order No. 21,782 in this proceeding, that Article 9 of NHPUC-115 between PSNH and NFI, which restricts the use of NFI property as a site for a generating facility, may have anti-competitive effects. However, in this particular case our concerns have been allayed by the Customer's representation that it has neither the inclination nor the ability to install a generation facility at its site. Accordingly, we will approve this contract because, as a matter of fact, we do not believe that its approval will have a negative impact on competition.

We have no basis for finding that PSNH's actions in this case constitute a violation of anti-trust law, as was argued by some. Based on the information before us, we can make no

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finding with respect to PSNH's overall course of conduct.

As a matter of policy going forward, however, we advise PSNH that we will scrutinize the provision in each special contract. For special contracts currently under review, however, we require PSNH to supplement its filing by providing information on the land affected by restrictive provisions and describing in detail its potential for development as a generation site.

Our actions here are prompted by the Customer's good faith efforts in pursuing with PSNH over an extended period of time a business retention solution that offers benefits to the State and to PSNH's other customers. We also realize that, although it is not the most efficient form of transaction, if NFI's property were indeed suitable for generation and its use became necessary, then condemnation rights under RSA 371:1 would be available to the appropriate entity.

In our Order of Notice, we also stated that pertinent issues would include the effect of Economic Development and Business Retention tariff filings on approved special contracts and the status of special contracts filed before tariffs are approved. In Order No. 21,895 in Docket No. DR 95-216, issued November 6, 1995, we resolved the former issue by stating that approval of an Economic Development or Business Retention tariff will not automatically disturb an approved special contract.

As for the latter issue, Order No. 21,895 also noted that RSA 378:18 remains a viable statutory option, though we expect that it is unlikely that it will be used for Economic Development or Business Retention purposes given the issuance of our Order establishing guidelines for tariffs to cover those situations. We are mindful as well of the circumstances confronting customers that have Economic Development or Business Retention special contract requests that were filed prior to the issuance of Order No. 21,895 on November 6, 1995, and which are presently on file. We therefore will process appropriate special contracts filed on or before November 6, 1995, in accordance with existing procedures given the fact that they were filed prior to the issuance of an order on this subject. Special contracts filed after November 6, 1995, will be evaluated to determine why the customer should not receive the Economic Development or Business Retention rate.

Finally, we earlier dismissed the OCA's and PUPI's objections to the manner in which this proceeding has been conducted. Their later objections are similarly unavailing and we find that the requirements of procedural due process have been met and that we have complied with our past practice with respect to the Order *Nisi* process.

Based upon the foregoing, it is hereby

ORDERED, that PSNH Special Contract No. 115 with Nashua Foundries, Inc. is approved.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,782, 80 NH PUC 526, Aug. 14, 1995. [N.H.] Re New Hampshire Public Utilities Commission, DR 95-216, Order No. 21,895, 80 NH PUC 709, Nov. 6, 1995.

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NH.PUC\*12/04/95\*[81169]\*80 NH PUC 773\*Baldwin Hydroelectric Corporation

[Go to End of 81169]

80 NH PUC 773

## Re Baldwin Hydroelectric Corporation

Additional party: New Hampshire Electric Cooperative, Inc.

DR 95-260

Order No. 21,930

New Hampshire Public Utilities Commission

December 4, 1995

ORDER rejecting a request by a qualifying small power production facility to allow pricing for its power purchase contract with an electric

**Page 773**

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cooperative to be set outside of the cooperative's competitive bidding program, which is designed to determine avoided costs to be used as a base price in long-term power purchase agreements. Commission states that consideration of a purchase contract outside the duly approved bidding process would undermine the process itself and the very heart of avoided-cost-based pricing and could lead to market abuses as well.

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### 1. COGENERATION, § 30

[N.H.] Rates — Purchases of power from qualifying facilities — Methods and bases for pricing — Competitive bidding — As determinative of avoided costs — Electric cooperative — No exemptions from bidding requirements — Necessity of compliance with bidding program — Protection of integrity of avoided-cost pricing. p. 775.

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BY THE COMMISSION:

### ORDER

On September 9, 1995, Baldwin Hydroelectric Corporation (Baldwin Hydro) filed a Petition with the New Hampshire Public Utilities Commission (Commission) which requested approval of a long-term power contract with the New Hampshire Electric Cooperative, Inc. (NHEC). Baldwin Hydro's Petition states that it is a fully licensed Qualifying Facility (QF) under the Public Utilities Regulatory Policies Act (PURPA) and under RSA 362-A, the Limited Electrical Energy Producers Act (LEEPA). It further alleges that its project financing is conditional upon the approval of a power contract. The Petition requests approval of a proposed power contract for the sale of four and a half megawatts for 20 years at a levelized rate of 7.95¢ per kiloWatt hour (Kwh).

On October 4, 1995, Baldwin Hydro filed a Motion to Expedite Proceeding and to Amend



Order of Notice to Narrow Issues (Motion to Narrow Issues). In that Motion, Baldwin Hydro seeks to exclude testimony or argument that it should participate in NHEC's recent competitive bidding process as a means of exercising its rights under PURPA and LEEPA. The Commission Staff (Staff) filed an objection to Baldwin Hydro's request to narrow issues on October 10, 1995; NHEC filed a similar objection on October 11, 1995.

A duly noticed prehearing conference was held on November 2, 1995 at which the Commission granted the full intervention requests of NHEC, Bio-Energy Corporation (Bio-energy), Pinetree Power Fitchburg, L.P. (Pinetree) and Public Service Company of New Hampshire (PSNH). George E. Sansoucy sought and received limited intervention status for the purposes of receiving the documents in the proceeding. The Office of the Consumer Advocate (OCA) is a statutorily recognized party.

At the prehearing conference, the Commission also heard oral argument on Baldwin Hydro's Motion to Narrow Issues. As stated above, Baldwin Hydro seeks to eliminate the issue of its participation, or lack thereof, in NHEC's recently issued Request for Bid (RFB) which the Commission approved as a means to establish a market-based avoided cost for NHEC. Baldwin Hydro argued that, since NHEC's avoided cost has not yet been determined, the Commission is free to set a separate rate for Baldwin Hydro administratively before the results of the competitive bidding process are known. It also contends that as a QF, NHEC is obligated to purchase Baldwin Hydro's power and that its proposed rate is less than NHEC's current wholesale purchase rate. According to Baldwin Hydro, the results of NHEC's RFB are irrelevant until the Federal Energy Regulatory Commission (FERC) resolves PSNH's complaint relative to NHEC's use of competitive bidding for QF purchases. Baldwin Hydro argues that by the time the results of the RFB are known, it will be too late to proceed with the project under the deadlines imposed by its FERC license.

NHEC argued that PURPA and LEEPA obligates it to purchase from QFs at prices that

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are at or below its avoided cost as established by the Commission. NHEC acknowledges its PURPA obligations, but contends that Baldwin Hydro must participate in the competitive bidding process which the Commission approved in Order No. 21,767 as a means of establishing NHEC's long-term avoided costs. According to NHEC, the effect of that order is that long-term purchases from QFs can only be made in the context of competitive bidding, because such bidding was the only method the Commission has approved for establishing avoided cost. NHEC further argues that if it allowed Baldwin Hydro, or any other facility, to make purchase arrangements outside of the RFB, it would undermine the bidding process. NHEC does not believe that the FERC proceeding will delay its RFB as PSNH has not sought to enjoin the RFB process, and it anticipates that it will be purchasing 20 megawatts from QFs by the Spring of 1996.

Neither Bio-energy nor Pinetree had a position on the issues but seek treatment similar to other Qfs selling to NHEC.

PSNH intervened in the instant proceeding because it filed a complaint at FERC concerning the Commission's approval of competitive bidding to establish NHEC's long-term avoided costs,

and the outcome of that case could affect the instant docket. PSNH also noted that production at Baldwin Hydro raises some serious engineering problems.

The OCA stated that it did not believe that the Commission should be concerned with the possible results of a FERC proceeding and should rather base its decision on the issues before it. It argued that NHEC is not obligated to re-design the process established by the Commission to determine avoided cost and that the issues raised in the first Order of Notice were valid aspects of this proceeding.

Staff noted that the Commission has approved a market based approach to setting avoided cost, and that any avoided cost established outside of the bidding process should have some relationship to the results of NHEC's RFB. Staff is concerned that the Commission is being asked to approve an avoided cost rate for Baldwin Hydro which is directly contrary to the process approved by Order No. 21,767. Staff does not believe that the results of the FERC proceeding would disrupt contracts between NHEC and projects who submitted bids: rather, PSNH's legal remedy, should it prevail at FERC, would be to seek compensation from NHEC. According to Staff, a Commission directive approving the power contract proposed by Baldwin Hydro would have serious consequences on the RFP process because other QFs would demand the same rate, which is significantly higher than the market rates which the RFB will likely generate.

[1] After reviewing the arguments set forth in the Motion to Narrow Issues and the Objections thereto, as well as the arguments presented at the prehearing conference, we deny Baldwin Hydro's request. NHEC's RFB is inextricably linked to our consideration of any purchase power agreement between NHEC and Baldwin Hydro, both in terms of Baldwin Hydro's participation in the process and the establishment of avoided cost. In Order No. 21,767, we authorized NHEC to utilize a competitive bidding process in order to set its long-term avoided cost rate for QF purchases. Baldwin Hydro is requesting a long-term rate which may significantly exceed the market rates which the RFB will generate. The Commission cannot require NHEC to purchase energy from Baldwin Hydro at rates higher than avoided costs.

In Order No. 21,767, the Commission established a competitive bidding process as an appropriate methodology to determine NHEC's avoided costs, and we will not here re-litigate the issues in that proceeding. Pursuant to that order, NHEC has issued an RFB and is in the process of evaluating the bids that were submitted. We agree that consideration of contract proposals before and outside that process undermines the process itself and would be unfair to those facilities that have participated in the RFB in good faith. We are not persuaded by Baldwin Hydro's contention that the process of setting an avoided cost rate through the RFB will be unduly delayed, either by the evaluation of the bids or the pendency of the proceeding at FERC. NHEC has indicated that it is committed to completing the RFB process expeditiously and PSNH has not requested FERC to stay the

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RFB. Thus, the results of the RFB are likely to be known at least within the timelines of a litigated proceeding before the Commission.

We will therefore adopt the proposed procedural schedule that accommodates consideration



of the issue of NHEC's RFB:

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

Prehearing Conference	November 2, 1995
Technical Conference	November 2, 1995
Company Testimony	December 6, 1995
Data Requests by Staff and Intervenors	December 20, 1995
Company Responses to Data Requests	January 3, 1996
Staff and Intervenor Testimony	January 17, 1996
Data Requests by Company of Staff and Intervenors	January 31, 1996
Staff and Intervenor Responses	February 14, 1996
to Company Data Requests	
Settlement Conference	March 6, 1996
Filing of Settlement Agreement, if any	March 13, 1996
Hearings on the Merits	March 27-28, 1996 at 10:00 A.M.

Based upon the foregoing, it is hereby

ORDERED, that NHEC, Bio-Energy Corporation (Bio-energy), Pinetree Power Fitchburg, L.P. (Pinetree), and Public Service Company of New Hampshire (PSNH) are granted full intervention, and George E. Sansoucy limited intervention for the purposes of receiving the documents in the proceeding; and it is

FURTHER ORDERED, that Baldwin Hydro's Motion to Narrow Issues is DENIED; and it is

FURTHER ORDERED, that the procedural schedule noted above is adopted for the remainder of the proceeding.

By order of the Public Utilities Commission of New Hampshire this fourth day of December, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 94-160, Order No. 21,767, 80 NH PUC 489, July 31, 1995.

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NH.PUC\*12/05/95\*[81170]\*80 NH PUC 776\*Steven Morehouse v. Granite State Telephone Company

[Go to End of 81170]

80 NH PUC 776

**Steven Morehouse**

**v.**

**Granite State Telephone Company**

DC 95-206  
Order No. 21,935

New Hampshire Public Utilities Commission

December 5, 1995

ORDER instructing a local exchange telephone carrier that it could not deny new service to a customer based on claims of unpaid bills from 11 years ago, as the carrier had neither pursued a judgment against the customer nor attempted to collect such arrearage within the prescribed statute of limitations.

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#### 1. PAYMENT, § 50

[N.H.] Methods of enforcement — Denial of service — For past arrearages and unpaid bills — Elapsed time and statute of limitations as factors — Failure of utility to seek judgment against customer as a factor — Doctrines of estoppel and laches — No authority to deny new service for long-past bills unpursued by utility — Telephone service. p. 778.

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APPEARANCES: Steven Morehouse, *Pro se*; Frederick J. Coolbroth, Esq., of Devine, Millimet and Branch for Granite State Telephone

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Company, Inc.; Amy L. Ignatius, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

#### I. PROCEDURAL HISTORY

On June 5, 1995, Steven Morehouse filed a complaint with the New Hampshire Public Utilities Commission (Commission) and requested a hearing, alleging that Granite State Telephone Company, Inc. (GST) refused to provide service on the grounds that a telephone bill from 1983 was still outstanding. Mr. Morehouse believed he may have paid the bill but could no longer locate records to substantiate his payment. At the urging of the Commission GST agreed to provide service to Mr. Morehouse pending a review by the Commission. The Commission issued an Order of Notice setting a hearing date for September 21, 1995.

On September 19, 1995, the Commission Staff (Staff) requested a continuance so that the parties and Staff could submit and review position papers. The Commission granted the request and rescheduled the hearing for October 2, 1995. GST filed a memorandum of law on September 27; Staff filed a position statement on September 28, 1995. Mr. Morehouse did not file a statement. The Office of Consumer Advocate, a statutorily recognized intervenor, did not participate in this docket.

## II. POSITION OF THE PARTIES AND STAFF

### A. *Agreed Statement of Facts*

On October 2, 1995, the parties and Staff submitted a Stipulation of Uncontested Facts. (Exh. 1) These facts were:

1. Mr. Morehouse received telephone service from GST from December 1981 to December 1983. In December 1983, Mr. Morehouse terminated service because he left the GST area;
2. At the time he left the area, GST's records indicate that Mr. Morehouse owed \$397.46 for unpaid basic exchange service and toll charges;
3. Mr. Morehouse does not dispute that the toll charges are his or that he received service during that period. Mr. Morehouse believed he paid the arrearage but has no corroborating documentation;
4. GST's records indicate the bill was not paid and Mr. Morehouse stated that he believed the final bill was still unpaid;
5. GST did not obtain a judgment on Mr. Morehouse's unpaid balance during the pertinent statute of limitations;
6. Mr. Morehouse moved back to the GST area in June 1994, and sought telephone service from GST, which refused him service until the arrearage was paid; and
7. After discussion with Staff, GST agreed to serve Mr. Morehouse, notwithstanding the unpaid arrearage, pending resolution of this docket.

### B. *Granite State Telephone*

GST argues it is not required to re-establish Mr. Morehouse's telephone service until the entire amount of the outstanding bill has been paid. Relying on *MBC, Inc. v. Engel*, 119 N.H. 8 (1979) and *Geurin v. N.H. Catholic Charities, Inc.*, 120 N.H. 501 (1980), GST states that the running of a statute of limitations on a debt does not extinguish the debt but merely bars the judicial remedy of a lawsuit to recover the debt. GST believes it has the right to deny service until the debt is paid. Also, Section I, Sixth Revision of Sheet 4 of GST's tariff states that GST has the right to refuse an application of a customer for service when that customer is indebted to GST for previous telephone service. In order to act in a reasonably prudent manner, GST argues it must attempt to collect old debts.

### C. *Mr. Morehouse*

Mr. Morehouse did not submit a position paper. At the hearing he stated that he does not feel he should be denied service. Because GST is the only telephone company in the area, he could not obtain service elsewhere. For a

company to request payment records that are over eleven years old is impractical and a near impossibility. He has no personal records to corroborate payment and his bank only had records for the prior seven years.

#### D. Staff

Staff does not believe Mr. Morehouse is responsible for the prior bill because GST failed to pursue its rights to obtain a judgment that would have given it twenty years to collect. Because it did not seek a judgment during the relevant statute of limitations, it can not use the unpaid bill as a basis to deny service today. Over the years, when faced with this situation, the Commission Staff has had the utility provide service if the arrearage is more than three or six years old (dependent upon the statute of limitations in place when the customer left the franchise area) and the company has not obtained a judgment. GST is the only utility which has refused to accept this policy.

#### III. COMMISSION ANALYSIS

[1] We have considered the arguments of Mr. Morehouse, GST and the Staff and conclude that Mr. Morehouse should not be denied service because of questions surrounding an eleven-year-old arrearage. Although GST acted in accordance with its tariff and in reliance on its records which indicated that Mr. Morehouse's telephone bill was unpaid, we do not believe it is fair or equitable to deny service under these circumstances.

Had GST sought a legal judgment within the applicable statute of limitations (when Mr. Morehouse's recollection was fresh and his records available), and if that judgment remained unpaid, GST would have been well within its rights to refuse service. However, we believe that the length of time (eleven years) between the billing and refusal of service for nonpayment results in prejudice to Mr. Morehouse because he cannot now produce records to support his position. Accordingly, the equitable doctrine of laches applies to preclude GST from asserting this claim against Mr. Morehouse, thereby denying him service. *See, State v. Weeks*, 134 NH 237, 240 (1991).

While this addresses the issue in Mr. Morehouse's case, we are willing to consider whether new standards should be developed on a going forward basis. Our docket DRM 93-221 on customer rules recently went to hearing, and we have received comments on all sections, including N.H. Admin. Rules, Puc 1203.15 regarding denial of service for unpaid bills. After review of comments in that case we will determine whether our policy on denial of service for unpaid bills should be amended.

Based upon the foregoing, it is hereby

ORDERED, that GST may not deny service to Mr. Morehouse on the basis of the 1983 arrearage; and it is

FURTHER ORDERED, that GST may take no further actions to collect that unpaid bill from Mr. Morehouse.

By order of the Public Utilities Commission of New Hampshire this fifth day of December, 1995.

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NH.PUC\*12/11/95\*[81171]\*80 NH PUC 778\*Freedom Electric Company

[Go to End of 81171]

80 NH PUC 778

**Re Freedom Electric Company**

DE 94-163

Order No. 21,936

New Hampshire Public Utilities Commission

December 11, 1995

ORDER declining to set a procedural schedule for prehearing conferences or hearings as to an alternative energy provider's petition for an electric service franchise, pending resolution of related matters before both the Federal Energy Regulatory Commission and the New Hampshire Supreme Court. Commission determines that it would be counterproductive to proceed with the docket before preliminary issues are settled by the other authorities. For earlier decisions in this docket, see Order No. 21,683 (80 NH PUC 314, *supra*), and Order No. 21,776

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(80 NH PUC 509, *supra*).

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## 1. PROCEDURE, § 7

[N.H.] Preliminary questions — Establishment of procedural schedule — Reasons for deferring setting of a schedule — Pending, concurrent matters before other state and federal authorities — Resolution of preliminary issues on extrajurisdictional basis — Proposed franchise operations of alternative energy corporation. p. 779.

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BY THE COMMISSION:

## ORDER

On June 6, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,683 which found, *inter alia*, that if Freedom Energy Company, LLC (Freedom) were to operate as represented, it would constitute a public utility pursuant to RSA 362:2 and that electric utility franchises are not exclusive as a matter of law. Public Service Company of New Hampshire (PSNH) and Granite State Electric Company (GSEC) filed motions for rehearing, which the Commission denied in Order No. 21,776 (August 4, 1995). PSNH appealed the Commission's Order to the New Hampshire Supreme Court, which has expedited the case for review. The case is scheduled for oral argument in February, 1996.

