NH.PUC*01/06/97*[97197]*82 NH PUC 1*Public Service Company of New Hampshire

[Go to End of 97197]

82 NH PUC 1

Re Public Service Company of New Hampshire

DE 96-238
Order No. 22,472

New Hampshire Public Utilities Commission

January 6, 1997

ORDER determining that an electric utility failed to comply with commission reporting requirements as to accidents involving utility property. The utility is fined $1,000 accordingly.

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1. ELECTRICITY, § 1

[N.H.] Public health and safety issues — Accidents involving utility property — Associated reporting requirements. p. 3.

2. REPORTS, § 1

[N.H.] Necessity of filing — As to accidents involving electric utility property — Issues as to timing — Issues as to types of accidents covered. p. 3.

3. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposing — Failure to comply with commission reporting requirements — As to accidents involving utility property — Electric utility. p. 3.

APPEARANCES: Robert A. Bersak, Esq. and Catherine E. Shively, Esq. for Public Service Company of New Hampshire; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 6, 1995, the New Hampshire Public Utilities Commission (Commission) accepted the recommendation of Staff and directed Public Service Company of New Hampshire (PSNH) to file within 30 days a description of procedural revisions to ensure future compliance with Commission accident reporting requirements of N.H. Admin. Rule, Puc 306.07. This Commission action was in response to prior reporting violations, notably PSNH's failure to report the July 18, 1994 fatal accident involving an electrocution.

On April 5, 1995, PSNH filed a written protocol explaining how it would comply with those requirements by following a newly formulated Accident Reporting Procedure incorporated by reference into PSNH's existing Officer-In-Charge Procedure. On May 3, 1995, PSNH filed a revised accident reporting procedure that incorporated changes recommended by the Commission's Engineering Department. The Commission approved the revised reporting procedures at its public meeting on May 15, 1995.

On May 8, 1996, a fatal vehicular/utility pole accident occurred. Because PSNH did not report the accident pursuant to the approved reporting procedures, Commission Staff had an informal conference with PSNH the following day. Subsequently, on July 12, 1996, PSNH failed to immediately report the explosion of a transformer bank serving Pennichuck Water Works, Inc. (Pennichuck), a utility that provides water to the greater Nashua, New Hampshire area. As a result of the transformer bank explosion, Pennichuck experienced a major power outage and left the Nashua area without its sole water treatment facility.

The Commission issued an order on August 1, 1996 requiring PSNH to appear on August 29, 1996 and show cause why it should not be fined pursuant to RSA 365:40 *et seq.*, for failure to comply with N.H. Admin. Rule, Puc 306.07.

The Commission heard evidence on August 29, 1996 on the show cause order. At the hearing, counsel for PSNH criticized Staff for unfairly focusing on PSNH's reporting

problems, while not showing equal concern for NHEC's failure to report a pole accident in Marlow, New Hampshire which had occurred on July 27, 1996. Subsequently, on September 5, 1996, counsel to PSNH informed the Commission that information contained within his testimony regarding Exhibit 4 relative to the Marlow pole accident was incorrect and that it had actually involved a PSNH pole, rather than an NHEC pole. As verified by a site inspection, Staff determined that the fatal accident in Marlow did not involve NHEC's franchise area, but PSNH's facilities in PSNH's franchise area. As a result, Staff requested reopening of the record, which the Commission granted, scheduling an additional hearing day for November 1, 1996.

PSNH, on October 28, 1996, moved to postpone the hearing, designate certain staff as Staff Advocates pursuant to RSA 363:30-36 and filed numerous data requests. Staff responded on October 30, 1996, assenting to a postponement and opposing the request to designate Staff as Staff Advocates. It also opposed the request for discovery on Staff and objected to certain data requests in particular.

The Commission granted the request to postpone the hearing until November 15, 1996. It denied the request to designate Staff Advocates as well as the filing of data requests though it instructed Staff to respond to the seven questions which it had agreed to answer if the Commission found it appropriate to do so.