As part of Order No. 21,683, Freedom was required to file a petition for declaratory ruling at the Federal Energy Regulatory Commission (FERC) regarding Freedom's proposed operations and whether they fall within the parameters of the Energy Policy Act of 1992. That petition has been docketed and is now pending before the FERC.

[1] On September 22, 1995, Freedom filed a Motion for Prehearing Conference for the Purpose of Developing a Procedural Schedule, to which New Hampshire Electric Cooperative, Inc. concurred and PSNH objected.

The Commission, on October 23, 1995, announced at its public meeting that it would deny Freedom's Motion for Prehearing Conference in order to allow the New Hampshire Supreme Court and the FERC to complete review of the Freedom matters now pending. The Commission believes that it would be counter-productive to hold a prehearing conference, establish a procedural schedule and proceed in this docket prior to the resolution of the issues pending before the two other judicial bodies. The Motion is denied without prejudice to any interested party to refile upon ruling of the New Hampshire Supreme Court and/or the FERC.

Based upon the foregoing, it is hereby

ORDERED, that Freedom's Motion for Prehearing Conference is DENIED.

By order of the Public Utilities Commission of New Hampshire this eleventh day of December, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Freedom Electric Co., DE 94-163, Order No. 21,683, 80 NH PUC 314, June 6, 1995.

[N.H.] Re Freedom Electric Co., DE 94-163, Order No. 21,776, 80 NH PUC 509, Aug. 4, 1995.

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NH.PUC\*12/12/95\*[81172]\*80 NH PUC 779\*LCI Telemanagement Corporation

[Go to End of 81172]

80 NH PUC 779

### **Re LCI Telemanagement Corporation**

DR 95-297

Order No. 21,937

New Hampshire Public Utilities Commission

December 12, 1995

ORDER authorizing a large telecommunications parent company, LCI Telemanagement Corporation, to amend its tariffs so as to incorporate the tariffed products of a newly acquired carrier, Bottom Line Telecommunications, Inc.

**Page 779**

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## 1. RATES, § 141

[N.H.] Factors affecting reasonableness — Consolidation or acquisition — Merging of acquired entity's tariffs into those of the acquiring entity — Formal amendment — Telecommunications carriers. p. 780.

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BY THE COMMISSION:

ORDER

[1] On October 24, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI Telemanagement Corporation (LCI) requesting authority to add Bottom Line Telecommunications, Inc. (BLT) products to the LCI tariff for effect November 22, 1995. Due to administrative oversight, this filing was not acted on within thirty days.

On November 6, 1995, the Commission approved the sale of certain BLT assets to Corporate Telemanagement Group, Inc. (CTG) (see Order No. 21,900). On August 22, 1995, the Commission approved the sale of CTG's assets to LCI (Order No. 21,793). Thus, when the Commission approved the sale of BLT assets to CTG, BLT assets were in fact being sold to LCI. The instant petition requests authority to include BLT products in the LCI tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 1 are approved for effect as filed:

1st Revised Check Sheet  
1st Revised Contents Page 2  
Original Page 32;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Corporate Telemanagement Group, Inc., DE 95-164, Order No. 21,793, 80 NH PUC 540, Aug. 22, 1995. [N.H.] Re Corporate Telemanagement Group, Inc., DE 95-226, Order No.

21,900, 80 NH PUC 727, Nov. 6, 1995.

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NH.PUC\*12/12/95\*[81173]\*80 NH PUC 780\*NOS Communications, Inc.

[Go to End of 81173]

80 NH PUC 780

**Re NOS Communications, Inc.**

DE 95-312

Order No. 21,938

New Hampshire Public Utilities Commission

December 12, 1995

ORDER approving an interexchange telephone carrier's proposal to amend its tariffs to eliminate time-of-day-sensitive pricing and to allocate nontransport costs to the first 10 minutes of usage per call.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Elimination of pricing based on time-of-day factors — Allocation of nontransport costs to the first 10 minutes of usage per call — Interexchange carrier. p. 781.

**Page 780**

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BY THE COMMISSION:

**ORDER**

[1] On November 3, 1995, the New Hampshire Public Utilities Commission received a petition from NOS Communications, Inc., (NOS) requesting authority to introduce a new tariff, NOS NHPUC No. 2, replacing the NOS NHPUC No.1 tariff in its entirety.

The proposed tariff is reformatted and revised significantly. Among other things, the proposed tariff contains rates that are no longer time of day sensitive and a new rate structure has been introduced to make non-transport costs sensitive to the first 10 minutes of usage per call.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize NOS to introduce its tariff, NOS NHPUC No. 2.

Based upon the foregoing, it is hereby



ORDERED, that the following pages of NOS's tariff, NHPUC No. 2 are approved for effect as filed:

- Cover Page
- 1st Revised Page 2 in lieu of Original
- Original Page 3
- Original Page 4
- 1st Revised Page 5 in lieu of Original
- Original Page 6
- Original Page 7
- Original Page 8
- Original Page 9
- Original Page 10
- Original Page 11
- 1st Revised Page 12 in lieu of Original
- 1st Revised Page 13 in lieu of Original
- Original Page 14
- 1st Revised Page 15 in lieu of Original
- Original Page 16;

and it is

FURTHER ORDERED, that NOS file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

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NH.PUC\*12/12/95\*[81174]\*80 NH PUC 781\*NOSVA Limited Partnership

[Go to End of 81174]

80 NH PUC 781

**Re NOSVA Limited Partnership**

DE 95-313

Order No. 21,939

New Hampshire Public Utilities Commission

December 12, 1995

ORDER approving an interexchange telephone carrier's proposal to amend its tariffs to eliminate time-of-day-sensitive pricing and to allocate nontransport costs to the first 10 minutes of usage per call.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — Elimination of pricing based on time-of-day factors — Allocation of nontransport costs to the first 10 minutes of usage per call — Interexchange carrier. p. 781.

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BY THE COMMISSION:

ORDER

[1] On November 6, 1995, the New Hampshire Public Utilities Commission received a petition from NOSVA Limited Partnership, (NOSVA) requesting authority to introduce a new tariff, NOSVA NHPUC No. 2, replacing the NOSVA NHPUC No.1 tariff in its entirety.

The proposed tariff is reformatted and

**Page 781**

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revised significantly. Among other things, the proposed tariff contains rates that are no longer time of day sensitive and a new rate structure has been introduced to make non-transport costs sensitive to the first 10 minutes of usage per call.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize NOSVA to introduce its tariff, NOSVA NHPUC No. 2.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of NOSVA's tariff, NHPUC No. 2 are approved for effect as filed:

- Cover Page
- 1st Revised Page 2 in lieu of Original
- Original Page 3
- Original Page 4
- 1st Revised Page 5 in lieu of Original
- Original Page 6
- Original Page 7
- Original Page 8
- Original Page 9
- Original Page 10
- Original Page 11
- 1st Revised Page 12 in lieu of Original
- 1st Revised Page 13 in lieu of Original
- Original Page 14

1st Revised Page 15 in lieu of Original  
Original Page 16;

and it is

FURTHER ORDERED, that NOSVA file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

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NH.PUC\*12/12/95\*[81175]\*80 NH PUC 782\*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 81175]

80 NH PUC 782

**Re New England Telephone and Telegraph Company dba NYNEX**

Additional applicant: Wilton Telephone Company

DE 95-315

Order No. 21,940

New Hampshire Public Utilities Commission

December 12, 1995

ORDER approving a joint proposal by two local exchange telephone carriers as to transfer of a small portion of an exchange and subsequent modification to their respective service territory boundaries.

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1. MONOPOLY AND COMPETITION, § 29

[N.H.] Territorial agreements — Modification of boundaries by mutual agreement — Pursuant to transfer of portion of exchange — Factors — Existing plant as facilitating service by new owner — No current customers being affected — Local exchange telephone carriers. p. 782.

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BY THE COMMISSION:

ORDER

[1] On November 8, 1995, New England Telephone and Telegraph Company (NYNEX) and Wilton Telephone Company (Wilton) filed for effect December 8, 1995 a joint petition to modify service territory boundaries in Mason, New Hampshire, as depicted on revised franchise maps submitted with the petition.

The petition requests approval to modify service territory boundaries by transferring a small portion of the NYNEX Greenville exchange to the Wilton exchange. The territory

**Page 782**

would be difficult for NYNEX to serve, while existing Wilton facilities can be extended easily to serve a new customer who desires service. There are no existing customers in the territory who will be affected by this boundary change.

We find the petition to be in the public good. The transfer will facilitate efficiency of service and maintenance between the Wilton and Greenville exchanges.

Based upon the foregoing, it is hereby

ORDERED, that the joint petition of NYNEX and Wilton to modify the boundary between the Greenville exchange and the Wilton exchange is approved; and it is

FURTHER ORDERED, that NYNEX's tariff page NHPUC No. 75 Part A Section 5, 6th Revised Page 39, is approved for effect as filed; and it is

FURTHER ORDERED, that Wilton's tariff page NHPUC No. 5, Section 6, Original Page 1 (cancelling NHPUC No. 4, Section 6, 2nd Revised Page 1) is approved for effect as filed; and it is

FURTHER ORDERED, that NYNEX and Wilton file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

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NH.PUC\*12/12/95\*[81176]\*80 NH PUC 783\*AT&T Communications of New Hampshire, Inc.

[Go to End of 81176]

80 NH PUC 783

**Re AT&T Communications of New Hampshire, Inc.**

DR 95-317

Order No. 21,941

New Hampshire Public Utilities Commission

December 12, 1995

ORDER authorizing an interexchange telephone carrier to expand the billing capabilities of master personal identification numbers associated with "500 Personal Number" service.

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## 1. RATES, § 582

[N.H.] Telephone rate design — Toll service — "500 Personal Number" service — Billing using personal identification number (PIN) — Expansion of master PIN billing opportunities — Interexchange carrier. p. 783.

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BY THE COMMISSION:

ORDER

[1] On November 14, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from AT&T Communications Company of New Hampshire, Inc. (AT&T), requesting authority to expand the use of the master personal identification number (PIN) for AT&T 500 Personal Number Service, for effect December 14, 1995. AT&T's 500 Personal Number Service allows the subscriber to program the PIN to terminate calls at the number at his location (home, office, business meeting, hotel, etc.)

Subscribers of AT&T 500 Personal Number Service are provided a Master PIN for their own use and caller PINs that may be used by callers. PINs are used to control caller access to AT&T 500 Personal Number Service features including whether a call is paid by the caller or subscriber, as well as to determine the appropriate rate.

The proposed revision allows the customer to place a call to any other telephone number and bill it to the AT&T 500 Personal Number Master PIN. Previously, only calls to the residence of the billed account and to the forwarded number, could be billed to the Master PIN.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by Interexchange Carriers in order to foster competition in the New Hampshire intrastate toll market and allow the

Page 783

Commission to analyze the effects of such competition. Therefore, the Commission will authorize AT&T to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of AT&T's tariff, NHPUC No. 1 are approved for effect as filed:

*Table of Contents*

1st Revised Page 24

*Section 22*

1st Revised Page 3

1st Revised Page 6

1st Revised Page 7

1st Revised Page 11;

and it is

FURTHER ORDERED, that AT&T file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

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NH.PUC\*12/12/95\*[81177]\*80 NH PUC 784\*Beebe River Water System

[Go to End of 81177]

80 NH PUC 784

**Re Beebe River Water System**

DE 95-271

Order No. 21,942

New Hampshire Public Utilities Commission

December 12, 1995

ORDER deferring action on a request to appoint a receiver for a small community water system, since the parties were attempting to settle disputes as to ownership of the system and to arrange for a certified operator to run the system.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — Factors affecting decision to defer such appointment — Willingness of affected parties to enter settlement negotiations — Resolution of ownership disputes — Employment of responsible system operator — Water utility. p. 785.

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BY THE COMMISSION:

**ORDER**

On September 25, 1995, the New Hampshire Department of Justice (DOJ) filed with the New Hampshire Public Utilities Commission (Commission) a letter asking the Commission to appoint a receiver for the Beebe River Water System (BRWS) in accordance with RSA 374:47-a. BRWS is the name that has been used as a convenience to describe the water system that has allegedly been operated by Messrs. Robert Welsh, Sr. and Robert Welsh, Jr. in the Beebe River Village subdivision in Campton, New Hampshire.

The DOJ pointed out in its September 25, 1995 letter that Beebe River Village is a community of approximately 25 homes and that a casket making company and an apartment building are also served by the water system that was built in conjunction with the subdivision development. It further explained that the water system had been operated in 1986 by Robert Welsh, Jr. under the auspices of two companies, W.W. Wood Products, Inc. and Beebe River Wood Products, Inc., which were involuntarily dissolved in 1991 and 1992, respectively. Violations of the New Hampshire Safe Drinking Water Act, RSA Ch. 485, were noted at the water system as early as 1990 and the Department of Environmental Services (DES) has been involved since that time in an attempt to remedy a pattern of unresponsiveness and neglect which threatened the health of the community. The situation deteriorated to the point that the DOJ was compelled to file its request for the appointment of a receiver.

Page 784

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On November 16, 1995, the Commission issued an Order of Notice setting a hearing for December 7, 1995, to examine the threshold issue of Commission jurisdiction to make an appointment in this case. This issue was raised by the apparent dispute over ownership of the system as described in a letter filed with the Commission on October 24, 1995, by counsel for the Welshes.

At the hearing, the DOJ and the Welshes presented a Settlement Agreement designed to resolve the State's claims against the Welshes for violating the Safe Drinking Water Act. The parties also asked the Commission to defer its decision with respect to appointing a receiver and explained that they had agreed to a plan to consolidate ownership of the water system for purposes of transferring the system to Lakes Region Water Co., Inc. In the event the consolidation and transfer is not consummated, the parties agree that they will reappear before the Commission seeking appointment of a receiver.

[1] While the parties' agreement concedes the Commission's jurisdiction to appoint a receiver we do not need to address that issue at this time. Rather, before us is a request to defer a decision to appoint a receiver because the parties have developed a plan to resolve their dispute and put in place a responsible water system operator. We find the parties' plan reasonable and in the best interests of the public but we require the parties to file with us on or before February 6, 1996, a report demonstrating that the transfer of ownership to a responsible party has occurred or, in the alternative, a renewal of the request to appoint a receiver. If a responsible system operator is found, the February 6, 1996 report should indicate as well the operator's plans for filing with us a request for a franchise.

Based upon the foregoing, it is hereby

ORDERED, that a decision on the Department of Justice's Request to Appoint a Receiver is deferred; and it is

FURTHER ORDERED, that the Department of Justice shall file on or before February 6, 1996, either a report describing the successful transfer of the Beebe River water system to a responsible system operator or a renewed request to appoint a receiver.

By order of the Public Utilities Commission of New Hampshire this twelfth day of

December, 1995.

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NH.PUC\*12/12/95\*[81178]\*80 NH PUC 785\*Tamworth Water Works, Inc.

[Go to End of 81178]

80 NH PUC 785

**Re Tamworth Water Works, Inc.**

Additional applicant: Lakes Region Water Company, Inc.

DE 95-323

Order No. 21,943

New Hampshire Public Utilities Commission

December 12, 1995

ORDER authorizing Lakes Region Water Company, Inc., to acquire a smaller water utility, Tamworth Water Works, Inc., where the acquiring utility had the experience and financial resources to operate the acquired utility and where it also was committed to making necessary system improvements to the smaller utility.

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1. CONSOLIDATION, MERGER, AND SALE, § 19

[N.H.] Factors affecting approval — Public interest — Proven abilities and financial resources of purchasing utility — Commitment of acquiring utility to making necessary upgrades to the acquired system — Water utilities. p. 786.

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BY THE COMMISSION:

ORDER

The Petitioners, Tamworth Water Works, Inc. (Tamworth) and Lakes Region Water Company, Inc. (Lakes Region) filed a joint petition on November 16, 1995 requesting approval of the transfer of Tamworth's water system to

**Page 785**

Lakes Region pursuant to RSA 374:30. Lakes Region currently owns and operates eleven water systems in various towns in northern New Hampshire and has a known history of financial, managerial and technical competence, as supported in the filing.

Lakes Region seeks to adopt existing rates granted in *Re Tamworth Water Works, Inc.*, 78 NH PUC 21 (1993). A stipulation agreement incorporated in that order anticipated a number of efforts toward capital improvements, possibly including or related to supply, storage, distribution



system upgrades, corrosion control, a pump station and metering. Lakes Region has met with the Commission's engineering staff and with the Department of Environmental Services to discuss the system's deficiencies, and has agreed to submit to Staff by April 1, 1996, a written proposal regarding procurement of additional water supply, such proposal to include a comparison of costs of various alternatives considered. Staff has agreed to work with Lakes Region on the timing, cost and appropriateness of other system improvements. While the referenced order offered up to four step increases in rates to accommodate the various capital improvements anticipated, Lakes Region does not anticipate requesting a rate increase in the foreseeable future.

[1] We find transfer of the Tamworth water system to Lakes Region to be in the public good. Lakes Region has an established record of experience and expertise in the water utility business and is willing to address deficiencies in the Tamworth system on a forward-looking basis. Because the next billing will occur on January 1, 1996, with billing done in advance, we will approve the transfer effective December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that transfer of the Tamworth water system from Tamworth Water Works, Inc. to Lakes Region Water Company, Inc. pursuant to RSA 374:30 is approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Tamworth shall send a copy of this Order *Nisi* by first class mail postmarked no later than December 18, 1995 to each customer and to the Tamworth town clerk, said delivery to be documented by affidavit filed with this office on or before December 27, 1995; and it is

FURTHER ORDERED, that any person objecting to this petition should so file before December 27, 1995; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 31, 1995, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Lakes Region shall submit a proposal regarding acquisition of a new source of water supply to Staff by April 1, 1996; and it is

FURTHER ORDERED, that Lakes Region shall file a compliance tariff with the Commission on or before January 31, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

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NH.PUC\*12/12/95\*[81179]\*80 NH PUC 786\*Union Telephone Company

[Go to End of 81179]

80 NH PUC 786

## Re Union Telephone Company

DR 95-177  
Order No. 21,944

New Hampshire Public Utilities Commission

December 12, 1995

ORDER clarifying Order No. 21,913 (80 NH PUC 744, *supra*) as to the timing and manner in which a local exchange telephone carrier is to reinstate and make restitution for an intraLATA toll service credit mechanism that the carrier had improperly discontinued in contravention of an approved settlement agreement that had addressed the carrier's excess earnings.

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#### 1. REPARATION, § 21

[N.H.] Grounds for authorizing — Damage through overcharge — Unlawful discontinuation of credit mechanism —

**Page 786**

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Noncompliance with approved settlement — Remedies — Reinstatement of credit mechanism — Refunds of improper collections — Timing — Basis for refund calculations — Basis for reinstated credit — Local exchange telephone carrier — Credits and refunds for intraLATA toll service. p. 787.

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BY THE COMMISSION:

#### ORDER

[1] On November 20, 1995, the New Hampshire Public Utilities Commission (Commission) issued Order No. 21,913 finding, *inter alia*, that Union Telephone Company (Union) had violated certain provisions of prior Commission orders regarding discounting of intrastate toll calls billed to Union ratepayers.