Subsequent to the hearing, Assistant Chief Engineer Arthur C. Johnson met with representatives of PSNH regarding the accident reporting procedures. He reported by memorandum dated November 21, 1996 that it was agreed at the meeting that the reporting procedures properly conveyed the intent of the Commission rules, provided adequate guidance for PSNH personnel, and that no revision was necessary.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH argued that the two incidents giving rise to the show cause order, though not reported immediately, were reported to the Commission on the following business day. The accident case in Colebrook was reported the following morning, due to the officer in charge's belief that a death resulting from an automobile hitting an electric pole but otherwise not involving utility property or operations did not require an immediate report in the middle of the night. The person who should have made the report was subsequently disciplined. The accident involving a transformer affecting Pennichuck occurred on a Friday evening but was not reported until the end of the following business day, a Monday. PSNH considered the obligation to report to be discretionary under the reporting protocol. The third incident, involving a motorcycle accident in Marlow, was not reported because PSNH was unaware that the accident occurred within its service territory due to its reliance on an inaccurate service territory map generated by PSNH.

PSNH argued that it will comply with the reporting requirements as ordered by the Commission but that it did not agree with the need for reporting accidents that do not involve utility operations. Automobile accidents that injure drivers or passengers but do not affect safety or utility operations, it asserts, are prime examples of incidents that should not give rise to immediate calls to the Staff.

PSNH also argued at the August 29, 1996 hearing that it believed the reporting requirements and level of compliance varied among utilities and inferred that it was being unfairly treated. At the November 15, 1996 hearing, those allegations as well as Staff's response to them were stricken as being outside the scope of this particular hearing.

B. *Staff*

Staff expressed frustration with PSNH's compliance with the reporting protocol over a number of years. It asserted that fatal vehicular accidents involving utility poles, even if there is no interruption in utility service (such as the Colebrook and Marlow incidents), should be reported immediately in order to assess whether poles have been properly placed and maintained.

The Pennichuck incident, Staff argued, was significant, in that Pennichuck's treatment facility was not operational for a number of hours and substances within the transformer could have contaminated the water source. Further, Staff was concerned about why the transformer fell and whether similar accidents were likely within PSNH's system. The written report of the July 12, 1996 Pennichuck incident was finally filed by PSNH on October 25, 1996, however, the analysis of the bolt failure was not included.

At the August 29, 1996 hearing, Staff recommended no fine, given the allegations made by PSNH that the reporting compliance of other utilities was not consistent. After further investigation and the discovery that the Marlow incident occurred within PSNH territory, Staff renewed its request for a fine, recommending $25,000, the maximum allowable under the statute.

III. COMMISSION ANALYSIS

[1-3] We have reviewed the record and find that PSNH has failed to comply with the reporting requirements set forth in the protocol agreed to between PSNH and Staff, and approved by the Commission May 15, 1995. More specifically, we find that on May 8, July 12 and July 27, 1996, in incidents described in more detail above, PSNH failed to follow the reporting protocol established with Staff and approved by the Commission. Accordingly, we will fine PSNH $1,000 pursuant to RSA 365:41.

It is critical that utilities maintain strict compliance with reporting requirements. When there is any doubt as to whether an incident requires a report, or an immediate report as opposed to a report the following business day, utilities should err on the side of caution at the time the incident occurs, and later seek clarification from the Commission to resolve areas of doubt. We understand PSNH's position, however, that some utility pole accidents may not require immediate, middle of the night, reporting, especially if there is no interruption in utility service or issue of safety. We therefore intend to review the intent of N.H. Admin. Rule, Puc 306.07 and the policy underlying the statutory reporting requirement, our administrative rules and the PSNH reporting protocol to consider whether it is appropriate to modify the reporting protocol regarding fatal accidents that do not affect utility service or safety issues. Unless and until an amendment to the reporting protocol is announced, however, it remains in full force as approved on May 15, 1995.