Union filed a motion for clarification of that order on November 24, 1995. Union asked for three clarifications: 1) that the Commission's requirement of a credit "immediately" will be satisfied by application of the credit to calls made on and after November 19, 1995; 2) that calculations for the refund schedule be based upon the toll billed by Union that is provided by NYNEX, Union's designated toll provider; and 3) that the credit also be based on the toll billed by Union that is provided by NYNEX.

All parties and Staff concur in the Motion for Clarification.

The requested clarifications are appropriate and consistent with our intention in Order No. 21,913. They will be approved as requested. We appreciate the promptness with which Union is undertaking the credits called for in Order No. 21,913.

Based upon the foregoing, it is hereby

ORDERED, that Union's Motion for Clarification is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DR 95-177, Order No. 21,913, 80 NH PUC 744, Nov. 20, 1995.

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NH.PUC\*12/12/95\*[81180]\*80 NH PUC 787\*SmarTalk TeleServices, Inc.

[Go to End of 81180]

80 NH PUC 787

**Re SmarTalk TeleServices, Inc.**

DE 95-221

Order No. 21,945

New Hampshire Public Utilities Commission

December 12, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 787.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 787.

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BY THE COMMISSION:

ORDER

[1, 2] On August 10, 1995, SmarTalk TeleServices, Inc. (STI), a California 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. STI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

On December 8, 1995, STI filed to release Smartalk's financial records to the Commission for its review in granting Smartalk's application for Certification. Upon receipt, Staff confirmed by telephone conversation with counsel representing STI that the foregoing "release" was intended to withdraw his Motion for Confidentiality, and that the release specifically included release of the financial information to the public.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that STI is granted 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 until the Commission orders otherwise.
3. STI 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, STI shall notify the Commission of the change.
5. STI 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. STI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. STI 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. STI 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. STI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by STI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service,

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rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission ordered otherwise; and it is

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

FURTHER ORDERED, that STI shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than December 19, 1995, and an affidavit proving publication shall be filed with the Commission on or before December 26, 1995; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. STI 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 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 2, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 9, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective January 11, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date and it

is

FURTHER ORDERED, that STI shall file a compliance tariff with the Commission on or before January 11, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b); and it is

FURTHER ORDERED, that any person wishing to file preliminary comments on the Trial Period file such comments no later than December 31, 1995.

By order of the Public Utilities Commission of New Hampshire this twelfth day of December, 1995.

Notice of Conditional Approval of  
SMARTALK TELESERVICES, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On August 10, 1995, SmarTalk TeleServices, Inc. (STI), a California 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. 21,945, issued in Docket No. DE 95-221, the Commission granted STI conditional approval to operate as of January 11, 1996, subject to the right of the public and interested parties to comment on STI 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. Comments on STI's petition to do business in the State must be submitted in writing no later than January 2, 1996, and reply comments no later than January 9, 1996, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*12/18/95\*[81181]\*80 NH PUC 790\*Granite State Electric Company

[Go to End of 81181]

80 NH PUC 790

## Re Granite State Electric Company

DR 95-277

Order No. 21,948

New Hampshire Public Utilities Commission

December 18, 1995

PETITION by electric utility for authority to update and revise its avoided-cost calculations used as the basis for credits and penalties applicable to commercial and industrial customers that subscribe to interruptible service programs; granted.

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### 1. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Commercial and industrial customers — Credits for agreeing to interrupt load — Penalties for failure to curtail when requested — Updating of program costs and charges. p. 790.

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BY THE COMMISSION:

### ORDER

Granite State Electric Company (GSEC) filed on October 2, 1995, with the New Hampshire Public Utilities Commission (Commission) an update of the short-term value of capacity and a review of the long-term value of capacity, used to calculate customer credits in GSEC's Cooperative Interruptible Service (CIS) Program. The Company's CIS program provides credits to large commercial and industrial customers based on the customers' ability and willingness to interrupt load as requested by GSEC during capacity shortages. Under the Settlement Agreement between GSEC and Commission Staff (Staff) approved by Order No. 20,684 in Docket No. DR 92-188, GSEC is required to file updated short-term and long-term avoided costs and re-calculate the credits on or before October 1st of each year.

GSEC's CIS program contains two different types of credits. In CIS-1, customers commit with a seven year notice of termination provision to a firm interruptible load level, are paid whether or not an interruption occurs and are penalized in the event that an interruption is called and the customer fails to comply. CIS-2 does not require a commitment by the customers and is performance based, with higher credits paid in months when an interruption actually occurs and the customer interrupts a level of load. Under each credit, there are three options which differ in frequency, duration and length of notification.

In its October 2, 1995 filing, GSEC updated the data on program expenses and the total credited interruptible load to calculate new program cost factors. The long-term avoided cost value, used in establishing the credit levels in CIS-1 remained unchanged from 1994/95, while the short-term avoided cost calculations used in the CIS-2 program was increased from \$12.06 per kilowatt-year (kW-year) to \$15.00 per kW-year. GSEC has not proposed any other changes to the program.

GSEC proposes the following monthly credits (\$/kW) and non-compliance charges (\$/kW-Day), depending upon which option the customer chooses:

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

CIS - 1		
	Credit	Non-Compliance Charge
Option 1	\$ 4.25	\$ 5.10
Option 2	\$ 4.67	\$ 5.60
Option 3	\$ 3.17	\$ 3.80
CIS - 2		
	Standby Credit	Performance Credit
Option 1	\$ 0.29	\$ 1.02
Option 2	\$ 0.31	\$ 1.12
Option 3	\$ 0.21	\$ 0.77

[1] The Commission has reviewed GSEC's filing and will approve the updated avoided costs, credits and non-compliance charges. We note that the short term avoided cost figure for

Page 790

the program year is different from that which has been recently filed as GSEC's Qualifying Facility Power Purchase Rate in DR 95-337. However, we understand that the apparent discrepancy is due to the difference in the period for which it is calculated (the year November 1, 1995 to October 31, 1996 in the instant docket versus the six month period January 1, 1996 to June 30, 1996 in DR 95-337), as well as the timing of the calculation. We find that the credits have been calculated in accordance with the formulas approved in Order No. 20,684, and that GSEC is to be commended for the reduction in the program costs on a per kWh basis. We are satisfied that GSEC's ongoing CIS program provides value to GSEC and its ratepayers in both the short and longer terms, and that the updated avoided costs and resulting credits are reasonable.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's updated avoided costs, CIS-1 and CIS-2 credits, and CIS-1 non-compliance charge are approved effective January 1, 1996; and it is

FURTHER ORDERED, that GSEC serve a summary of its proposed rate change and a copy of this Order on all current CIS-1 and CIS-2 customers by first class U.S. Mail, postmarked no later than December 29, 1995; and it is

FURTHER ORDERED, that GSEC file a compliance tariff with the Commission on or before January 31, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this eighteenth day of December, 1995.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Granite State Electric Co., DR 92-188, Order No. 20,684, 77 NH PUC 745, Nov. 30, 1992.



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NH.PUC\*12/19/95\*[81182]\*80 NH PUC 791\*Public Service Company of New Hampshire

[Go to End of 81182]

80 NH PUC 791

## Re Public Service Company of New Hampshire

DR 95-068

Order No. 21,949

New Hampshire Public Utilities Commission

December 19, 1995

PETITION by electric utility for withdrawal of an accountant's affidavit which had been ruled admissible as parole evidence in a docket addressing the utility's proposal to recover its costs of complying with the Clean Air Act Amendments through its fuel and purchased power adjustment clause rate rather than through base rates; granted, with the procedural schedule for the docket again revised accordingly.

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### 1. PROCEDURE, § 11

[N.H.] Dismissal without decision on merits — Withdrawal — Of parole evidence — Of accountant's affidavit — Further adjustment of associated procedural schedule — Proceeding addressing recovery of Clean Air Act compliance costs via fuel and purchased power adjustment clause rates. p. 793.

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BY THE COMMISSION:

ORDER

### I. PROCEDURAL HISTORY

On March 9, 1995 Public Service Company of New Hampshire (PSNH) filed for cost recovery for compliance with the Clean Air Act Amendments of 1990 (CAAA) with the New Hampshire Public Utilities Commission (Commission). PSNH sought recovery of these costs pursuant to section "EA" of the Fuel and

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Purchased Power Adjustment Clause (FPPAC) of the Rate Agreement. The Commission issued an Order of Notice setting a prehearing conference for April 19, 1995, adopting a preliminary procedural schedule, and requesting a recitation of contested issues from the Parties and Commission Staff (Staff). Full intervenors in this case are the New Hampshire Electric

Cooperative, Inc. (NHEC) and the Office of Consumer Advocate (OCA), a statutorily recognized intervenor.

On September 11, 1995 the New Hampshire Attorney General's Office filed an Affidavit of Alan Kessler (Kessler Affidavit). According to the Attorney General's office, a signatory to the Rate Agreement, the Kessler Affidavit was filed to assist the Commission in clarifying any ambiguity in the Rate Agreement relative to the recovery of expenses incurred by PSNH to comply with new environmental regulations. PSNH requested that the Kessler Affidavit be marked as an exhibit. On October 12, 1995 the Commission issued Order No. 21,860 adopting a new procedural schedule, granting PSNH's request to make the Kessler Affidavit an exhibit in this proceeding and denying the request of the OCA to make the State a mandatory party to the proceeding. The order also denied a request by PSNH to subpoena Superior Court Associate Justice, Larry M. Smukler<sup>1(72)</sup>.

On November 13, 1995, pursuant to RSA 541:3, the OCA filed a Motion for Rehearing of that part of Order No. 21,860 which allowed the Kessler Affidavit into evidence and denied the OCA's request to make the State of New Hampshire a mandatory party to the proceeding if the Kessler Affidavit is ruled admissible.

On October 27, 1995 the Commission received a letter from PSNH withdrawing its request to introduce the Kessler Affidavit and proposing to change the procedural schedule to allow the Parties and Staff to discuss settlement. On November 6, 1995 the Commission stated it would treat the letter as a motion to withdraw the Kessler Affidavit from Commission consideration (Motion to Withdraw). A letter from the Executive Director dated November 9, 1995 informed the Parties and Staff of the Commission's decision and directed that responses to the letter be filed by November 15, 1995.

On October 30, 1995 Staff and the OCA pre-filed testimony in accordance with the revised procedural schedule adopted in Order No. 21,860. On November 7, 1995 PSNH filed a Motion to Strike the October 30, 1995 testimony of Staff and the OCA and also requested and further amendment to the procedural schedule (Motion to Strike).

On October 30, 1995 the OCA filed comments with the Commission relative to PSNH's request to withdraw the Kessler Affidavit and on November 16, 1995 filed an objection to the Motion to Strike. On November 13, 1995 Staff filed a concurrence with PSNH's request to withdraw the Kessler Affidavit and on November 16, 1995 filed an objection to the Motion to Strike. On November 15, 1995 the New Hampshire Electric Cooperative (NHEC) filed a concurrence with PSNH's request to withdraw and an Objection to the Motion to Strike.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. PSNH

In its October 27, 1995 Motion to Withdraw PSNH asserted that it was withdrawing its request to place the Kessler Affidavit into evidence because of the "significant procedural difficulties use of the [Kessler] Affidavit has caused ... " that could result in unnecessary litigation. PSNH further asserted that it believed this "matter is one capable of settlement" and requested a modification of the procedural schedule to provide the parties and Staff an opportunity to discuss settlement.

Subsequent to the filing of the OCA's and Staff's testimony pursuant to the revised procedural schedule, PSNH filed the Motion to Strike. PSNH based its motion to strike Staff's and the OCA's testimony on the assertion that the testimony provided for in Order no. 21,860 was "expressly intended to provide the Parties an opportunity to address only issues fairly raised by the [Kessler] Affidavit, and not to provide an opportunity for parties to raise new

Page 792

issues not previously addressed in pre-filed testimony and unrelated to the substance of the [Kessler] Affidavit." Motion at ¶ 4.

PSNH also requested, presumably in the form of alternative relief, a six week continuance to prepare rebuttal testimony to the new issues raised in Staff's and the OCA's testimony.

#### B. OCA

With regard to PSNH's request to withdraw the Kessler Affidavit from Commission consideration, the OCA's Motion for Rehearing delineated its arguments on this issue apparently concurring in the request.

The OCA contended that PSNH must file a Motion for Rehearing pursuant to RSA 541:3 (Supp. 1994) to amend a procedural schedule adopted by Commission order.

The OCA conceded its testimony may go beyond issues previously raised in the proceeding, but contended the testimony is within the scope of Order No. 21,860.

#### C. NHEC

NHEC concurred in PSNH's letter to the extent the Commission interpreted the letter as a Motion to Withdraw because PSNH is, in essence, concurring with the Motion in Limine NHEC filed relative to the Kessler Affidavit.

NHEC objected to PSNH's Motion to Strike, asserting that PSNH was fully aware that Staff and the OCA would file new testimony in this proceeding, and arguing that the testimony was within the scope of Order No. 21,860. Because PSNH was fully aware of the scope of the testimony to be filed subsequent to the introduction of the Kessler Affidavit, NHEC objected to any further modification of the procedural schedule.

#### D. Staff

Staff had no objection to PSNH's request to withdraw the Kessler Affidavit from evidence.

Staff objected to the Motion to Strike for the same reasons set forth in the positions of the OCA and NHEC. Staff also objected to the requested continuance for settlement purposes, citing what it considered to be PSNH's disingenuous position in prior settlement attempts in this proceeding.

### III. COMMISSION ANALYSIS

[1] The issues for our consideration herein are whether to grant PSNH's request to withdraw the Kessler Affidavit from consideration in this proceeding, whether Staff's and the OCA's testimony is beyond the scope of testimony provided for in Order No. 21,860, and whether to grant PSNH's request to extend the procedural schedule.

We believe it is appropriate to grant the request to withdraw the Kessler Affidavit from consideration in this proceeding, in that Mr. Kessler is apparently unavailable to answer questions relative to the statements contained in his Affidavit. Moreover, it was PSNH that originally requested the introduction of the Kessler Affidavit over the objections of Staff and the other Parties. Because the Kessler Affidavit has been withdrawn from consideration in this proceeding the OCA's Motion for Rehearing of that part of Order No. 21,860 allowing PSNH to introduce the document into evidence has been rendered moot.

We further find the October 30, 1995 testimony of the OCA and the Staff to be within the scope of testimony provided for in Order No. 21,860 for the reasons set forth below.

In Order No. 21,860 we provided the parties and Staff an opportunity to file testimony "consistent with our announcement at the September 20, 1995 hearing...." Order No. 21,860 at 8. At that hearing we provided the Parties and Staff with the opportunity to file testimony because of our receipt of the Kessler Affidavit. In response to this ruling, PSNH inquired whether this new testimony could "address issues that haven't been raised to date or is it limited to the issues that have already be (sic) raised?" Transcript, September 20, 1995 at p. 58-59.

In response to this inquiry, Commissioner Ellsworth stated:

**Page 793**

There were statements of issues that you presented to us, that EnerDev presented to us that we took to be the overall concept upon which we would consider this case. *If, as was suggested this morning, the Kessler Affidavit has brought to mind issues that are relevant to this case that have not been earlier considered, that seems to be appropriate.*

Transcript, September 20, 1995 at pp. 58-59 (emphasis added).

Thus, the only limitation on Staff's and the OCA's testimony was that it be relevant to the issues in this case. PSNH does not object to the testimony on the grounds of relevance. Because we find the testimony to be relevant, it is admissible and the Motion to Strike is denied.

Because we have allowed introduction of the testimony, we will provide PSNH an additional week to file its rebuttal testimony. Furthermore, because PSNH has requested an opportunity to discuss settlement with the other Parties and Staff, we will grant PSNH a one week continuance of the hearings in this matter. The previously scheduled hearing dates should be used by the Parties and Staff to discuss settlement.

Based upon the foregoing, it is hereby

**ORDERED**, that Public Service Company of New Hampshire's request to withdraw the Affidavit of Alan Kessler from Commission consideration is granted, and the Office of the Consumer Advocate's Motion for Rehearing of Order No 21,860 is rendered moot; and it is

**FURTHER ORDERED**, that Public Service Company of New Hampshire's Motion to Strike the October 30, 1995 testimony of the Commission Staff and the Office of the Consumer Advocate is denied; and it is

**FURTHER ORDERED**, that Public Service Company of New Hampshire is granted a one week extension to file rebuttal testimony and that the hearings on the merits of this proceeding

are rescheduled for December 5, and December 6, 1995; and it is

FURTHER ORDERED, that the parties and Staff use the previously scheduled hearing dates in this matter to attempt to reach a mutually agreed upon settlement of the issues.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1995.

#### FOOTNOTES

<sup>1</sup>The complete procedural history and a detailed analysis of the issues raised by the introduction of the Kessler Affidavit is contained in Order No. 21,860 and will not be repeated herein.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 21,860, 80 NH PUC 640, Oct. 12, 1995.

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NH.PUC\*12/19/95\*[81183]\*80 NH PUC 794\*Lower Bartlett Water Precinct

[Go to End of 81183]

80 NH PUC 794

### **Re Lower Bartlett Water Precinct**

DE 95-302

Order No. 21,951

New Hampshire Public Utilities Commission

December 19, 1995

ORDER granting a franchise to a water precinct for service in an area outside its precinct boundaries but unserved by any other supplier. The precinct agrees to charge all of its customers at the same rates, regardless of whether they are inside or outside precinct boundaries.

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#### 1. FRANCHISES, § 25

[N.H.] Factors affecting grant — Technical, financial, and managerial abilities — Lack of other service providers — Supplies as meeting minimum standards — Consumer demand for service — Water precinct — Service beyond precinct boundaries. p. 795.

**Page 794**

## 2. RATES, § 595

[N.H.] Water rate design — Precinct as service provider — Extension of service beyond precinct boundaries — Uniformity of rates for all consumers. p. 795.

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BY THE COMMISSION:

## ORDER

[1, 2] The Petitioner, Lower Bartlett Water Precinct (Lower Bartlett) filed with the New Hampshire Public Utilities Commission (Commission) on October 30, 1995, pursuant to RSA 362:4 and 374:22, a request for permission to furnish water to business and residential customers in the Town of Bartlett outside the boundaries of the precinct, but not including the confines of the Holiday Ridge Water System franchise.

Lower Bartlett is a New Hampshire Village Precinct established in accordance with RSA 52 to furnish water service; it currently serves approximately 950 people through 380 service connections. Lower Bartlett represents that the water rates it will charge customers outside its precinct boundaries are no higher than the rates charged to customers within the precinct. This exempts it from, among other things, the definition of public utilities, and from rate regulation. *See* RSA 362:4, III (a). Lower Bartlett's rates employ a base charge ranging, in relation to the size of the customer's meter, from \$60 to \$200 annually and a usage charge of \$1.50 per thousand gallons. Based on a typical statewide usage of 180 gallons per day per customer, the annual customer bill would range from \$158.55 to \$298.55.

In accordance with RSA 374:22, III., Lower Bartlett has submitted with its petition copies of letters from the Department of Environmental Services (DES) Divisions of Water Resources and Water Supply and Pollution Control, respectively, attesting to the suitability and availability of its water supply. Further, it points out that its installed storage capacity permits it to provide fire protection in the proposed franchise area. The Petitioner represents as well that there is no other water utility, water precinct or municipal water system in the area capable of serving the requested franchise area.