Based upon the foregoing, it is hereby

ORDERED, that PSNH is found to have violated N.H Admin. Rule, Puc 306.07 and the accident reporting protocol agreed to with Staff and approved by the Commission; and it is

FURTHER ORDERED, that PSNH shall pay a fine of $1,000 for failure to comply with administrative rule and reporting protocol as approved; and it is

FURTHER ORDERED, that the Commission shall review its reporting requirements to consider whether they should be modified regarding fatal vehicular accidents involving utility poles.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1997.

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NH.PUC*01/06/97*[97198]*82 NH PUC 3*Generic Telecommunications Competition Docket

[Go to End of 97198]

82 NH PUC 3

Re Generic Telecommunications Competition Docket

DE 90-002
Order No. 22,473

New Hampshire Public Utilities Commission

January 6, 1997

ORDER reducing the degree of the commission's regulatory oversight over competitive intraLATA toll carriers. While stopping short of completely deregulating such carriers, commission acknowledges that development of the intraLATA market can proceed more effectively if the formal certification process is replaced with a mere registration process.

Page 3

1. MONOPOLY AND COMPETITION, § 2

[N.H.] Public policy — State legislative preferences — Free enterprise — Minimization of commission regulation — Telecommunications industry. p. 5.

2. REGULATION

[N.H.] State legislative policies — Promotion of competition and free market — Minimization of commission regulation — Telecommunications industry. p. 5.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA toll calling — Relaxed regulation of competitive carriers — Easing of market entry — Substitution of simple registration process for formal certification process. p. 6.

4. CERTIFICATES, § 123

[N.H.] Telecommunications carriers — IntraLATA toll services — Relaxed regulation of competitive carriers — Substitution of simple registration process for formal certification process. p. 6.

5. PUBLIC UTILITIES, § 117

[N.H.] Regulatory status — Telecommunications carriers — Competitive intraLATA toll services — Retention of public utility status — But now subject to relaxed form of regulation. p. 6.

6. COMMISSIONS, § 58

[N.H.] Regulatory assessments — Liability for — Competitive intraLATA toll carriers — Relaxed regulation notwithstanding. p. 6.

7. REGULATION

[N.H.] Telecommunications industry — Competitive intraLATA toll services — Relaxed regulation — As distinguished from deregulation. p. 6.

8. SERVICE, § 110

[N.H.] Commission jurisdiction — Telecommunications — Competitive intraLATA toll services — Relaxed regulation — Impropriety of total deregulation. p. 6.

9. RATES, § 582

[N.H.] Telephone rate design — Toll services — IntraLATA toll calling — Effect of relaxed regulation — Retention of tariff filing requirements. p. 6.

BY THE COMMISSION:

ORDER

The purpose of this order is to codify our preliminary findings regarding the degree to which competitive intraLATA[1(1)] toll providers should be regulated. Our experience in the trial period for intraLATA competition established in Order No. 20,916 (August 2, 1993) persuades us that our current procedures for regulating such toll providers is cumbersome and provides no greater degree of public protection than would a more streamlined approach. Accordingly, as set forth more fully below, we will modify our current procedures for authorizing competitive intraLATA toll providers and will outline the manner in which they will be regulated by this Commission in the future.

The Commission's movement towards competition in telecommunications has been mirrored by enactments at our Legislature (*see, e.g.*, RSA 374:22-g) and on a federal level with the passage of the Telecommunications Act of 1996. Consistent with federal mandate, the Commission is encouraging the development of meaningful competition through a number of actions, including this reduction in regulation over competitive intraLATA toll providers. Our decision today is based upon the following history.

As the telecommunications industry has evolved in recent years, so has the

Commission's view of the appropriate degree of regulation over some of the new participants in the intraLATA toll market. One of the significant changes in the past few years is the emergence of competitive interLATA and intraLATA toll providers, who provide toll services either by using their own facilities or by buying toll services in bulk from a carrier or carriers and reselling them to individual retail customers. Some toll providers are facilities based, that is, they own or operate facilities, including switches, to route and/or carry calls. Others are non-facilities based or "switchless" toll providers, in that they only repackage the product offered by one or more carriers and have no ability to route, switch or carry the calls themselves. Many are a hybrid of the two, using facilities in some instances while serving customers on a non-facilities basis in others. In 1995, competitive intraLATA toll providers generated over $32.3 million in revenues in New Hampshire.