Lower Bartlett has presented sufficient information indicating that its exercise of a franchise right would be for the public good inasmuch as : (1) it has the managerial, legal, technical and financial expertise to furnish water service; (2) DES attests that the water supply meets statutory standards for quantity and quality; (3) consumers in the franchise area have requested water service; and, (4) no other entity is willing and able to furnish such water service.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Lower Bartlett is granted permission to furnish water service in the area of the Town of Bartlett as shown on a map on file with the Commission and as described in section 10 of its Petition for Franchise; and it is

FURTHER ORDERED, that Lower Bartlett shall provide on or before December 26, 1995, a copy of this Order *Nisi* to the Clerk of the Town of Bartlett and to the following water systems:

Holiday Ridge Supply Co., Inc.

Rolling Ridge Water System  
Saco Ridge Water Co., Inc.  
Birchview by the Saco  
Putervale, Inc. Water System;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than December 26, 1995 and to be documented by affidavit filed with this office on or before January 2, 1996; 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 9, 1996; and it is

**Page 795**

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 16, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 18, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before January 18, 1996, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of December, 1995.

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NH.PUC\*12/20/95\*[81184]\*80 NH PUC 796\*Public Service Company of New Hampshire

[Go to End of 81184]

80 NH PUC 796

**Re Public Service Company of New Hampshire**

DR 95-205

Order No. 21,953

New Hampshire Public Utilities Commission

December 20, 1995

ORDER rejecting an electric utility's proposed special rate contract with Teradyne, Inc., as filed, but directing the parties to modify and resubmit the contract consistent with the concerns expressed by the commission. The commission finds troublesome and possibly anticompetitive those provisions in the contract that prohibit the customer from establishing generation facilities

of its own and that prevent the customer from contacting any other power supplier for at least a five-year period.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development incentives for retaining industrial load — Special rate contracts — Electric utility — Necessity of modification and resubmission. p. 798.

2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Necessity of modification and resubmission of contract. p. 798.

3. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 798.

4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Anti-self-generation provisions — Anti-third-party power supplier provisions — Acquiescence by customer as a factor — Contract as part of economic development measures as a factor — Electric utility — Dissenting opinion. p. 799.

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BY THE COMMISSION:

ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on July 28, 1995, a ten-year special contract, Special Contract No. NHPUC-118 (NHPUC-118), between PSNH and Teradyne, Inc. (Teradyne), a Massachusetts corporation with two manufacturing facilities located in Nashua, New Hampshire. Teradyne Connection Systems, a division of Teradyne, manufactures printed circuit boards at its Pittsburg Avenue plant for use at its electronic backplane interconnection systems

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manufacturing facility located on Simon Street in Nashua.

The filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts as outlined in DR 91-172. NHPUC-118 is proposed to be effective for a period of ten years commencing August 12, 1995, or upon the effective date as stated in the Commission order. PSNH's filing included the special contract,



testimony, and a technical statement supporting the discounted rates for Teradyne in both redacted and unredacted form. A letter from Teradyne supporting NHPUC-118 was attached as an exhibit.

Contemporaneous with its filing, PSNH requested protective treatment for certain customer specific information considered confidential in the special contract and technical statement. As with other requests of this type, we find the information to be protected falls within the exceptions to RSA 91-A:5 and meets the terms of N.H. Admin. Rules, Puc 204.08. Accordingly, the request for protective treatment will be granted.

On December 11, 1995, Joshua L. Gordon, Esquire, on behalf of Campaign for Ratepayers Rights (CRR) filed a Motion to Bar Jurisdiction and also filed for intervention in this docket.

PSNH asserts in its filing that, absent approval of NHPUC-118, Teradyne would increase its external purchases of printed circuit boards and would increase its out-of-State production capacity. PSNH attests electric costs represent a significant portion of Teradyne's total operating costs. NHPUC-118 is designed to "retain existing load by preventing further migration of production of printed circuit boards and assembly of backplanes to subcontractors outside of New Hampshire." The pricing of NHPUC-118 is also intended to provide Teradyne with an incentive to expand production capacity in New Hampshire which would result in returning outsourced product back to New Hampshire. A letter by R. Michael Mayo, Purchasing Manager for Teradyne Connection Systems, states that Teradyne has invested substantial capital and labor to increase its energy efficiency and that as an EPA Green Lights Partner it expects to meet its upgrade requirements ahead of schedule. Mr. Mayo also states that even with NHPUC-118, Teradyne's electric rates will be higher than the rates paid by its principal competitors. Absent approval of NHPUC-118, Mr. Mayo states that expected expansion will not occur and out-of-State subcontracted work will increase.

The pricing contained in NHPUC-118 consists of rates of electric service for each facility lower than those otherwise available under applicable tariff rates. The rates include a customer charge, a Base Demand Charge, Excess Demand Charge, Base Energy Charge and an Excess Energy Charge. The Excess Demand Charge will apply to all monthly Billing Demand above the Base Demand level specified in the NHPUC-118. The Base Demand Charge is \$10.30 per kVA-month until June 1, 1996 at which time it increases 3% and continues to escalate 3% on the first day of June each year thereafter. The Excess Demand Charge starts at \$5.15 per kVA-month and also escalates annually at 3% on June 1 of each year of the ten-year contract.

The Base Energy Charge, which applies to all monthly consumption up to the Base Energy level specified in NHPUC-118, is the total of the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC), the FPPAC rate, the full level of the Nuclear Decommissioning Charge (NDC) and an energy charge adder of 1.5 cents per kWh. The Excess Energy Charge applies for all monthly consumption in excess of the Base Energy level and is the total of FPPAC BA, the FPPAC rate, the NDC and an excess energy adder of 0.85 cents per kWh. PSNH asserts that both facilities exceed the thresholds contained in the Commission's Checklist. All consumption at new facilities will be billed under the Excess Demand and Excess Energy charges. PSNH currently bills the accounts separately and will continue to do so under NHPUC-118.

PSNH states that NHPUC-118 will benefit PSNH, Teradyne and PSNH's other customers. As a condition of service under NHPUC-118, Teradyne accepts a number of provisions. Article 7, PSNH as Sole Supplier, states Teradyne agrees to utilize PSNH as its sole supplier of electricity at its current and future facilities

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located within PSNH's service territory during the ten-year term of NHPUC-118. Article 7 also states that Teradyne shall not operate a generating facility nor allow a third party to own or operate a generating facility on property Teradyne owns, acquires or controls within PSNH's service territory for the purposes of displacing sales by PSNH.<sup>1(73)</sup>

Article 8, Future Electric Supply Options, contains the terms under which Teradyne may seek an alternative supply of electricity for either a portion or all of Teradyne's requirements. In particular, Article 8 states that Teradyne may not seek any alternative supplier sooner than 60 months from the effective date of NHPUC-118. After 60 days, if Teradyne receives a bona fide offer from a third party supplier, Teradyne must submit the offer to PSNH and its notice to terminate NHPUC-118 in accordance with Article 8 and Article 17 - Notice. If PSNH matches the third party supply offer, Teradyne is required to accept PSNH's proposal plus pay an additional one cent per kWh premium.

[1, 2] The Commission has reviewed NHPUC-118, the supporting materials, and the information on the land affected by NHPUC-118. We have conducted our review pursuant to RSA 378:18 and our intention to process the special contracts that were filed with the Commission before November 6, 1995, as we had stated in Nashua Foundries, Inc. (Order No. 21,929, December 4, 1995). We remain concerned about the potential anti-competitive effects of Article 7 of NHPUC-118 as the Simon Street site has available land and thermal load that could be used for generation. Nonetheless, we do not think the potential usage of this particular site for generation should prevent the benefits that will occur by approving NHPUC-118. The economic expansion discussed by Mr. Mayo of Teradyne and Mr. Hall of PSNH would warrant our outright approval of NHPUC-118 if not for the troubling provision of Article 8. We are concerned that during a time of great change in this industry and the move toward a more competitive industry, Article 8 would have a potentially chilling effect on future competitive suppliers. The Article 8 provision allows Teradyne to seek a third party supplier for its electricity needs after the fifth year of NHPUC-118. During the first five years PSNH is contractually obligated to be the sole source supplier. Should Teradyne seek a third party supply, PSNH has the right to see and verify the third party's supply offer and then match it with the proviso that after matching the price the customer must pay an additional one-cent per kWh premium. Article 8 as contained herein, and because it has now appeared in a number of other recent special contracts, poses serious anti-competitive aspects that are not in the public interest. We would approve NHPUC-118 absent the anti-competitive aspects contained in Article 8 and recommend that PSNH refile NHPUC-118 for immediate consideration as soon as a remedy to Article 8 is completed, signed by PSNH and Teradyne and filed with the Commission.

[3] We must also address CRR's December 11, 1995 Motion to Bar Jurisdiction (Motion). RSA 362-C:6 prohibits the Commission from issuing any order which would "result in the fixing

of rates other than in the manner prescribed in the [Rate] agreement". CRR alleges that this provision divests the Commission of jurisdiction to "hear, deliberate, entertain, or approve special contracts." Motion, ¶ 2. We disagree.

RSA 374:18 authorizes the approval of special contracts. It is not, in our view, a form of ratemaking or "fixing of rates" as envisioned by RSA 362-C:6. When a special contract is approved, the tariffed rates for that class of customer remain unchanged. While the charge to the individual customer served under the special contract differs from the tariffed rate, rates themselves have not been changed. There is no adjustment to the revenue requirement of a utility overall, and tariffed rates to other classes of customers are not adjusted to make up the difference between the tariffed rate and the special contract rate.

We would interpret an effort to change PSNH's revenue requirement and adjust the tariffed rates for all of PSNH's commercial, industrial or residential customers to be the type of change in rates which RSA 362-C:6 intended to prohibit during the fixed rate period. Special contracts involving PSNH are not excluded

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from consideration and the Commission has full jurisdiction to entertain these filings.

Moreover, our position is supported by a ruling of the Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH Office of Consumer Advocate et al. v. Public Utilities Commission*, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of this and other special contracts, the Court found that in approving the rate agreement the legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement". For all of the foregoing reasons, CRR's motion is denied.

Because CRR's Petition for Intervention was filed on the day of our duly noticed deliberations we find it untimely and therefore deny it.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-118 is DENIED without prejudice; and it is FURTHER ORDERED, that PSNH may refile NHPUC-118 amended in accordance with the terms of this order; and it is

FURTHER ORDERED, that PSNH's request for protective treatment is GRANTED; and it is FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction is DENIED; and it is FURTHER ORDERED, that CRR's Petition for Intervention is DENIED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of December, 1995.

Concurring Opinion of Commissioner Bruce B. Ellsworth

I would approve NHPUC-118 as filed.

[4] While I agree with my colleagues that Article 8 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two

willing parties. If each is satisfied as to the terms and conditions of NHPUC-118, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 8. If the parties agree to the majority's remedy to Article 8, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth  
Commissioner

December 20, 1995

#### FOOTNOTES

<sup>1</sup>By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Teradyne special contract. Specifically, the Commission requested information on the land affected by NHPUC-118, including whether the land affected had generation potential. On November 22, 1995, PSNH filed a one-page summary of the information requested. PSNH stated that one of the three sites would have generation potential, but concluded that future generation was not likely.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995.

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NH.PUC\*12/22/95\*[81185]\*80 NH PUC 800\*Granite State Electric Company

[Go to End of 81185]

80 NH PUC 800

### **Re Granite State Electric Company**

DR 95-337  
Order No. 21,954

New Hampshire Public Utilities Commission

December 22, 1995

ORDER approving a fuel adjustment clause rate of 0.826 cents per kilowatt-hour for an electric utility. Short-term energy and capacity rates for purchases of power from qualifying facilities are approved as well.

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## 1. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Factors — Actual cost data — Sales forecast updates — Capital projects at generating plants — Gas-fired repowering project — Planned refueling outages at nuclear plants — Electric utility. p. 802.

## 2. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric utility from qualifying facility — Avoided-cost-based pricing — Energy rate component — Short-term rates — Capacity-related pricing standards. p. 802.

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APPEARANCES: Peter J. Dill, Esquire on behalf of Granite State Electric Company; James R. Thyng and James J. Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

## I. PROCEDURAL HISTORY

On December 1, 1995 Granite State Electric Company (GSEC or the Company) filed tariff pages, testimony and schedules supporting changes to its fuel adjustment clause (FAC) and power purchase rates for qualifying facilities (QFs). On December 13, the Company filed revised schedules. The changes in GSEC's FAC and the rates it pays QFs are effective for bills rendered for meters read for the period January 1, 1996 through June 30, 1996.

On December 13, 1995, the New Hampshire Public Utilities Commission (Commission) held a duly noticed public hearing at its offices in Concord to review the FAC and QF rates filed by GSEC.

## II. POSITIONS OF THE PARTIES AND STAFF

## A. GSEC

The Company proposes an FAC factor of \$0.00826 per kwh, and the following short-term avoided capacity and energy rates for QFs:

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

Energy Rates Per kwh	<i>On PeakOff-Peak</i>		<i>Average</i>
Subtransmission Distribution	\$0.02350	\$0.01823	\$0.02067
Primary Distribution	\$0.02524	\$0.01913	\$0.02196
Secondary Distribution	\$0.02613	\$0.01958	\$0.02261
Capacity Rates Per kwh	<i>Capacity Payment</i>		
Subtransmission	\$1.79 per kw-month		
Primary Distribution	\$1.96 per kw-month		

Secondary Distribution      \$2.05 per kw-month

The value of capacity used to determine Granite State's QF capacity payments is \$21 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.

At the December 13, 1995 hearing, GSEC presented witnesses in support of its proposed rates. Ms. Pamela A. Viapiano, Senior Rate Analyst, supported her testimony on the proposed FAC 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.

Ms. Viapiano testified that the FAC factor would decrease \$0.00049 per kwh to \$0.00826 per kwh from the current factor of \$0.00875 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 of approximately \$1.65 per MMBTU. He expects residual fuel oil prices to remain at a relatively high level averaging \$2.26 to \$2.30 per MMBTU. He expects spot gas prices to begin a seasonal decline after peaking at approximately \$2.75 per MMBTU in February, falling to below \$2.00 per MMBTU by June.

#### *B. Staff*

Staff reviewed the Company's FAC filing and the revisions submitted on December 13, 1995. The revisions pertained to interest adjustments, update amounts for November, 1995 actual results and the impact of cost refunds associated with NEP's share of output from Wyman Unit #4. Staff reviewed the Company's QF filing and the underlying documentation supporting the Company's QF capacity payments of \$21 per kw year. At the hearing, Staff questioned the Company witnesses about the impact of natural gas pipeline demand charges and demand charge mitigation and the timing of outages at Seabrook and Maine Yankee. The higher natural gas pipeline demand charges and the reduced demand charge mitigation are attributable to the Manchester Street Repowering Project. As of November, NEP's three newly repowered combined cycle generating facilities at Manchester Street attained commercial operation. As a result, gas demand for Manchester Street will be higher and the proposed fuel factor reflects GSEC's share of these higher demand charges. Also, demand charge mitigation from January 1996 through June 1996 is estimated to be lower than the previous six-month period because there will be fewer sales of gas to third parties due to the higher demand from Manchester Street.

The Seabrook #1 outage for annual maintenance ended on December 11, 1995 and the Maine Yankee outage is estimated to be completed by December 31, 1995.

The Company agreed to provide additional responses to record requests for a reconciliation of the November actual over-recovery of fuel costs versus estimated over-recovery of fuel costs and the assumptions used in the preparation of the kwh sales forecast. The Company provided the November reconciliation and it

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shows that the overcollection decreased by \$4,000 (i.e., from \$99,000 to \$95,000). The

assumptions used in preparing the kwh sales forecast show that the first half 1996 kwh sales forecast indicates a 2.63% growth over actual sales during the same period in 1995. GSEC's 1996 kwh sales were forecast using a monthly regression analysis based on January 1990 through March 1995 time period. All data was adjusted to reflect normal weather and projected DSM savings. The forecast does not reflect any increase or decrease in GSEC sales due to the proposed New Hampshire Pilot Program. The Company notes in its record request response that it is unlikely that any increase or decrease would have any significant impact on the level of GSEC's fuel adjustment factor. Any increase or decrease in sales would also increase or decrease GSEC's kwh purchases from NEP. GSEC's fuel expense would likely increase or decrease at the same rate as its kwh sales with no net effect to the fuel clause factor.

Staff is satisfied with the Company responses and supports the Company's filing for FAC rates and QF rates.

Based on the above, Staff recommends that the Commission approve the proposed FAC of \$0.00826 per kwh, and the rates paid to QFs, all rates to be effective for bills rendered for meters read on or after January 1, 1996 through June 30, 1996. The change in the FAC factor results in a decrease of \$.25 per month for a residential customer using 500 kwhs per month.

### III. COMMISSION ANALYSIS

[1, 2] The Commission understands GSEC's adjustment to update for actual November 1995 sales results in a slight reduction to the over-recovery amount of \$4,000. The Commission also understands that the forecast kwh sales for the first half of 1996 does not reflect any increase or decrease in sales due to the New Hampshire Pilot Program. Furthermore, the Commission understands that if there had been any increase or decrease in sales due to the Pilot Program, it would be unlikely that any increase or decrease would have any significant impact on the FAC. Based on the above and based on its review of the record in this case the Commission finds the proposed FAC and the rates GSEC pays QF's to be just and reasonable and approves the proposed rates.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for GSEC for bills rendered for meters read on or after January 1, 1996 shall be \$0.00826 per kwh; and it is

FURTHER ORDERED, that GSEC pay Qualifying Facilities for the period January 1, 1996 through June 30, 1996 the following rates:

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

Energy Rates Per kwh	<i>On PeakOff-Peak Average</i>		
Subtransmission Distribution	\$0.02350	\$0.01823	\$0.02067
Primary Distribution	\$0.02524	\$0.01913	\$0.02196
Secondary Distribution	\$0.02613	\$0.01958	\$0.02261
Capacity Rates Per kwh	<i>Capacity Payment</i>		
Subtransmission	\$1.79 per kw-month		
Primary Distribution	\$1.96 per kw-month		
Secondary Distribution	\$2.05 per kw-month;		

and it is

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

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1995.

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NH.PUC\*12/27/95\*[81186]\*80 NH PUC 803\*Concord Electric Company

[Go to End of 81186]

80 NH PUC 803

### **Re Concord Electric Company**

Additional applicant: Exeter and Hampton Electric Company

DR 95-336

Order No. 21,955

New Hampshire Public Utilities Commission

December 27, 1995

ORDER approving proposed fuel adjustment clause (FAC) and purchased power adjustment clause (PPAC) rates of two affiliated electric utilities, with FAC credits of 0.724 cents per kilowatt-hour (kwh) and 0.735 cents per kwh for Concord and Exeter, respectively, and PPAC charges of 0.405 cents per kwh and 0.424 cents per kwh for Concord and Exeter, respectively. The proposed rates are accepted despite the fact that they do not fully factor in the effects of a pilot demand-side management plan or the impact of an overbilling situation with Public Service Company of New Hampshire.

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#### 1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Charges versus credits — Factors affecting need for charge — Updated cost data — Affiliated electric utilities. p. 804.

#### 2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Credits — Factors — Cost updates — Effects of overbillings — Efficiencies associated with pilot conservation programs — Affiliated electric utilities. p. 804.

#### 3. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric utility from qualifying facility — Avoided-cost-based pricing — Energy rate component — Short-term rates — Pricing standards. p. 805.

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

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On December 1, 1995, 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, 1996. Concord requested a FAC credit of \$0.00719 per kwh and a PPAC of \$0.00438 per kwh. Exeter & Hampton requested a FAC credit of \$0.00768 per kwh and a PPAC of \$0.00395 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	2.57 cents per kwh
Off Peak	2.31 cents per kwh
All Hours	2.43 cents per kwh
Capacity Rate	\$0.02 per kw-year

As a result of a record request, the Companies on December 19, 1995 filed Exhibit 4, which included revised rates. The record request sought new FAC and PPAC rates that would be adjusted for November 1995 data.

The New Hampshire Public Utilities

**Page 803**

Commission (the Commission) held a duly noticed hearing at its office in Concord on December 12, 1995 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*

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, 1996 would be as follows:

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

Demand	\$15.66 per kw-month
Base Energy	\$0.01854 per kwh

Fuel Charge \$0.01784 per kwh

On December 19, 1995, the Companies filed Exhibit 4, a record request, which contains updated cost information reflecting, *inter alia*, November 1995 actual data. The revised PPAC and FAC rates, using updated data in Exhibit 4, are as follows: for Concord the PPAC would be \$0.00405 per kwh and the FAC rate would be a credit of \$0.00724 per kwh; for Exeter & Hampton the PPAC would be \$0.00424 and the FAC would be a credit of \$0.00755 per kwh.

#### 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 over collection, and the over billing from Public Service Company of New Hampshire (PSNH) due to a metering error. The Companies indicated that they were confident with their forecasts.

Unitil Power Company is working with PSNH to arrive at a corrected bill for the billing error as a result of a metering problem. They indicated that they had received a number of proposals to correct the error, all of which were prepared by PSNH and had deficiencies in the calculations per the company. Mr. Lavoie further testified that a proposed methodology had been accepted by both Companies, just prior to the hearing and that final figures should be available prior to the next PPAC and FAC filing. Mr. Lavoie testified that he had included a refund of \$110,000 for November 1995 and \$83,000 in April 1996 to approximate the over billings from PSNH. These amounts will be reconciled when final figures are obtained. Staff requested that Mr. Lavoie as part of the next PPAC and FAC filings provide detailed workpapers to support these calculations.

Staff inquired of Ms. Asbury regarding the sales forecast in light of the implementation of the pilot program. Ms. Asbury testified that the sales forecast was prepared on an annual basis and the growth rates in her testimony therefore reflected sales growth on an annual basis. The projected growth in sales for Concord during 1996 is 4.0% and for Exeter sales are expected to grow by 4.5%. Staff submitted Exhibit Number 3 which shows sales growth of 4.75% for Concord for the first 6 months of 1996, including sales lost due to the pilot program, and 7.24% sales growth, including the sales lost due to the pilot program, for Exeter.

### III. COMMISSION ANALYSIS

[1, 2] We will accept the December 19, 1995 revised filings of the Companies that were submitted to the Commission. The revised filings adjust the filing for actual November data.

We will require that the company file detailed workpapers regarding the metering problem with PSNH in the next PPAC FAC filing. We will reserve final determination on the Companies' resolution of the billing adjustment until the next fuel and purchased power adjustment hearings in June 1996.

We will also accept the Companies' sales forecast, although we realize that the forecast does not reflect any adjustment due to

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implementation of the pilot program.

We find, therefore, that the rates to be used for the Companies' FAC and PPAC shall be those based on the filing of December 19, 1995. The FAC will be a credit of \$0.00724 per kwh for Concord and a credit of \$0.00755 per kwh for Exeter & Hampton. For the same period, the PPAC rate for Concord will be a charge of \$0.00405 per kwh and a charge of \$0.00424 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 \$1.71, or a 3.22% decrease, to a monthly 500 kwh bill. A typical 500 kwh per month residential bill for Exeter & Hampton customers will decrease by \$2.55 or 4.95%. These have been adjusted for the franchise tax effect.

[3] 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 \$0.002 per kw-year capacity payment to QFs on short-term rates for the January through June, 1996 period. The rates for on-peak will be \$0.0257 per kwh; for off-peak, \$0.0231 per kwh; and for all hours, \$0.0243 per kwh.

Based upon the foregoing, it is hereby

ORDERED, that the Companies file detailed workpapers on resolution of the metering bill adjustment from PSNH; and it is

FURTHER ORDERED, that Concord Electric Company Fuel Adjustment Charge rate for the period January through June, 1996, shall be a credit of \$0.00724 per kwh for bills rendered on meter readings on or after January 1, 1996; and it is

FURTHER ORDERED, that for the period January through June, 1996, the Concord Electric Company Purchased Power Adjustment Clause rate shall be \$0.00405 per kwh for bills rendered on meter readings on or after January 1, 1996; and it is

FURTHER ORDERED, that for the period January through June, 1996, the Exeter & Hampton Electric Company Fuel Adjustment Charge rate shall be a credit of \$0.00755 per kwh for bills rendered on meter readings on or after January 1, 1996; and it is

FURTHER ORDERED, that for the period January through June, 1996, the Exeter & Hampton Electric Company Purchased Power Adjustment Clause rate shall be \$0.00424 per kwh for bills rendered on meter readings on or after January 1, 1996; 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	2.57 cents per kwh
Off Peak	2.31 cents per kwh
All Hours	2.43 cents per kwh

Capacity Rate \$0.02 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 twenty-seventh day of December, 1995.

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NH.PUC\*12/28/95\*[81187]\*80 NH PUC 806\*Public Service Company of New Hampshire

[Go to End of 81187]

80 NH PUC 806

## Re Public Service Company of New Hampshire

DR 95-214

Order No. 21,957

New Hampshire Public Utilities Commission

December 28, 1995

ORDER rejecting as filed an electric utility's proposed special rate contract with Kollsman, a Division of Sequa Corporation, but directing the parties to modify and resubmit the contract consistent with the concerns expressed by the commission. The commission finds troublesome and possibly anticompetitive those provisions in the contract that prohibit the customer from establishing generation facilities of its own and that prevent the customer from contacting any other power supplier for at least a five-year period, the positive business retention benefits of the contract notwithstanding.

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### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development incentives for retaining industrial load — Special rate contracts — Electric utility — Necessity of modification and resubmission. p. 808.

### 2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Necessity of modification and resubmission of contract. p. 808.

### 3. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 808.

### 4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Anti-self-generation provisions — Anti-third-party power supplier provisions — Acquiescence by customer as a factor — Contract as part of economic development measures as a factor — Electric utility — Dissenting opinion. p. 809.

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BY THE COMMISSION:

ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on July 28, 1995, a ten-year special contract, Special Contract No. NHPUC-119 (NHPUC-119), between PSNH and Kollsman, Division of Sequa Corporation (Kollsman), a New Hampshire corporation with two manufacturing facilities located in Merrimack and Nashua, New Hampshire. Kollsman manufactures instrumentation and equipment for military and commercial aircraft, electro-optics for weapons systems, weapons training systems and medical diagnostic equipment.

The filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts as outlined in DR 91-172. NHPUC-119 is proposed to be effective for a period of ten years commencing August 15, 1995, or upon the effective date as stated in the Commission order. PSNH's filing included the special contract, testimony, and a technical statement supporting the discounted rates for Kollsman in both redacted and unredacted form. A letter from Kollsman supporting NHPUC-119 was attached as an exhibit.

Contemporaneous with its filing, PSNH

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requested protective treatment for certain customer specific information considered confidential in the special contract and technical statement. As with other requests of this type, we find the information to be protected falls within the exceptions to RSA 91-A:5 and meets the terms of N.H. Admin. Rules, Puc 204.08. Accordingly, the request for protective treatment will be granted.

On December 11, 1995, Joshua L. Gordon, Esquire, on behalf of Campaign for Ratepayers Rights (CRR) filed a Motion to Bar Jurisdiction and also filed for intervention in this docket.

PSNH asserts in its filing that, absent approval of NHPUC-119, Kollsman would initiate a relocation of its research, development and manufacture of avionics instruments to a facility located in the Mid-West. At the current time, avionics represents approximately one-third of Kollsman's operations in New Hampshire. Kollsman is actively pursuing cost reduction and cost control measures to retain and to possibly expand its market share in an increasingly competitive industry. PSNH attests electric costs represent a significant portion of Kollsman's total operating costs. NHPUC-119 is designed to improve Kollsman's competitive position and encourage its expansion in New Hampshire. A letter by Mr. Lee McLean, Manager, Operations Administration, states that NHPUC-119 is required to keep Kollsman's New Hampshire facilities competitive with the industry and avoid relocating portions of business to the Mid-West. He

states that Kollsman has implemented many changes both internally and externally to achieve a competitive position in the industry, including reductions in labor costs, establishment of quality partnerships with vendors and energy conservation measures. Absent approval of NHPUC-119, Mr. McLean states that the attractive electric rates and incentives offered by a Kansas utility will cause the relocation of the avionics business to its Wichita plant.

The pricing contained in NHPUC-119 consists of rates of electric service for each facility lower than those otherwise available under applicable tariff rates. The rates include a customer charge, a Base Demand Charge, Excess Demand Charge, Base Energy Charge and an Excess Energy Charge. The Excess Demand Charge will apply to all monthly Billing Demand above the Base Demand level specified in the NHPUC-119. The Base Demand Charge is \$10.30 per kVA-month until June 1, 1996 at which time it increases 3% and continues to escalate 3% on the first day of June each year thereafter. The Excess Demand Charge starts at \$5.15 per kVA-month and also escalates annually at 3% on June 1 of each year of the ten-year contract. The maximum amount that Kollsman will be billed for service will be the amount that Kollsman would have been billed during that year under Rate LG or Rate GV of the tariff, whichever would otherwise be applicable.

The Base Energy Charge, which applies to all monthly consumption up to the Base Energy level specified in NHPUC-119, is the total of the Base Amount (BA) in the Fuel and Purchased Power Adjustment Clause (FPPAC), the FPPAC rate, the full level of the Nuclear Decommissioning Charge (NDC) and an energy charge adder of 1.9 cents per kWh. The Excess Energy Charge applies for all monthly consumption in excess of the Base Energy level and is the total of FPPAC BA, the FPPAC rate, the NDC and an excess energy adder of 0.80 cents per kWh. PSNH asserts that both facilities exceed the thresholds contained in the Commission's Checklist.

PSNH states that NHPUC-119 will benefit PSNH, Kollsman and PSNH's other customers. As a condition of service under NHPUC-119, Kollsman accepts a number of provisions. Article 6, PSNH as Sole Supplier, states Kollsman agrees to utilize PSNH as its sole supplier of electricity at its current and future facilities located within PSNH's service territory during the ten-year term of NHPUC-119. Article 6 also states that Kollsman shall not operate a generating facility nor allow a third party to own or operate a generating facility on property Kollsman owns, acquires or controls for the purposes of displacing sales of Northeast Utilities' retail customers or the retail sales of any of Northeast Utilities' wholesale customers.<sup>1(74)</sup>

Article 8, Future Electric Supply Options, contains the terms under which Kollsman may seek an alternative supply of electricity for

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either a portion or all of Kollsman's requirements. In particular, Article 8 states that Kollsman may not seek any alternative supplier sooner than seven years from the effective date of NHPUC-119. After 60 days, if Kollsman receives a bona fide offer from a third party supplier, Kollsman must provide the terms of the offer to PSNH in accordance with Article 8 and Article 14 - Notice. If PSNH matches the third party supply offer, Kollsman is required to accept PSNH's proposal plus pay an additional 5% premium per kWh.

The Commission has reviewed NHPUC-119, the supporting materials, and the information on the land affected by NHPUC-119. We have conducted our review pursuant to RSA 378:18 and our intention to process the special contracts that were filed with the Commission before November 6, 1995, as we had stated in *Nashua Foundries, Inc.* (Order No. 21,929, December 4, 1995). We remain concerned as a matter of policy about the potential anti-competitive effects of Article 6 of NHPUC-119. However, in this instance we are reassured by the description of the property in question, the representation by PSNH that Kollsman prefers to use the available land at its Merrimack location for future expansion, the representation that there is insufficient space for generation at the Nashua location, and the representation that there is no thermal load at either location, which suggests this is an unlikely site for development of generation. Thus, we do not believe that this provision of NHPUC-119 will have a negative impact on competition nor do we believe, based on the representations of Kollsman and PSNH, that the mere potential usage of this particular site for generation should prevent the benefits that will occur upon our approval of this special contract. In addition, as we noted in Order No. 21,929, if Kollsman's property were indeed suitable for generation and its use became necessary, condemnation rights under RSA 371:1 would be available to the appropriate entity.

**[1-3]** The benefits of business retention discussed by Mr. McLean of Kollsman and Mr. Hall of PSNH would warrant our outright approval of NHPUC-119 if not for the troubling provisions of Article 8. We are concerned that during a time of great change in this industry and the move toward a more competitive industry, Article 8 would have a potentially chilling effect on future competitive suppliers. The Article 8 provision allows Kollsman to seek a third party supplier for its electricity needs after the seventh year of NHPUC-119. During the first seven years PSNH is contractually obligated to be the sole source supplier. Should Kollsman seek a third party supply, Kollsman must provide to PSNH the terms of the third party's supply offer and then match it with the proviso that after matching the price the customer must pay an additional 5% premium per kWh. Article 8 as contained herein, and because it has now appeared in a number of other recent special contracts, poses serious anti-competitive aspects that are not in the public interest. We would approve NHPUC-119 absent the anti-competitive aspects contained in Article 8 and recommend that PSNH refile NHPUC-119 for immediate reconsideration as soon as a remedy to Article 8 is completed, signed by PSNH and Kollsman and filed with the Commission.

We must also address CRR's December 11, 1995 Motion to Bar Jurisdiction (Motion). RSA 362-C:6 prohibits the Commission from issuing any order which would "result in the fixing of rates other than in the manner prescribed in the [Rate] agreement". CRR alleges that this provision divests the Commission of jurisdiction to "hear, deliberate, entertain, or approve special contracts." Motion, ¶ 2. We disagree.

RSA 374:18 authorizes the approval of special contracts. It is not, in our view, a form of ratemaking or "fixing of rates" as envisioned by RSA 362-C:6. When a special contract is approved, the tariffed rates for that class of customer remain unchanged. While the charge to the individual customer served under the special contract differs from the tariffed rate, rates themselves have not been changed. There is no adjustment to the revenue requirement of a utility overall, and tariffed rates to other classes of customers are not adjusted to make up the difference between the tariffed rate and the special contract rate.

We would interpret an effort to change PSNH's revenue requirement and adjust the tariffed



rates for all of PSNH's commercial,

industrial or residential customers to be the type of change in rates which RSA 362-C:6 intended to prohibit during the fixed rate period. Special contracts involving PSNH are not excluded from consideration and the Commission has full jurisdiction to entertain these filings.

Moreover, our position is supported by a ruling of the Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH Office of Consumer Advocate et al. v. Public Utilities Commission*, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of this and other special contracts, the Court found that in approving the rate agreement the legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement". For all of the foregoing reasons, CRR's motion is denied.

Because CRR's Petition for Intervention was filed on the day of our duly noticed deliberations we find it untimely and therefore deny it.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-119 is DENIED without prejudice; and it is

FURTHER ORDERED, that PSNH may refile NHPUC-119 amended in accordance with the terms of this order; and it is

FURTHER ORDERED, that PSNH's request pursuant to RSA 91-A:5,IV and N.H. Admin. rules, Puc 204.08 for protective treatment is GRANTED subject to reconsideration in the event that the Commission 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; and it is

FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that CRR's Petition for Intervention is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1995.

Special Contract No. NHPUC-119 with Kollsman, Division of Sequa Corporation

Concurring Opinion of Commissioner Bruce B. Ellsworth

I would approve NHPUC-119 as filed.

[4] While I agree with my colleagues that Article 8 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-119, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 8. If the parties agree to the majority's remedy to Article 8, and if the majority approves the remedied contract, I will join them in approving it.



Bruce B. Ellsworth  
Commissioner  
December 28, 1995

FOOTNOTES

<sup>1</sup> By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Kollsman special contract. Specifically, the Commission requested information on the land affected by NHPUC-119, including whether the land affected had generation potential. On November 29, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that space for generation was available at one of the sites, but concluded that future generation was not likely.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995.

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NH.PUC\*12/28/95\*[81188]\*80 NH PUC 810\*New Hampshire Electric Cooperative, Inc.

[Go to End of 81188]

80 NH PUC 810

**Re New Hampshire Electric Cooperative, Inc.**

DR 95-335  
Order No. 21,958

New Hampshire Public Utilities Commission

December 28, 1995

ORDER approving a power cost adjustment rate of 0.875 cents per kilowatt-hour for an electric cooperative. A short-term energy rate payable to small power producers likewise is approved.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment rate — Factors affecting decrease in charge — Changes in wholesale supplier rates — Nuclear-related outage and refueling costs — Electric cooperative. p. 811.

2. COGENERATION, § 28

[N.H.] Rates — For purchases of power by electric cooperative from qualifying facilities —

Wholesale supplier's rates as basis — Energy rate component — Short-term rates. p. 811.

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APPEARANCES: Dean, Rice and Howard, by Mark E. Howard, Esq. on behalf of New Hampshire Electric Cooperative, Inc., Thomas C. Frantz and Eugene F. Sullivan, Jr. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

## ORDER

### I. PROCEDURAL HISTORY

On November 30, 1995 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, 1996 through June 30, 1996. Supporting testimony and exhibits were included in NHEC's filing. NHEC filed 1st Revised page 43, Rates for Purchases from Qualifying Facilities, November 30, 1995. The short term rates proposed are the wholesale rates of each of the four utilities from which NHEC purchases power.

At a duly noticed hearing on December 12, 1995, NHEC Rate Analyst, Heather K. Lucas, testified in support of NHEC's proposed PCA factor.

### II. POSITIONS OF THE PARTIES AND STAFF

#### A. NHEC

NHEC proposes a PCA factor of \$0.00875 per kWh effective with all meters read on and after January 1, 1996. The proposed PCA factor represents a decrease of \$0.00676 per kWh, or 4.8% on average retail revenue, compared to the current PCA factor of \$0.01551 per kWh. It is equal to the forecasted power costs which are not already included in base rates, less any over-recovery from the preceding period, divided by the expected energy sales for the PCA period. Ms. Lucas stated that a residential customer using 500 kWh per month will have a monthly bill of \$69.69, a decrease of \$3.41.

NHEC's forecasted power cost requirement for the period is \$48,858,382. In addition, NHEC expects an over-recovery of \$218,175 on January 1, 1996. The forecasted power costs minus the over-recovery plus amortization of the previously deferred Seabrook refueling and Maine Yankee replacement power of \$908,562 and \$586,134, respectively, minus the anticipated base rate purchased power costs of \$45,318,571, leaves \$4,816,332 to be recovered through the PCA factor. NHEC estimates sales of 565,389,800 kWh over the PCA period, resulting in the proposed PCA factor of \$0.00875 per kWh. The proposed PCA factor includes \$0.00023 per kWh for the interest

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accumulated on the deferred Seabrook and Maine Yankee balances. In DR 95-153, NHEC's previous PCA filing, NHEC requested and was authorized to recover the Seabrook refueling costs over the number of months between the scheduled Seabrook refueling outages which is expected to be 18 months. At the time, two-thirds of the total refueling costs were deferred for

recovery in 1996. Similar treatment of the replacement power costs associated with the extended outage of Maine Yankee were also requested by NHEC in DR 95-153 and approved by the Commission. The recovery period for Maine Yankee replacement power costs was 4 years. NHEC requests recovery of \$586,134 in 1996. The balance at the end of 1996 in the Maine Yankee deferral account is expected to be \$1,465,336.