For years, New England Telephone, now doing business as NYNEX, was the only carrier authorized to provide intraLATA toll service. As the incumbent toll provider, NYNEX still retains over 75% of the intraLATA toll traffic.[2(2)] Neither NYNEX nor any other incumbent local exchange carrier (ILEC) is included in our use of the term "competitive intraLATA toll provider." At a future time, we intend to consider the appropriate regulatory treatment for the intraLATA toll services offered by NYNEX and other ILECs that may enter the intraLATA toll market.

We first became involved in analysis of competitive toll service when Long Distance North and AT&T sought authorization, which prompted the Commission to undertake the Generic

Telecommunications Competition Docket, DE 90-002. During this period, we became aware of a switched reseller operating without Commission authorization. The Commission found the carrier to be a public utility pursuant to RSA 362:2. *See, Re Atlantic Connections Ltd.*, 76 NH PUC 91 (1991), affirmed on appeal, *Appeal of Atlantic Connections Ltd.*, 135 N.H. 510 (1992).

In 1993, we learned from competitive toll providers considering entry into the New Hampshire market that the statutory requirement that a public utility be incorporated within New Hampshire was a deterrent to operating within the State. In response, we initiated a legislative amendment so that a telecommunications public utility has a choice either to be incorporated in New Hampshire or simply registered with the New Hampshire Secretary of State. RSA 374:25 (effective June 23, 1994). The number of petitions for authorization increased dramatically.

We also saw an increase in providers interested in entering the New Hampshire market as a result of our Generic Telecommunications Competition Docket, DE 90-002. In our final order in that case, we established a framework for intraLATA toll competition and set decreasing access rates that stepped down from 20 cents per minute to the present level of 7.2 cents per minute (for combined originating and terminating access). We established a two year Trial Period of intraLATA competition, commencing in October 1993.[3(3)] Prior to the Trial Period, there were 20 competitive intraLATA toll providers authorized in New Hampshire; since then, the Commission has certified over 125 and has approximately 80 applications for authority pending.

Nothing in our experience in the Trial Period suggests that extensive regulation of competitive toll providers is necessary. We are now evaluating data collected during the Trial Period and will issue a report of our findings in the near future. It is clear to us based on our review thus far, however, that we should reevaluate the degree of regulation imposed on competitive intraLATA toll providers.

[1, 2] There is a long-standing tradition in New Hampshire that one should exert regulation only to the extent necessary. Part 2, article 83 of the New Hampshire Constitution provides, in pertinent part,

> 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

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elaborated on the State's clear preference for free enterprise, admonishing the Commission for exerting jurisdiction over a new area of telecommunications which, the Court concluded, did not require regulation. *Appeal of Omni Communications, Inc.*, 122 N.H. 860 (1982). The Court found that the Legislature never intended the Commission to have jurisdiction over radio paging services (or "beepers") and there was no public need to bring these services within the

Commission's purview. As the Court stated, "... the legislature did not intend to place all ... telephone, telegraph, light, heat and power companies under the umbrella of the [Commission's] regulatory power." 122 N.H. at 863 (citations omitted).

The New Hampshire Supreme Court has also stated that the Commission's jurisdiction is somewhat fluid, depending not only on the operations of the utility provider but the policy reasons for asserting jurisdiction. In *Allied N.H. Gas Co. v. Tri-State Gas Co.*, 107 N.H. 306 (1966), the Court held that though certain operations might fall within a strict reading of RSA 362:2, they were not necessarily regulated if, by asserting jurisdiction, the Commission would go beyond the purposes for which the Commission had been created.

It is equally important, as noted in the *Freedom Energy* appeal, that the Commission narrowly construe its authority and exercise the degree of regulation that promotes fair competition while ensuring the public good. *Appeal of Public Service Company of New Hampshire*, 140 N.H. — (1996) (Supreme Court Docket #95-610, Order May 13, 1996 at page 7). In this case, therefore, we should impose regulation that will encourage the development of competition as well as protecting residential and commercial customers' interests.

Switched and switchless toll providers offer a service that is now subject to considerable competition. Recently, we ordered the implementation of intraLATA presubscription which, we expect, will increase the level of competition for smaller customers. Under presubscription, customers will enjoy the same ease of selecting an intraLATA toll carrier as they now have for interLATA toll, eliminating the need to dial the extra five digit access code to reach a carrier other than NYNEX. Customers can move from one toll provider to another for intraLATA toll service if they are dissatisfied with any aspect of the provider's service.

[3-9] In light of the increasingly competitive market for intraLATA toll service, we find no need for extensive Commission regulation of the rapidly expanding number of competitive intraLATA toll providers. We will no longer require a provider to demonstrate its financial, technical or managerial competence but instead will institute a simple registration process. Nor will we scrutinize the terms, rates or conditions of service or issue orders regarding tariff changes.

Effective immediately, we will require the following:

A. *Registration*

A competitive intraLATA toll provider shall register with the Commission before commencing operations in the State. It shall submit the company's name, business address and contact person, noting a toll free customer service number if available. It shall submit evidence of incorporation in New Hampshire or Secretary of State registration as a foreign entity authorized to do business in the State in accordance with RSA 374:25. It shall also certify that it will be bound by all applicable administrative rules and orders of the Commission. These registration requirements are effective with the date of this order.

The Commission will presume that competitive toll providers possess the necessary qualifications to operate, a presumption which is subject to further analysis if a problem is raised by the public, another utility or the Commission regarding a particular utility provider. Before

commencing operations in the State, a competitive intraLATA toll provider must obtain verification from the Commission stating the provider has met the Commission's registration requirements.

B. *Tariff Filings*

A competitive intraLATA toll provider shall file an initial tariff and keep a current tariff on file with the Commission. New services and changes in services will be effective upon 30 days of filing, pursuant to RSA 378:3, unless otherwise ordered by the Commission.

We will presume that initial tariff provisions and subsequent changes are just and reasonable and in the public interest, given the wide availability of alternative toll providers and services. This presumption is subject to further evaluation if a problem is raised by the public, another utility or the Commission regarding a particular service or condition of service. Tariff conditions inconsistent with our administrative rules and/or statutory requirements will be null and void, notwithstanding a tariff on file with the Commission. Pursuant to Order No. 20,566 (August 5, 1992), changes in rates of existing services continue to be effective automatically if filed no later than one day after the new rate's effective date.

C. *Utility Assessment*

Competitive toll providers shall remain utilities pursuant to RSA 362:2. As such, they continue to be responsible for their share of the Utility Assessment for Commission operations in accordance with RSA 363-A.

D. *Reporting Requirements*

As a condition of authorization to operate within the state, each competitive toll provider shall file with the Commission an Annual Report consisting of a Balance Sheet and Statement of Operations, statement of New Hampshire revenues, and an Information Sheet containing the names, business mailing addresses and titles of corporate officers, and the address to which the New Hampshire Utility Assessment should be mailed.

E. *Pending Applications for Authority*

Applications for authority to operate now pending before the Commission will be treated as registration filings. We direct our Staff to review pending applications in light of this order and contact any applicant who has not met the terms of the registration process to complete its filing.

F. *Pending Tariff Changes*

Petitions for tariff approval now pending before the Commission will be evaluated in light of the terms of this order; that is, they will automatically become effective 30 days from the date on which they were received by the Commission unless an order is issued otherwise.