The decrease in the PCA is based primarily on a change in the recovery balance. Current projections for the January 1, 1996 PCA recovery balance is an over-recovery of \$218,175. NHEC entered the current PCA period on July 1, 1995 with an under-recovery of \$1,921,529. The over-recovery will result in a decrease to the PCA factor of \$0.00787 per kWh. It is based primarily on a decrease in the Wholesale Fuel and Purchased Power Adjustment (FPPAC) surcharge by PSNH, NHEC's largest wholesale power provider, resulting in a credit for the period of January 1, 1996 to June 30, 1996.

#### *B. Staff*

Staff did not file testimony in the proceeding, but questioned Ms. Lucas on a number of power cost issues, including NHEC's sales forecast, the effect of the deferrals on NHEC's financial condition and the power costs PSNH has forecasted for the wholesale FPPAC period commencing on January 1, 1996, especially the PSNH forecast of the time Seabrook would be off-line for its scheduled refueling.

Staff understands the FPPAC rate is approved by FERC and cannot be adjusted during the period January 1, 1996 to June 30, 1996. Staff stated its concern that, given the beginning over-recovery balance, if the Seabrook refueling is completed ahead of schedule a substantial decrease on NHEC's costs will be reflected in the PCA on July 1, 1996. Staff will review this in the next PCA filing.

### III. COMMISSION ANALYSIS

[1, 2] Based on our review of the record, we find that NHEC's proposed PCA factor of \$0.00875 per kWh is appropriate for the period January 1, 1996 through June 30, 1996, results in just and reasonable rates and is in the public interest.

We note that NHEC's concern for rate stability in its filing is consistent with past treatment of Seabrook refueling-related power costs and we will continue our approval of NHEC's deferral mechanism for Seabrook. In recognition of the difficulty in forecasting its duration we will reconsider this deferral issue as well as the Maine Yankee deferral of replacement power costs during the next filing.

Based upon the foregoing, it is hereby

ORDERED, that the Power Cost Adjustment factor for NHEC for the period January 1, 1996 through June 30, 1996 shall be \$0.00875 per kWh, effective on all meters read on and after January 1, 1996; and it is

FURTHER ORDERED, that the short-term avoided energy rates paid to qualifying facilities shall be as shown in NHEC 1st Revised Page 43 for the period January 1, 1996 through June 30, 1996; 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 this order.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1995.

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NH.PUC\*12/28/95\*[81189]\*80 NH PUC 812\*Public Service Company of New Hampshire

[Go to End of 81189]

80 NH PUC 812

## Re Public Service Company of New Hampshire

DR 95-270

Order No. 21,959

New Hampshire Public Utilities Commission

December 28, 1995

ORDER rejecting as filed an electric utility's proposed special rate contract with Textron Automotive Interiors, Inc., but directing the parties to modify and resubmit the contract consistent with the concerns expressed by the commission. The commission finds troublesome and possibly anticompetitive those provisions in the contract that prohibit the customer from establishing generation facilities of its own and that prevent the customer from contacting any other power supplier for at least a five-year period, the positive business retention benefits of the contract notwithstanding.

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### 1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Economic development incentives for retaining industrial load — Special rate contracts — Electric utility — Necessity of modification and resubmission. p. 814.

### 2. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Terms encumbering customer's property — Anti-self-generation provisions — Prohibitions on third-party power supplier bids — Determination of anticompetitive effects — Electric utility — Necessity of modification and resubmission of contract — Benefits of business retention notwithstanding. p. 814.

### 3. RATES, § 49

[N.H.] Commission jurisdiction — As to special rate contracts — No unlawful infringement on traditional rate-making practices — Commission authority to review and approve, modify, reject, or remand. p. 814.

### 4. MONOPOLY AND COMPETITION, § 21

[N.H.] Restraint of trade and anticompetitive practices — Special contracts — Anti-self-generation provisions — Anti-third-party power supplier provisions — Acquiescence by customer as a factor — Benefits of business retention incentives as a factor — Electric utility — Dissenting opinion. p. 815.

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BY THE COMMISSION:

### ORDER

The Petitioner, Public Service Company of New Hampshire (PSNH), filed on September 25, 1995, a ten-year special contract, Special Contract No. NHPUC-121 (NHPUC-121), between PSNH and Textron Automotive Interiors, Inc. (Textron), a wholly owned subsidiary of Textron, Inc. with headquarters in Providence, Rhode Island and three manufacturing facilities located in Dover and Farmington, New Hampshire. Textron manufactures instrument panels, door panels, armrests, airbags, center consoles and headliners to totally integrated vehicle interiors.

The filing by PSNH was made pursuant to RSA 378:18 and the Checklist for Economic Development and Business Retention Special Contracts as outlined in DR 91-172. NHPUC-121 is proposed to be effective for a period of ten years commencing September 1, 1995, or upon the effective date as stated in the Commission order. PSNH's filing included the special contract, testimony, and a technical statement supporting the discounted rates for Textron in both redacted and unredacted form. A letter from Textron supporting NHPUC-121 was attached as an exhibit.

### Page 812

Contemporaneous with its filing, PSNH requested protective treatment for certain customer specific information considered confidential in the special contract and technical statement. As with other requests of this type, we find the information to be protected falls within the exceptions to RSA 91-A:5 and meets the terms of N.H. Admin. Rules, Puc 204.08. Accordingly, the request for protective treatment will be granted.

On December 11, 1995, Joshua L. Gordon, Esquire, on behalf of Campaign for Ratepayers Rights (CRR) filed a Motion to Bar Jurisdiction and also filed for intervention in this docket.

PSNH asserts in its filing that, absent approval of NHPUC-121, Textron would relocate its Dover and Farmington New Hampshire facilities to other existing Textron facilities in other states. The big three automobile manufacturers have pushed for price reduction programs, and in order to meet their demands, Textron has been forced to review its operating strategies and employ cost reduction measures, including closing its Dover factory and consolidating those operations in Farmington. PSNH also demonstrates that Textron has been aggressive in its conservation and load management efforts. NHPUC-121 is designed to improve Textron's competitive position and help ensure that Textron will remain in New Hampshire. A letter by Mr. James D. Houston, Vice President of New Hampshire Operations, states that NHPUC-121 will help Textron to remain competitive in a price-sensitive industry and that approval of NHPUC-121 is a major component in its plans for reconfiguring New Hampshire operations and is integral to maintaining jobs in this state.

The pricing contained in NHPUC-121 consists of rates of electric service for each facility lower than those otherwise available under applicable tariff rates. The rates include a fixed Customer and Demand Charge that escalates each year for the ten-year term of NHPUC-121. The Base Demand Charge is \$10.30 per kVA-month until June 1, 1996 at which time it increases 3% and continues to escalate 3% on the first day of June each year thereafter. The Energy Charge for Textron's existing load is 0.75 cents per kWh above the sum of total FPPAC costs and the Nuclear Decommissioning Charge for the first three years of the Contract. For the next two years, the Energy Charge for existing load is increased by 0.25 cents per kWh and for the remaining years the Energy Charge is increased again by 0.5 cents per kWh. Pricing for economic expansion will be provided at 0.5 cents per kWh for all energy above Textron's existing usage after Textron notifies PSNH of the expansion and PSNH and Textron determine the Base Energy level of each facility. The Base Energy level will be filed with the Commission as an addendum to NHPUC-121. The maximum amount that Textron will be billed for service will be the amount that Textron would have been billed during that year under Rate LG or Rate GV of the tariff, whichever would otherwise be applicable.

PSNH states that NHPUC-121 will benefit PSNH, Textron and PSNH's other customers. As a condition of service under NHPUC-121, Textron accepts a number of provisions. Article 7, PSNH as Sole Supplier, states Textron agrees to utilize PSNH as its sole supplier of electricity at its current and future facilities located within PSNH's service territory during the ten-year term of NHPUC-121 unless terminated pursuant to Article 8, Future Electric Supply Options. Article 7 also states that Textron shall not operate a generating facility nor allow a third party to own or operate a generating facility on property Textron owns, acquires or controls within New Hampshire for the purposes of displacing retail sales of Northeast Utilities's subsidiaries or retail sales of Northeast Utilities' wholesale customers, unless terminated pursuant to the provisions of Article 8.<sup>1(75)</sup>

Article 8, Future Electric Supply Options, contains the terms under which Textron may seek an alternative supply of electricity for either a portion or all of Textron's requirements. In particular, Article 8 states that Textron may not seek any alternative supplier sooner than sixty (60) months after the effective date of NHPUC-121. After 60 months, if Textron receives a bona fide offer from a third party supplier, Textron must submit the terms of the offer to PSNH in accordance with Article 8. If PSNH matches the third party supply offer within 60 days, Textron is required to accept

### Page 813

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PSNH's proposal plus pay an additional one cent premium per kWh.

The Commission has reviewed NHPUC-121, the supporting materials, and the information on the land affected by NHPUC-121. We have conducted our review pursuant to RSA 378:18 and our intention to process the special contracts that were filed with the Commission before November 6, 1995, as we had stated in Nashua Foundries, Inc. (Order No. 21,929, December 4, 1995). We remain concerned as a matter of policy about the potential anti-competitive effects of Article 7 of NHPUC-121. However, in this instance although PSNH represents that there is sufficient land available to develop generation at all three locations, we are reassured by the

representation by PSNH that Textron has no intention of starting up a generation facility or leasing any of their land to a third party for a generation facility, and that there is no thermal load at any of the locations, which suggests this is an unlikely site for development of generation. Thus, we do not believe that this provision of NHPUC-119 will have a negative impact on competition nor do we believe, based on the representations of Textron and PSNH, that the mere potential usage of this particular site for generation should prevent the benefits of business retention that we expect will occur upon our approval of NHPUC-121. In addition, as we noted in Order No. 21,929, if Textron's property were indeed suitable for generation and its use became necessary, condemnation rights under RSA 371:1 would be available to the appropriate entity.

**[1-3]** The benefits of business retention discussed by Mr. Houston of Textron and Mr. Hall of PSNH would warrant our outright approval of NHPUC-121 if not for the troubling provisions of Article 8. We are concerned that during a time of great change in this industry and the move toward a more competitive industry, Article 8 would have a potentially chilling effect on future competitive suppliers. The Article 8 provision allows Textron to seek a third party supplier for its electricity needs after the fifth year of NHPUC-121. During the first five years PSNH is contractually obligated to be the sole source supplier. Should Textron seek a third party supply, PSNH has the right to see and verify the third party's supply offer and then match it with the proviso that after matching the price the customer must pay an additional one cent premium per kWh. Article 8 as contained herein, and because it has now appeared in a number of other recent special contracts, poses serious anti-competitive aspects that are not in the public interest. We would approve NHPUC-121 absent the anti-competitive aspects contained in Article 8 and recommend that PSNH refile NHPUC-121 for immediate reconsideration as soon as a remedy to Article 8 is completed, signed by PSNH and Textron and filed with the Commission.

We must also address CRR's December 11, 1995 Motion to Bar Jurisdiction (Motion). RSA 362-C:6 prohibits the Commission from issuing any order which would "result in the fixing of rates other than in the manner prescribed in the [Rate] agreement". CRR alleges that this provision divests the Commission of jurisdiction to "hear, deliberate, entertain, or approve special contracts." Motion, ¶ 2. We disagree.

RSA 374:18 authorizes the approval of special contracts. It is not, in our view, a form of ratemaking or "fixing of rates" as envisioned by RSA 362-C:6. When a special contract is approved, the tariffed rates for that class of customer remain unchanged. While the charge to the individual customer served under the special contract differs from the tariffed rate, rates themselves have not been changed. There is no adjustment to the revenue requirement of a utility overall, and tariffed rates to other classes of customers are not adjusted to make up the difference between the tariffed rate and the special contract rate.

We would interpret an effort to change PSNH's revenue requirement and adjust the tariffed rates for all of PSNH's commercial, industrial or residential customers to be the type of change in rates which RSA 362-C:6 intended to prohibit during the fixed rate period. Special contracts involving PSNH are not excluded from consideration and the Commission has full jurisdiction to entertain these filings.

Moreover, our position is supported by a ruling of the Merrimack County Superior Court (McGuire, J.) on December 11, 1995 in *NH*

Office of Consumer Advocate et al. v. Public Utilities Commission, Docket No. 95-E-331. In denying a Petition filed by OCA and CRR seeking to enjoin our deliberations of this and other special contracts, the Court found that in approving the rate agreement the legislature did not vacate or alter our authority under RSA 378:18 to approve special contracts "and has not done so since the passage of the rate agreement". For all of the foregoing reasons, CRR's motion is denied.

Because CRR's Petition for Intervention was filed on the day of our duly noticed deliberations we find it untimely and therefore deny it.

Based upon the foregoing, it is hereby

ORDERED, that Special Contract No. NHPUC-121 is DENIED without prejudice; and it is

FURTHER ORDERED, that PSNH may refile NHPUC-121 amended in accordance with the terms of this order; and it is

FURTHER ORDERED, that PSNH's request for protective treatment is GRANTED pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08, subject to reconsideration in the event that the Commission 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; and it is

FURTHER ORDERED, that CRR's Motion to Bar Jurisdiction is DENIED; and it is

FURTHER ORDERED, that CRR's Petition for Intervention is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1995.

Concurring Opinion of  
Commissioner Bruce B. Ellsworth

I would approve NHPUC-121 as filed.

[4] While I agree with my colleagues that Article 8 poses issues which some might consider anti-competitive, I cannot find that it is not in the public interest. There is, here, a contract of two willing parties. If each is satisfied as to the terms and conditions of NHPUC-121, I cannot find it in the public interest to deny them the right to execute it.

Accordingly, I was, and am, prepared to sign an approving order for the contract as submitted. However, the majority returns the contract for reconsideration of Article 8. If the parties agree to the majority's remedy to Article 8, and if the majority approves the remedied contract, I will join them in approving it.

Bruce B. Ellsworth Commissioner

December 28, 1995

#### FOOTNOTES



<sup>1</sup>By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Textron special contract. Specifically, the Commission requested information on the land affected by NHPUC-121, including whether the land affected had generation potential. On December 1, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that all three sites have limited potential thermal load but are in a non-attainment zone for purposes of air quality. PSNH concludes that there is a possibility that generation could be installed at Textron's facilities but it is unlikely. Textron has indicated that it would prefer to use available land for future expansion.

#### EDITOR'S APPENDIX

##### Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-149, Order No. 21,929, 80 NH PUC 770, Dec. 4, 1995.

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NH.PUC\*12/28/95\*[81190]\*80 NH PUC 816\*Northern Utilities, Inc.

[Go to End of 81190]

80 NH PUC 816

### **Re Northern Utilities, Inc.**

DR 95-107

Order No. 21,960

New Hampshire Public Utilities Commission

December 28, 1995

ORDER adopting stipulation to close a proceeding examining a natural gas local distribution company's first integrated least-cost resource plan, but to allow the company to go ahead and implement its plan as modified to better facilitate planning and forecasting methods and to integrate demand- and supply-side resources.

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#### 1. EXPENSES, § 126

[N.H.] Gas utility — Commodity or supply costs — Integrated least-cost planning requirements — Forecasting methods and criteria — Integration of demand- and supply side resources — Initial efforts — Necessity of refinements — Stipulation. p. 818.

#### 2. GAS, § 7

[N.H.] Operating practices — Integrated least-cost planning — Forecasting methods and criteria — Integration of demand- and supply side resources — Initial efforts — Necessity of refinements — Stipulation. p. 818.

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APPEARANCES: LeBoeuf, Lamb, Greene and MacRae by Paul B. Dexter, Esq. for Northern Utilities, Inc.; McLane, Graf, Raulerson and Middleton by Richard A. Samuels, Esq. for EnergyNorth Natural Gas, Inc.; Kenneth E. Traum of the 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:

## ORDER

### I. PROCEDURAL HISTORY

On April 7, 1995 Northern Utilities, Inc. (Northern) filed its 1995 Least Cost Integrated Plan (LCIP) with the New Hampshire Public Utilities Commission (Commission). By order of notice, the Commission scheduled a prehearing conference for June 16, 1995 to identify intervenors, set a schedule for duration of the docket and outline initial positions of the Parties and Staff.

The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. In addition, after some discovery had occurred, EnergyNorth Natural Gas, Inc. (ENGI) sought full intervention, without opposition. *See*, Order No. 21,788 (August 15, 1995).

OCA, on August 16, 1995, filed the testimony of Kenneth E. Traum. Commission Staff (Staff) filed the joint testimony of George R. McCluskey and Kenneth E. Yasuda on August 18, 1995. Northern, on October 5, 1995 filed a Rebuttal Statement.

A series of procedural schedules have been approved and subsequently amended by Commission order, at the request of the Parties and Staff. As a result of a Settlement Conference on October 10, 1995, the Parties and Staff filed a Stipulation and Agreement (Stipulation). The Commission heard testimony in support of the Stipulation on October 31, 1995. The Stipulation recommended that the Commission neither approve nor reject Northern's 1995 Integrated Resource Plan but instead close the docket on the condition that Northern comply with a number of agreements entered into by Northern, OCA and Staff, which are set forth in the Stipulation.

### II. POSITIONS OF PARTIES AND STAFF AND TERMS OF STIPULATION

#### A. *Northern Utilities*

Northern's LCIP filing contained a 10 year demand forecast and resource plan for meeting

**Page 816**

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the projected demand. It supplemented its filing with a description of its handling of demand side resources in its resource plan, an issue of concern to Staff. Prior to the April filing, Northern had been proceeding under a Letter Agreement to establish a least cost planning process, which was approved by the Commission in Order No. 20,707 (December 21, 1992).

As part of its plan, Northern stated that it did not seek approval of any particular option but instead, sought a Commission finding that Northern's planning process was sound and was likely to result in the selection of best cost options, based upon information available at the time the

resources are selected.

Northern also submitted a profitability study evaluating load growth in targeted areas that would provide net benefits to Northern's existing firm customers. Northern sought a Commission finding that its marketing activities to promote load growth were consistent with least cost planning and that in future rate cases, prudently incurred promotional advertising costs will be recoverable.

*B. ENGI*

Though ENGI was a full intervenor, it did not file testimony or participate in the Stipulation.

*C. OCA*

OCA's testimony argued that the Commission should focus on Northern's planning process rather than specific resource investments, and that the review should not be used to determine prudence or grant preapproval of any particular resource decision. OCA also argued that the LCIP should evaluate how to meet the energy needs of New Hampshire ratepayers at least cost, rather than the combined energy needs of New Hampshire and Maine ratepayers.

*D. Staff*

Staff's testimony recommended gas utility filing and evaluation requirements that mirrored those for electric utilities, with some modification to shorten the planning horizon and replace the transmission report with a report on large distribution-related projects. It also expressed concern that Northern's demand forecast overstated future demand for natural gas and therefore did not anticipate the impact on investment decisions should the forecast prove inaccurate. Staff questioned whether a proposed contractual agreement to purchase liquefied natural gas from the facility proposed in Wells, Maine is the least cost supply option for replacing the gas currently delivered by Granite State Gas Transmission, Inc. and that a number of specific questions regarding the facility must be resolved, though not necessarily as part of the LCIP process. Staff recommended that the LCIP should include more specificity with respect to: Northern's supply contracts, the revenue requirements, rates associated with the plan, and the planning criteria on which the plan was based. Staff also expressed concern that Northern placed too great an emphasis on supply side resources as compared to demand side resources.

*E. Stipulation*

The Stipulation recommends that the Commission neither approve nor reject Northern's 1995 LCIP. Rather, the Commission should close Northern's LCIP docket on the condition that Northern's 1997 and subsequent LCIPs meet agreements in eight areas, which are more fully detailed in the Stipulation. The eight areas are: 1) planning guidelines (specifying, among other things, a 10 year planning horizon, report on long term avoided supply costs which will form the basis of economic evaluation of demand side resources, all of which are subject to modification if there are changes in the natural gas industry); 2) planning criteria, delineating the planning criteria used in the 1997 plan; 3) natural gas demand forecast (including likely prices given resource additions and subtractions, development and analysis of price elasticities of demand based on historical data; 4) supply side resources (including a chart displaying volumes and start and end dates for existing supply contracts, analysis of the benefits and detriments of using futures and

options contracts as gas management tools); 5) demand side resources (evaluation of demand side and supply side resources on an equivalent basis and analysis if Northern believes that less than the optimal amount of demand side resources would be in the public interest); 6) integration of supply side and demand side resources, which would be submitted for the purpose of assessing Northern's resource planning process and which would identify those existing and uncommitted resources planned to meet forecasted demand, year by year, for the 10 year horizon; 7) uncertainty over forecasts, by submitting high and low demand growth scenarios and addressing the impacts of a large shift of gas sales to transportation services; 8) promotional advertising and growth plans, which Northern will address in future LCIP filings, without a finding in this docket that Northern's growth plans are consistent with least cost planning principles.

The Parties and Staff also agreed that Northern's evaluation of supply side alternatives was reasonable and that the Wells, Maine facility should be further explored as part of the Commission's review of the recently-filed affiliate gas supply contracts between Granite State Gas Transmission and Northern.

### III. COMMISSION ANALYSIS

[1, 2] Having reviewed the testimony and Stipulation, we are persuaded that the Stipulation is in the public interest and will approve it as filed. We recognize that integrated resource planning for gas utilities is in its infancy and that there will necessarily be a period in which the utilities become familiar with our filing and review requirements and more importantly, in the analysis of demand side and supply side resources and forecasts of demand. We will adopt the recommendations in the eight areas delineated in the Stipulation. We are confident that in so doing the 1997 LCIP filing will demonstrate a greater facility with the detailed forecasting and analysis called for in a complete LCIP.

In addition, we find that Northern's supply side resource evaluation is consistent with least cost planning principles.

We agree that the best mechanism for further review of the Wells facility is through Docket DR 95-315 regarding the affiliate agreements between Northern and Granite State Gas Transmission.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation and Agreement entered into between Northern, OCA and Staff is APPROVED; and it is

FURTHER ORDERED, that Northern's 1995 Integrated Resource Plan will be closed, in accordance with the terms of the Stipulation.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 1995.

### EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Western Union Communications, Inc., DE 95-120, Order No. 21,707, 80 NH PUC 376, June 21, 1995.

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NH.PUC\*12/29/95\*[81191]\*80 NH PUC 818\*LCI Telemanagement Corporation

[Go to End of 81191]

80 NH PUC 818

**Re LCI Telemanagement Corporation**

DR 95-339

Order No. 21,961

New Hampshire Public Utilities Commission

December 29, 1995

ORDER authorizing a large telecommunications parent company, LCI Telemanagement Corporation, to amend its tariffs so as to incorporate the tariffed products of a newly acquired carrier, WorldTel Services, Inc.

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1. RATES, § 141

[N.H.] Factors affecting reasonableness — Consolidation or acquisition — Merging of

**Page 818**

acquired entity's tariffs into those of the acquiring entity — Formal amendment — Telecommunications carriers. p. 819.

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BY THE COMMISSION:

**ORDER**

[1] On December 4, 1995, the New Hampshire Public Utilities Commission (Commission) received a petition from LCI Telemanagement Corporation (LCI) requesting authority to add WorldTel products to the LCI tariff for effect January 7, 1996.

On November 6, 1995, the Commission approved the sale of certain WorldTel assets to LCI (see Order No. 21,901). The instant petition requests authority to include WorldTel products in the LCI tariff.

We find the proposed changes to be in the public good. The Commission permits flexibility in tariffing by interexchange carriers in order to foster competition in the New Hampshire

intrastate toll market and allow the Commission to analyze the effects of such competition. Therefore, the Commission will authorize LCI to revise its tariff as outlined above.

Based upon the foregoing, it is hereby

ORDERED, that the following pages of LCI's tariff, NHPUC No. 1 are approved for effect as filed:

- 2nd Revised Check Sheet
- 2nd Revised Contents Page 2
- Original Page 33
- Original Page 34;

and it is

FURTHER ORDERED, that LCI file properly annotated tariff pages in compliance with this Commission order no later than 30 days from the issuance date of this order as required by N.H. Admin. Rules, Puc 1601.05 (k).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1995.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Corporate Telemanagement Group, Inc., DE 95-229, Order No. 21,901, 80 NH PUC 729, Nov. 6, 1995.

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NH.PUC\*12/29/95\*[81192]\*80 NH PUC 819\*Telecom One, Inc.

[Go to End of 81192]

80 NH PUC 819

**Re Telecom One, Inc.**

DE 95-253

Order No. 21,962

New Hampshire Public Utilities Commission

December 29, 1995

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

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate intraLATA long-distance services — Interim authority

— Assessment of competitive impacts — Exclusion of local exchange services. p. 819.

## 2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate intraLATA toll services — Interim authority — Assessment of competitive impacts — Exclusion of local exchange services. p. 819.

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BY THE COMMISSION:

### ORDER

[1, 2] On September 11, 1995, Telecom One, Inc. (TOI), a Delaware corporation, petitioned the New Hampshire Public Utilities Commission (Commission) for authority to do business as a telecommunications public utility

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in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. TOI has demonstrated the financial, managerial and technical ability to offer service as conditioned by this order.

The Commission previously approved numerous, similar petitions filed during the Trial Period, pursuant to the Modified Stipulation Agreement (Stipulation) in Docket No. DE 90-002, approved by Order No. 20,916 (August 2, 1993). Our orders in those numerous dockets granted the petitioner interim authority to offer intraLATA toll service, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, during the Trial Period, in order to allow the Commission to analyze competition during the two-year Trial Period.

Because the Trial Period identified by the Stipulation expired on September 30, 1995, we have explicitly clarified that the authority we had granted remains in effect until we specifically modify or revoke that authority, after analysis of the Trial Period. *See* Order No. 21,851 (October 3, 1995). Likewise, our grant of authority ordered herein remains in effect until we specifically modify or revoke that authority.

The public good is served by permitting such competition by telecommunications companies. The Commission permits competitive entry in order to foster competition in the New Hampshire intrastate toll market and allow the Commission to analyze the effects of such competition.

The public should be provided an opportunity to respond in support of, or in opposition to this petition. We also recommend that any person interested file any preliminary comments on the Trial Period no later than December 31, 1995.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that TOI is granted 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 until the Commission orders otherwise.

3. TOI 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, TOI shall notify the Commission of the change.

5. TOI 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. TOI shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

7. TOI 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. TOI 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. TOI shall compensate the appropriate Local Exchange Company for all originating and terminating access used by TOI pursuant to NET Tariff N.H.P.U.C. 79, Switched Access Service Rate or its relevant equivalent contained in the tariffs of the Independent Local Exchange Companies.

10. New Service offerings filed for approval with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that the authority granted herein remains in full force and effect until the commission ordered otherwise; and it is

FURTHER ORDERED, that nothing contained in this Order shall be construed to allow TOI to operate outside of the conditions set

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forth in appropriate Local Exchange Company tariffs; and it is

FURTHER ORDERED, that TOI shall publish a copy of the Notice of Conditional Approval attached to this Order once in a statewide newspaper of general circulation. Said publication shall occur no later than January 5, 1996, and an affidavit proving publication shall be filed with the Commission on or before January 12, 1996; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. TOI 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 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 19, 1996; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 26, 1996; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective January 29, 1996, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that TOI shall file a compliance tariff with the Commission on or before January 29, 1996, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1995.

Notice of Conditional Approval of  
TELECOM ONE, INC.

Granting Interim Authority to Conduct Business as a Telecommunications Public Utility in the State of New Hampshire

On September 11, 1995, Telecom One, Inc. (TOI), 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. 21,962, issued in Docket No. DE 95-253, the Commission granted TOI conditional approval to operate as of January 29, 1996, subject to the right of the public and interested parties to comment on TOI 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. Comments on TOI's petition to do business in the State must be submitted in writing no later than January 19, 1996, and reply comments no later than January 26, 1996, 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. [N.H.] Re Long Distance North of New Hampshire, Inc., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC\*12/29/95\*[81193]\*80 NH PUC 822\*Connecticut Valley Electric Company

[Go to End of 81193]

80 NH PUC 822

**Re Connecticut Valley Electric Company**

DR 95-334

Order No. 21,963

New Hampshire Public Utilities Commission

December 29, 1995

ORDER approving the fuel adjustment clause (FAC) and purchased power cost adjustment (PPCA) rates proposed by an electric utility, resulting in an FAC rate of 0.60 cents per kilowatt-hour (kwh) and a PPCA charge of 0.32 cents per kwh. The proposed rates are accepted despite concerns as to the high costs of hydropower imported from Quebec, even though federally approved. Commission also warns the utility to sharpen its forecasting skills.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Charges versus credits — Factors affecting need for charge — High federally approved rates for imported hydropower — Electric utility. p. 823.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Charges versus credits — Factors affecting need for charge — Deficient forecasting — Extreme swings between overcollections and underrecoveries — Electric utility. p. 823.

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APPEARANCES: Hans G. Huessy, Esquire, for Connecticut Valley Electric Company; Thomas C. Frantz and James J. Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 30, 1995, Connecticut Valley Electric Company (CVEC or Company) filed tariff pages, testimony and exhibits supporting changes to its fuel adjustment clause (FAC), purchased power cost adjustment (PPCA), and the short-term power purchase rates for qualifying facilities (QFs). The changes in the FAC, PPCA, and the rates CVEC pays to QFs are proposed to be effective January 1, 1996 through December 31, 1996.

On December 13, 1995, the New Hampshire Public Utilities Commission (Commission) held

a duly noticed public hearing to review CVEC's proposed changes to the FAC, PPCA and the rates paid to QFs.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. CVEC

The Company proposes to increase the FAC factor from \$0.0011 per kWh to \$0.0060 per kWh and to increase the PPCA factor from \$0.0011 per kWh to \$0.0032 per kWh on bills rendered on or after January 1, 1996. The combined effect of the FAC and PPCA is to increase rates by 6.9% or approximately \$1.1 million. CVEC estimates that the increase in the FAC rate would result in \$813,121 or 4.8% of the overall revenue increase for the period while the proposed PPCA factor would increase rates by \$348,480 or 2.1%. A typical residential bill of 500 kWh per month will increase by \$3.50 per month, i.e., from \$61.98 to \$65.48.

C.J. Frankiewicz, Director of Revenue Requirements of Central Vermont Public Service Company (CVPS), CVEC's parent company, testified that the primary reason for the increase in the FAC is the change in the FAC from an over-recovery in 1995 designed to refund \$392,253 to an expected under-recovery

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of \$74,607 in the 1996 FAC. The swing of \$466,860 represents over one-half of the increase in the FAC. Changes in the 1996 forecasted sales level, increased RS-2 energy charges, the wholesale energy rates approved by the Federal Energy Regulatory Commission (FERC), and increased costs from the New Hampshire/Vermont Solid Waste Project (NH/VTSWP) contribute the remainder of the increase in the FAC factor for 1996.

Mr. Frankiewicz also testified on the calculation of the RS-2 rate, the reconciliation of the 1995 PPCA, the expected filing by CVPS of the so-called RS-3 rate to replace the RS-2 rate for CVEC, and the calculation of the PPCA rate for 1996.

CVEC purchases capacity which includes production, transmission and distribution, and energy under the RS-2 rate. The energy portion attributable to CVEC purchases is passed through the FAC; the capacity related costs are recovered in the PPCA. CVPS estimates the cost of capacity for the service year and the estimated costs are allocated to CVEC based on the ratio of the monthly loads of CVEC coincident with the monthly reserve requirement loads of CVPS using the NEPOOL 70/30 formula. The estimated RS-2 capacity charges are billed monthly to CVEC and then reconciled to actual capacity costs.

In CVEC's filing, actual data through October 31, 1995 was used with reforecasted data for November and December 1995. CVEC expects a slight over-collection entering the 1996 PPCA period, which will be used to offset the forecasted 1996 RS-2 and SPP capacity costs of \$7,776,930 and \$32,700, respectively. After interest and franchise tax is included, the total PPCA costs for recovery equal \$7,862,998. Base capacity revenues of \$7,324,323 are then subtracted to arrive at the PPCA costs to be collected over the period. The PPCA amount CVEC expects to need to collect is \$538,675 which, divided by forecasted 1996 sales, results in a PPCA rate of \$0.0032 per kWh. The primary difference in the increased PPCA rate is the change in the beginning level of the overcollection that is included as a refund to customers. That difference,

\$298,579, reflects over 85% of the rate increase.

#### B. Staff

Staff reviewed the Company's FAC and PPCA filing and the rates paid to QFs under Rate E of CVEC's retail tariff. In particular, Staff was concerned with the high prices contained in the various schedules of the Hydro-Quebec/Vermont Joint Owners contract (VJO contract) for which CVEC is billed its proportional share through the RS-2 rate. Staff believes that the VJO contract should receive a prudence review as had been done for CVPS in Vermont. Staff recommended that this issue be made part of DE 94-315, the CVEC Integrated Least Cost Plan, which is currently under review and that it be expedited in order to ensure an opportunity to take action in the RS-2 rate true-up period, if needed. Staff was also concerned about the inaction at FERC on CVEC's petition regarding the QF status of the NHVTSWP. The petition has been pending for over two years and Staff believes delay in the resolution of this issue is potentially having a large negative effect on CVEC customers. Staff believes that the Commission had the authority and the responsibility under RSA 363:23 to take those actions necessary to seek relief if rates charged are unjust or unreasonable based on the actions of a department of the federal government.

Staff also questioned CVEC about the methodology used for determining QF rates and the 1996 retail sales forecast. In particular, Staff was concerned about why there was such a large discrepancy between the actual 1995 sales levels and the forecast of 1995 sales used in the preceding FAC and PPCA filing.

### III. COMMISSION ANALYSIS

[1, 2] The Commission has reviewed the CVEC filing and though concerned about a number of aspects of the filing finds that the proposed rates are just and reasonable. We are concerned, however, with the errors in the forecast of sales which result in unnecessary fluctuations in rates. This is an area we will continue to monitor closely.

We share Staff's concerns about the VJO contract with Hydro-Quebec and the flow

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through of those costs to CVEC customers. We understand the rates are FERC approved, but we will direct CVEC to provide testimony and documentation of this issue as soon as possible in DE 94-315, CVEC's current IRP proceeding. We will expect this issue to be addressed in an expedited manner to ensure that if actions are warranted at FERC during its review of the RS-2 costs, that opportunity is not lost.

We have considered Staff's recommendation that the Commission request that FERC issue a decision or in the alternative give us a time frame upon which to expect a decision in the CVEC/Wheelabrator dispute. We agree with Staff's concern about the length of time the petition has been pending at FERC and the potential negative effects on CVEC customers. We therefore will file a letter with FERC requesting that it issue a decision if one is pending or in the alternative inform us as to when to expect a decision.

Based upon the foregoing, it is hereby

ORDERED, that the Fuel Adjustment Clause factor for CVEC for all meters read on and after January 1, 1996, shall be \$0.0060 per kWh; and it is

FURTHER ORDERED, that the Purchased Power Cost Adjustment factor for all meters read on and after January 1, 1996, shall be \$0.0032 per kWh; and it is

FURTHER ORDERED, that CVEC file testimony and supporting material concerning the Hydro-Quebec/Vermont Joint Owners contract by January 12, 1996 to be included in DE 94-315; and it is

FURTHER ORDERED, that rates paid to QFs are approved as filed by CVEC; and it is

FURTHER ORDERED, that CVEC file tariff pages in compliance with this order by January 12, 1996.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 1995.

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## Endnotes

### 1 (Popup)

<sup>1</sup>The capacity factor proposed by PSNH would not only apply to Seabrook Station but all other nuclear stations in which PSNH has an interest or entitlement.

### 2 (Popup)

<sup>2</sup>As part of its agreement with the State of New Hampshire which allowed a reorganized PSNH out of

## Page 3

bankruptcy, Northeast Utilities, PSNH's parent, agreed to use its "best efforts" to renegotiate rate orders with six Hydroelectric SPPs and eight woodburning SPPs. These savings are the result of the renegotiation of all six of the Hydroelectric SPP rate orders.

### 3 (Popup)

<sup>3</sup>Pursuant to the Rate Agreement, all of the savings resulting from the renegotiation of rate orders with the eight wood burning plants are applied to the so-called deferral account during the fixed rate period, which ends on June 1, 1997. Subsequent to that date savings from the TIMCO and Bristol plants will be applied equally to reduce FPPAC costs and the remaining deferral accounts.

### 4 (Popup)

<sup>3</sup>Pursuant to the Rate Agreement, all of the savings resulting from the renegotiation of rate orders with the eight wood burning plants are applied to the so-called deferral account during the fixed rate period, which ends on June 1, 1997. Subsequent to that date savings from the TIMCO and Bristol plants will be applied equally to reduce FPPAC costs and the remaining deferral accounts.

### 5 (Popup)

<sup>1</sup>Claremont offered testimony which explained that the process of converting its customers to bottled propane had gone slower than expected because there were technical difficulties associated with many of the conversions. At the time of the hearing, Claremont was in the process of completing the conversions of two customers; two other customers had failed to respond to Claremont's attempts to contact them.

### 6 (Popup)

<sup>2</sup>Claremont acknowledges that the nitrogen gas methodology was discussed during the final hearing but only in the context of dividing the pipeline into a *few* sections, as opposed to 8 sections which the current abandonment plan proposes. It is this difference which Claremont claims materially reduces the safety risks.

### 7 (Popup)

<sup>2</sup>Claremont acknowledges that the nitrogen gas methodology was discussed during the final hearing but only in the context of dividing the pipeline into a *few* sections, as opposed to 8 sections which the current abandonment plan proposes. It is this difference which Claremont claims materially reduces the safety risks.

### **8 (Popup)**

<sup>1</sup>This information typically relates to the operating costs and marketing strategies of special contract customers. Competitors of special contract customers could use such commercial data to gain an unfair insight into the business profile of such customers.

### **9 (Popup)**

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### **10 (Popup)**

<sup>1</sup> The consultant will be paid for by the parties pursuant to RSA 365:37,II, with 50% of the costs paid by PSNH and 50% by the SPPs.

### **11 (Popup)**

<sup>1</sup>Both Lewis Builders and Consumers New Hampshire Water Company, Inc. estimated that it would cost approximately \$100,000 to bring the system into compliance with DES regulations. They also indicated the distribution system was constructed by the developer either without easements or outside of easements which would require obtaining from the necessary easements from homeowners, some of which had abandoned the system for private wells. *See e.g.*, Transcript, December 14, 1993, at 6.