G. *Remaining Commission Oversight*

Because we remain at the threshold of significant change in the telecommunications industry, it is not appropriate at this time to fully deregulate competitive intraLATA toll providers. Our role providing oversight and assistance on consumer protection matters is critical, and we must maintain the ability to exert greater control over any provider that abuses its authority to operate or otherwise conducts business in an unfair or deceptive manner. Effective immediately, we will regulate competitive intraLATA toll providers in accordance with the limited terms detailed in this order. Our authority, of course, extends only so far as the Legislature provides. Based upon current statutory enactment, we maintain the authority to impose greater regulation over particular entities and competitive intraLATA toll providers as a whole, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that effective immediately, the Commission will exert limited regulation over competitive intraLATA toll providers in accordance with the terms of this order; and it is

FURTHER ORDERED, that the following dockets: DS 96-395 Cable & Wireless, Inc.; DS 96-398 Business Telecom, Inc.; DS 96-400 MCI Telecommunications Corporation; DS 96-403 LCI International Telecom Corp.; DS 96-404 AT&T Communications of NH, Inc.; DS 96-408 Sprint Communications Company of New Hampshire, Inc.; DS 96-410 Tel-Save, Inc. d/b/a The Phone Company of New Hope; DS 96-418 MCI Telecommunications

Corporation; DS 96-421 Frontier Communications International, Inc.; DS 96-422 Frontier Communications of New England, Inc.; and DS 96-423 Sprint Communications Company of New Hampshire, Inc.; are hereby closed and that the filings contained therein shall be considered effective pursuant to paragraph F above.

By order of the Public Utilities Commission of New Hampshire this sixth day of January, 1997.

FOOTNOTES

[1]A Local Access Transport Area or LATA is a geographic area established by the Modified Final Judgement in the divestiture of AT&T. LATAs define the boundaries for provision and administration of services between Bell Operating Companies and AT&T and other interexchange carriers. Because there is essentially only one LATA in New Hampshire, for our purposes the term intraLATA is synonymous with intrastate.

[2]According to Annual Reports filed with the Commission, revenue figures for 1995 indicate that the leading intraLATA toll providers are, in order, NYNEX 75%, AT&T 8.5%, MCI 8.5%, Frontier Communications 2.4%, Sprint 1.5%, and all others combined 4.6%.

[3]Though the official two year Trial Period has concluded, the authority granted to competitive intraLATA toll providers during that period extends indefinitely, unless and until the Commission orders otherwise. *See*, Order No. 21,851 (October 3, 1995).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition, DE 90-002, Order No. 20,566, 77 NH PUC 418, Aug. 5, 1992. [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., et al., DE 87-249, Order No. 21,851, 80 NH PUC 628, Oct. 3, 1995.

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NH.PUC*01/09/97*[97199]*82 NH PUC 8*New England Telephone and Telegraph Company dba NYNEX

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82 NH PUC 8

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-274
Order No. 22,474

New Hampshire Public Utilities Commission

January 9, 1997

ORDER amending the hearing schedule established for considering a local exchange telephone carrier's proposal for offering prepaid calling card service.

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1. PROCEDURE, § 25

[N.H.] Hearings — Continuance or postponement of — To prevent other scheduling conflicts — As to prepaid calling card service proposal — Local exchange telephone carrier. p. 8.

2. RATES, § 649

[N.H.] Practice and procedure — Hearings — Postponement of — As to proposed offering of prepaid calling card service — Local exchange telephone carrier. p. 8.

BY THE COMMISSION:

ORDER

[1, 2] On August 27, 1996, New England Telephone & Telegraph (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) tariff pages proposing to introduce Prepaid Calling Service for effect September 26, 1996. NYNEX states that Prepaid Calling Service would provide customers with an alternative method for paying for local, coin and toll calls within New Hampshire. Customers would buy a printed card containing the stated value, the 800 access number,

authorization code, and dialing instructions. Prepaid Calling Service would allow customers to place a call from any residence, business or pay telephone by dialing 1-800-NYNEX-95. As part of its filing, NYNEX included a Tariff Filing Support Package containing marketing and cost support materials.