### **12 (Popup)**

<sup>2</sup>The Town was notified of this hearing but did not attend. It is noteworthy that the Town has offered to supply water to the distribution system on a wholesale basis but has refused to take title to or maintain the distribution system.

### **13 (Popup)**

<sup>3</sup>The entire subdivision and the community water system was constructed under the label of the "Beaver Village Realty Trust" which appears to be nothing more than Mr. Dickey's "alter ego". *See eg*, Transcript December 29, 1992.

### **14 (Popup)**

<sup>4</sup>The bacterial contamination of a community water system can be caused by any number of factors, many of which are caused by the construction and design of the system and are not the fault of the operator. In any case, the bacterial infestation of this water system is in no way related the manner in which Consumers has operated the system. The problem is easily resolved through chlorination, but such a capital investment can not be justified by an interim receiver.

### **15 (Popup)**

<sup>1</sup>It has been orally represented to our Staff that there are currently only two households

that have chosen not to become members of the Corporation. Given that the number of households that are not members of the Corporation is less than ten, the actual number of households does not affect our analysis and we will assume that there are still three households that are not members of the Corporation in the absence of more reliable evidence. *See*, RSA 362:4 (Supp. 1994) *infra*.

**16 (Popup)**

<sup>1</sup>It has been orally represented to our Staff that there are currently only two households that have chosen not to become members of the Corporation. Given that the number of households that are not members of the Corporation is less than ten, the actual number of households does not affect our analysis and we will assume that there are still three households that are not members of the Corporation in the absence of more reliable evidence. *See*, RSA 362:4 (Supp. 1994) *infra*.

**17 (Popup)**

<sup>1</sup>Specifically, provision A. 1. allows the School District to cancel (for whatever reason) the Contract on an annual basis, while provision A. 2. allows for immediate termination of the Contract should conditions change significantly in the heating supply industry. An example of such an adverse change is the material increase in the cost of steam heat versus other forms of heat delivery (see Article 3: A. 2. a. of the Contract).

**18 (Popup)**

<sup>1</sup>As part of its petition in DR 92-009, NHEC had included a Standby tariff proposal that was later withdrawn from the filing. The record in this docket also indicates that some backup or standby service has been provided to a customer of NHEC, the Balsams, a resort hotel with an affiliated manufacturing business, Tillotson Rubber Company, located in Dixville Notch, under tariff rates for a number of years.

**19 (Popup)**

<sup>1</sup>Distributed utility resources include small generation technologies, energy storage systems and DSM measures which are located close to customer loads.

**20 (Popup)**

<sup>2</sup>In particular, EnerDev cites the potential problems associated with the conversion of SO<sub>2</sub> to SO<sub>3</sub> which could cause air heaters to plug, leading to plant outages and higher power costs.

**21 (Popup)**

<sup>3</sup>According to PSNH's projections, the Combined System will not need additional capacity until 2007. Exh. 1, p.2. The Sharing Agreement terminates in 2002.

**22 (Popup)**

<sup>4</sup>PSNH's costs are reduced by its share of joint dispatch and capability responsibility savings which result from the single entity status of the Combined System within NEPOOL.

**23 (Popup)**



<sup>5</sup>According to Staff a fully integrated system is one where the participants pool resources and equitably share in the costs and benefits. The affiliates of the NU Initial System are structured this way as members of the NUG&T. PSNH and the Initial System pool resources, resulting in operational savings, but PSNH is responsible for all of its "own load" costs.

**24 (Popup)**

<sup>1</sup>We note that the pleadings reveal that Rosebrook had entered into special contracts in the two years preceding this contract with the Hotel without filing the subject contracts with the Commission. We can find no justification for this failure to comply with RSA chapter 378. We anticipate the water utility will not allow any further managerial lapses such as this in the future. *See*, RSA 365:41 and 42 (Supp. 1994).

**25 (Popup)**

<sup>1</sup>To date, only one tenant has been deemed incompatible with the telecommunications equipment.

**26 (Popup)**

<sup>2</sup>The Commission also found that the failure to derive a profit from the sale of electricity was irrelevant to its analysis. *Echo Valley Campground v. Public Service Company of New Hampshire*, 71 NH PUC 211, 214 (1986)

**27 (Popup)**

<sup>1</sup>Small industrial and commercial customers are defined as those with average demands of 50 kW or less, and medium customers are those with average demands of 50 kW to 250 kW.

**28 (Popup)**

<sup>2</sup>The fixed rate period ends on May 31, 1997.

**29 (Popup)**

<sup>3</sup>*See*, Report and Order No. 21,366, DR 93-237.

**30 (Popup)**

<sup>1</sup>DC 94-237 Thomas A. Behrens v. PSNH, in which Mr. Behrens argued that his proposal to build a motel with electric space heating units and a propane power generator for backup electricity qualified for Rate LCS. PSNH and Mr. Behrens settled the dispute through the filing of Special Contract No. NHPUC-100, approved on November 11, 1994 by Order *Nisi* 21,417.

**31 (Popup)**

<sup>1</sup>Order No.21,589 describes in more detail the structure of the Combined System and PSNH's relationship to it.

**32 (Popup)**

<sup>2</sup>We have reviewed the dockets referred to in Mr. Sabatino's testimony and are unpersuaded that they support his overall conclusion.

**33 (Popup)**

<sup>3</sup>The Twenty Year Load and Resource Plan was the basis for the Capacity Transfer Agreements which are components of the Sharing Agreement.

**34 (Popup)**

<sup>1</sup>In 1992 Congress passed the Energy Policy Act (EPACT), which, in part, amended the Federal Power Act found at 16 U.S.C.A. §824k. Because EPACT amended section 212 of the Federal Power Act, some have used section 212 citations, while others use the United States Code citations. We will refer to EPACT provisions by citation to 16 U.S.C.A. §824k.

**35 (Popup)**

<sup>2</sup>RSAs 374:22-a through 22-c were enacted in 1977 in recognition of a need to specifically designate certain electric utility franchise areas whose boundaries were either uncertain or undefined. This uncertainty had developed as a result of arrangements which had existed between electric utilities and the New Hampshire Electric Cooperative, Inc., who, pursuant to RSA 374:23 (1947) and NHPUC Order 6205 had been authorized to provide service to customers within a 1000' radius of its electric lines. *Re New Hampshire Electric Cooperative, Inc.*, 35 NHPUC 83-84 (1953).

RSAs 374:22-a through 22-c were repealed in 1989 upon completion of all franchise arrangements.

**36 (Popup)**

<sup>1</sup>Residential Rate D and Rate DC currently contain a lifeline component.

**37 (Popup)**

<sup>2</sup>A few clarifications appear necessary at this point. NHEC's Brief refers to Docket No. DR 93-124, the present docket, when the reading seems to refer to the past rate case filing, Docket No. DR 92-009. In the cost allocation section of NHEC's Brief, "intra-class" is used when "inter-class" allocation is the issue being discussed.

**38 (Popup)**

<sup>1</sup>In its prefiled testimony Staff expressed concern that non-participants were "subsidizing" the ETS program. Exhibit 11, p. 10-11. By reducing NHEC's contribution toward ETS equipment, it reduces the costs which are borne by non-participants, which in turn shifts the overall allocation of costs and benefits more favorably for non-participants.

**39 (Popup)**

<sup>1</sup>Pennichuck's tariff defines a "developer extension" as one which is requested to provide water service to a "prospective residential, commercial or industrial development or for any substantial nonresidential [sic] purposes as determined by the Company". Exhibit 17, Sec. 20 A(4).

**40 (Popup)**

<sup>2</sup>This risk relates to the federal tax liability the Company incurs when a main extension is dedicated, commonly referred to as "Contribution in Aid of Construction" (or CIAC). The risk is that in the event that the development fails or results in less than full build-out, the full CIAC still gets put into ratebase and ratepayers do not get the benefit of the additional revenue which the development might have brought.

**41 (Popup)**

<sup>3</sup>Currently, Consumers provides a fifty (50) foot allowance for individuals and none in the case of developers. Pennichuck's current tariff provides a twenty-five (25) foot allowance to individuals and none for developers.

**42 (Popup)**

<sup>4</sup>We note that there was no empirical evidence presented at the hearing to support the contention that the proposed policy will, in fact, result in more main extensions.

**43 (Popup)**

<sup>1</sup> CVEC and CVPS are collectively known as the Consolidated Company.

**44 (Popup)**

<sup>2</sup> The NHPUC does not have jurisdiction over the RS-2 rate and therefore cannot require wholesale rate redesign.

**45 (Popup)**

<sup>3</sup> The embedded charges therefore vary annually and will be reconciled at the end of the calendar year.

**46 (Popup)**

<sup>4</sup> Adjusted for reserve margin.

**47 (Popup)**

<sup>1</sup>The ski area special contracts were approved on an interim basis for one year pending full Commission review in Docket Nos. DR 94-258, DR 94-259, DR 94-260 and DR 94-261. A hearing on the merits was held June 1, 1995.

**48 (Popup)**

<sup>1</sup> For the complete background of this proceeding refer to Order No. 21,504.

**49 (Popup)**

<sup>1</sup>The customer was the State of New Hampshire. The contract for Centrex service was released by the Department of Administrative Services which, when it became aware of its inadvertent release of proprietary information, later requested the PUC to impound the contract and preserve its confidentiality.

**50 (Popup)**

<sup>2</sup>See, e.g. DR 95-079, Order No. 20,509, "Further Ordered, that this order is subject to the ongoing rights of the Commission to reconsider this order in light of RSA 91-A should circumstances so warrant."

**51 (Popup)**

<sup>3</sup> The *Zenith* test referenced in *DR 89-010* emerged from a ruling on a massive international anti-trust case regarding an all-encompassing confidentiality order. The three prongs of the test are 1) Is it a trade secret? 2) Will disclosure cause cognizable harm? and 3) Has serious injury been clearly defined? *Zenith* stands for the proposition that economic information may be a trade secret, that competitive disadvantage is a cognizable harm, and that good cause must be demonstrated.

**52 (Popup)**

<sup>4</sup>If the business customer switching service is competitive then a customer will be permitted by market forces to negotiate a special contract and permitted by RSA 91-A to confidentiality. If the business customer switching service is not competitive then a customer

will not be permitted by market forces to negotiate a special contract.

### 53 (Popup)

<sup>5</sup>\*Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer II*), 77 FCC 2d 384 (1980), (*Final Decision*), *modified on recon.*, 84 FCC 2d 50 (1081) (*Reconsideration Order*), *modified on further recon.*, 88 FCC 2d 512 (1981) (*Further Reconsideration Order*), *affirmed sub nom.*, *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

\*Amendment of Sections 64.702 of the Commission's Rules and Regulations, (*Computer III*), CC Docket No. 85-229, Phase I, *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987), (*Phase I Reconsideration Order*), *further recon.* 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*), *Phase I Order and Phase I Reconsideration Order vacated sub nom.*, *California V. FCC*, 0=905 F. 2d 1217 (9th Cir. 1990) (*California*); Phase II, CC Docket No. 85-229, 2 FCC Rcd 3072 (1987) (*Phase II Order*) *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*) *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Reconsideration Order*) *Phase II Order vacated sub nom.*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*)(which vacated three orders in *Computer III*).

\*Report and Order, *Computer III Remand Proceedings*, FCC 900-415, 5 F.C.C.R. 7719 (1990) (*Computer III Remand Proceedings Order*).

\**California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*) (which found that the change in policy of achieving open network architecture as a precondition to removal of structural separation, announced in *Computer III*, did not violate the Administrative Procedures Act).

\**California v. FCC*, 39 F.3d 919 (9th Cir. 1994).

### 54 (Popup)

<sup>1</sup>Mr. Patterson also indicated that New England-American will have the opportunity to achieve lower debt interest costs than the merging utilities through access to "Rule 144A" offerings to issue debt to institutions which invest in large public offerings. Rule 144A is a Securities and Exchange Commission (SEC) rule which allows for the resale of non-SEC registered securities to institutional buyers. This secondary market liquidity tends to make such securities more attractive to investors, thereby reducing interest costs.

### 55 (Popup)

<sup>1</sup>These non-price factors include dispatchability, reliability, and project feasibility.

### 56 (Popup)

<sup>2</sup>QFs may compel utilities to purchase energy and capacity pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), 16 USCA Sec. 824a-3 (1995), as implemented by regulations of the Federal Energy Regulatory Commission (FERC), by requiring a utility to purchase QF output for a "specified term". 18 C.F.R. Sec. 292.304(d).

**57 (Popup)**

<sup>3</sup>We will not elaborate on PSNH's arguments which relate to utilization of a wholesale supplier's avoided costs to determine the avoided costs of the purchasing utility. We ruled in our oral scoping order that we would not in this proceeding revisit the issue of methodology. We address this issue in detail in the Commission Analysis, *infra*.

**58 (Popup)**

<sup>4</sup>The host utility in these circumstances refers to the utility in whose service territory the QF is located and which under PURPA can voluntarily agree to wheel the QF output to a distant utility. See, 18 C.F.R. sec. 292.303(d).

**59 (Popup)**

<sup>5</sup>We issued our initial order relative to the appropriate scope of this proceeding during the March 21, 1995 prehearing conference. At our invitation PSNH thereafter filed a motion seeking to enlarge the scope of the proceeding which we ruled upon at the April 17, 1995 hearing. At that time we decided that we would not, within this proceeding, revisit the issue of whether competitive bidding is an appropriate methodology for determining NHEC's long-term avoided costs.

**60 (Popup)**

<sup>6</sup>We specifically agreed to hear arguments over whether the Commission should set NHEC's long-term avoided costs at the April 17, 1995 hearing. Transcript, Day II, p.12-13.

**61 (Popup)**

<sup>7</sup>We believe that *Carolina Power* is distinguishable from the circumstances in this case. Because we have already determined that we will not revisit the issue of methodology in this proceeding, however, we decline to present any detailed analysis on that issue. As set forth, *infra*, if NHEC elects not to issue the RFP, we will invite further argument on the issue of methodology.

**62 (Popup)**

<sup>8</sup>PSNH itself acknowledges that there is no "wheeling" issue in this case in light of Northeast Utilities's open access tariff. Post-Hearing Memorandum, p. 14, n.27; Transcript, Day II, p. 90-91.

**63 (Popup)**

<sup>1</sup>All references to the Order shall constitute a reference to the majority decision.

**64 (Popup)**

<sup>1</sup> A "free rider" is a customer who benefits from the economic development tariff, but for whom the existence of the discounted rate did not affect the customer's business decision to locate or expand.

**65 (Popup)**

<sup>1</sup>At the hearing, Ms. Muzzey testified that the effect of the ski area's contribution to the under-recovery of power costs could be addressed in docket no. DR 95-153, NHEC's Power Cost Adjustment proceeding. In that proceeding, OCA supported a \$74,952 charge to NHEC's ski areas. OCA based its recommendation on NHEC Exhibit 3 which indicated that of NHEC's \$1,395,767 under-recovery, \$74,952 was contributable to the ski areas, but from whom the costs would not be recoverable because of the new interruptible power agreement. The Commission found in DR 95-193 that the ski areas had caused significant increases to NHEC's power costs which would be recovered largely from other NHEC customers, but that a fuel and purchased power adjustment clause is not the proper proceeding to address what are essentially rate design problems. *See* Order No. 21,727, June 13, 1995.

**66 (Popup)**

<sup>1</sup>Under the Seabrook Power Contract, PSNH reimburses NAEC its share of all costs incurred by operator NAESC (formerly NH Yankee), regardless of Commission findings of imprudence. Disallowances for imprudence by NAESC and NAEC are therefore absorbed by PSNH.

**67 (Popup)**

<sup>1</sup>In the absence of specific legislative authority to issue declaratory rulings, such as RSA 362-A:5, RSA 541-A:16, I(d) in conjunction with RSA 541-A:1, V is also a substantive grant of authority to the State's administrative agencies to entertain petitions for declaratory rulings.

**68 (Popup)**

<sup>1</sup>RSA 378:28, amended in 1993, now requires that a finding of prudence be made explicit in a rate case order.

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### **69 (Popup)**

<sup>1</sup>Although Staff's investigation into the petition appears to have occurred over a very short period of time, we note that our Staff has worked closely with Tilton-Northfield, financial institutions, the New Hampshire Department of Environmental Services and the federal Environmental Protection Agency to assist the Company with compliance with the SDWA since 1989. *See e.g.*, testimony of Douglas Brogan and Eugene F. Sullivan Jr.

### **70 (Popup)**

<sup>1</sup>See *New Hampshire Employment Projections By Industry and Occupation*. State of New Hampshire, Department of Employment Security. August 1995.

### **71 (Popup)**

<sup>1</sup>Union filed its compliance tariffs with a cover letter which omitted any reference to the fact that it had discontinued the intrastate toll credit. *See*, Exhibit 2; Transcript Day 1, pp. 63-64.

### **72 (Popup)**

<sup>2</sup>Not only did Union fail to inform its customers that their effective rates would increase, it failed to clearly advise its local exchange customers that NYNEX would become the customer's intraLATA toll provider. This defective notice deprived Union's customers of their opportunity to be heard on the increase in effective toll rates and on the selection by Union of NYNEX as the 1+ intraLATA toll carrier for Union's local exchange customers.

### **73 (Popup)**

<sup>3</sup>Union's own witness, Mr. Sanborn, acknowledged that Union would still be obligated today under the settlement agreement to continue to apply the toll credit if it had not elected to become an access only provider. Tr. Day 1, p.156. Moreover, if it elected to remove NYNEX as its designated IntraLATA toll carrier and provide such service itself, Union acknowledges that it would be required under DR 90-220 to reinstate the credit. *Id.* at 157-58.

### **74 (Popup)**

<sup>4</sup>The fact that the settlement agreement was entered into by Union and Staff does not change this analysis. It is clear that the revenue reducing mechanisms were intended to benefit ratepayers; thus, Union cannot argue that no such obligation attaches because ratepayers were not a party to the agreement.



**75 (Popup)**

<sup>1</sup>It is not clear from the OCA's brief whether the \$4.0 million referred to includes rates already collected, or proposed to be collected. Nevertheless, this does not affect its position on the legality of collection of these funds.

**76 (Popup)**

<sup>1</sup>The complete procedural history and a detailed analysis of the issues raised by the introduction of the Kessler Affidavit is contained in Order No. 21,860 and will not be repeated herein.

**77 (Popup)**

<sup>1</sup>By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Teradyne special contract. Specifically, the Commission requested information on the land affected by NHPUC-118, including whether the land affected had generation potential. On November 22, 1995, PSNH filed a one-page summary of the information requested. PSNH stated that one of the three sites would have generation potential, but concluded that future generation was not likely.

**78 (Popup)**

<sup>1</sup>By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH was directed to file supplemental information on the Kollsman special contract. Specifically, the Commission requested information on the land affected by NHPUC-119, including whether the land affected had generation potential. On November 29, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that space for generation was available at one of the sites, but concluded that future generation was not likely.

**79 (Popup)**

<sup>1</sup>By letter of the Executive Director of the Commission, dated November 9, 1995, PSNH

was directed to file supplemental information on the Textron special contract. Specifically, the Commission requested information on the land affected by NHPUC-121, including whether the land affected had generation potential. On December 1, 1995, PSNH filed a two-page summary of the information requested. PSNH stated that all three sites have limited potential thermal load but are in a non-attainment zone for purposes of air quality. PSNH concludes that there is a possibility that generation could be installed at Textron's facilities but it is unlikely. Textron has indicated that it would prefer to use available land for future expansion.