On September 18, 1996, the Office of Consumer Advocate (OCA) filed a letter with the Commission regarding NYNEX's petition and requesting that the Commission grant NYNEX approval of its proposal for Prepaid Calling Service only if the tariff rates reflect NYNEX's current time-of-day tariff rates. In the alternative, OCA requested a hearing be held on the issues. OCA stated that the NYNEX proposal raises concerns about unfair marketing practices of providers of Prepaid Calling Services and requested that the Commission impose, if necessary, regulations on all providers of Prepaid Calling Services. On December 23, 1996, by Order No. 22,459, the Commission granted OCA's request for a hearing and set January 29, 1997 as the date for hearing. However, as a result of a conflict with other hearing requirements it is necessary to change the hearing date to February 5, 1997.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on February 5, 1997, at 10:00 a.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, NYNEX notify all persons desiring to be heard at this hearing by publishing a copy of this Order no later than January 14, 1997, in a newspaper of general circulation in that portion of the State in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before February 5, 1997; 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 NYNEX and the Office of Consumer Advocate on or before January 31, 1997, 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 pursuant to N.H. Admin. Rule Puc 202.08, any party seeking to file testimony and exhibits do so no later than January 29, 1997; and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before February 5, 1997.

By order of the Public Utilities Commission of New Hampshire this ninth day of January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-274, Order No. 22,459, 81 NH PUC 1031, Dec. 23, 1996.

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NH.PUC*01/13/97*[97200]*82 NH PUC 9*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97200]

82 NH PUC 9

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Freedom Ring

Communications, L.L.C.

DR 96-336
Order No. 22,475

New Hampshire Public Utilities Commission

January 13, 1997

ORDER approving a refiled interconnection agreement negotiated by an interexchange telephone carrier and a local exchange telephone carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and

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exchange access services — Local exchange and interexchange carriers. p. 11.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — But continued concern as to potential market abuse and cross-subsidization issues — Local exchange and interexchange carriers. p. 11.

APPEARANCES: Swidler & Berlin by Eric Branfman, Esq. for Freedom Ring Communications, L.L.C.; John B. Messenger, Esq. for NYNEX; Office of Consumer Advocate by Thomas S. Lyle 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 October 21, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Interconnection Agreement (Agreement) between NYNEX and Freedom Ring Communications, L.L.C. (Freedom Ring). The Agreement was negotiated and filed for approval pursuant to 47 U.S.C. §252(e) of the Telecommunications Act of 1996 (Act). Because of procedural infirmities, an earlier filing had been rejected without prejudice by Order No. 22,359 in DE 96-290 (October 15, 1996).

The filing raises, *inter alia*, issues related to the Commission's review of the Agreement utilizing the standards set forth in §252(e)(2)(A) of the Act. Although the Act contains strict time limits on the review process for negotiated agreements, it grants liberal discretion for state commissions to define the process. Accordingly, the Commission, in Order No. 22,236 (July 12, 1996), established certain procedures and timetables.

The Commission scheduled a prehearing conference for November 21, 1996, set a deadline for intervention requests, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

There were no intervenors other than the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor. Based on the recommendations of the Parties and Staff, the Commission established a procedural schedule in conformance with Order No. 22,236 (July 22, 1996).

At the prehearing conference, Staff proposed to expand the scope of the docket to address the relationship and potential for cross subsidization and abuse of market power by Union Telephone Company (Union) which is a wholly owned subsidiary of UTEL. ACN, Inc., which is also a subsidiary of UTEL, owns 50% of Freedom Ring. Although the Commission denied the request to expand this docket, Order No. 22,434 (December 5, 1996) left open the possibility that the issue would be dealt with in DR 96-165, Freedom Ring's petition to operate as a competitive local exchange carrier.

In Order No. 22,434, the Commission also instructed NYNEX and Freedom Ring to modify §3.0 of the Agreement to remove any representation that NYNEX met the Act's §271 competitive checklist by signing this Agreement.

The Commission heard evidence on the Agreement January 6, 1997. There was no testimony in opposition to the Agreement.

II. POSITIONS OF THE PARTIES AND STAFF

A. *NYNEX and FREEDOM RING*

NYNEX and Freedom Ring recommend approval of the Agreement, arguing that it meets the statutory requirements of the Act, that is, it does not discriminate against any carrier not a party to the Agreement and is consistent with §252(e)(2)(A). They jointly filed an amendment to §3.0 which removes the representation that the §271 checklist is satisfied by

the execution of the Agreement.

The Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic, joint network configuration, unbundled access, resale, collocation, and number portability. The Agreement also contains a "most favored nation" clause (§29.14) that requires NYNEX or Freedom Ring to make available any terms negotiated with other carriers that are more favorable than those contained within this Agreement.

B. *OCA*

OCA accepted the amendment to §3.0 regarding the §271 checklist, stating that the amendment met the OCA's concerns on that issue. OCA could not affirmatively conclude that the Agreement met the two standards for approval, based on inadequate technical review of the Agreement, but found nothing within it to suggest that the Agreement was discriminatory or contrary to the public interest.

OCA remains concerned about the potential for cross-subsidization between Union and Freedom Ring but stated that it would raise that issue where appropriate, most likely in DR 96-165.

C. *Staff*

Staff recommended approval of the Agreement, as amended by the new §3.0 language regarding the §271 checklist. Based on its review, it found the Agreement to be non-discriminatory and consistent with the public interest. Staff also stated its intention to further explore the issue of the relationship and potential for abuse between Union and Freedom Ring in DR 96-145 or wherever the Commission may direct.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the Agreement as amended and find it meets the standards of §252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience and necessity. We accept the modification of §3.0 to remove the representation that the execution of the Agreement constitutes compliance with the §271 checklist.

We are pleased to see an Agreement successfully negotiated between NYNEX and a competitor and fully expect that additional agreements will be filed in the coming months. The

development of a competitive local exchange market is consistent both with the federal Telecommunications Act, New Hampshire statute and Commission policy.

Freedom Ring has yet to receive authorization as a competitive local exchange carrier, though docket DR 96-165 is moving forward. We recognize the concerns of the OCA and Staff regarding the relationship between Union and Freedom Ring and the potential for misuse of market power or cross-subsidization. To the extent that Parties or Staff wish to pursue this issue, it should be done in the context of the Freedom Ring authorization docket. In order to facilitate that inquiry, we will direct the Executive Director to deliver copies of this order to Union's President and counsel and further direct Union to respond to data requests which may be posed by any participant in DR 96-165.[1](4) We will not make Union a mandatory party to the docket but will include it on the official service list in order to ensure that Union receives copies of all documents in the docket.

Based upon the foregoing, it is hereby

ORDERED, that the interconnection agreement negotiated between NYNEX and Freedom Ring is APPROVED; and it is

FURTHER ORDERED, that the issue of Union's relationship with Freedom Ring shall be explored, to the extent the Parties and Staff so desire, in DR 96-165; and it is

FURTHER ORDERED, that the Executive Director shall place Union on the service list of DR 96-165 and be served with this order.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1997.

FOOTNOTES

[1]Although we are ordering Union to respond to data requests, Union may still avail itself of the standard objections to particular requests under our administrative rules.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of the Telecommunications Act of 1996, DE 96-177, Order No. 22,236, 81 NH PUC 549, July 12, 1996. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 96-290, Order No. 22,359, 81 NH PUC 760, Oct. 15, 1996. [N.H.] Re New

England Teleph. & Teleg. Co. dba NYNEX, DE 96-336, Order No. 22,434, 81 NH PUC 993, Dec. 5, 1996.

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NH.PUC*01/13/97*[97201]*82 NH PUC 12*Granite State Electric Company

[Go to End of 97201]

82 NH PUC 12

Re Granite State Electric Company

DR 96-320
Order No. 22,476

New Hampshire Public Utilities Commission

January 13, 1997

ORDER approving updated avoided costs used by an electric utility in administering its "cooperative interruptible service" program.

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1. RATES, § 339

[N.H.] Electric rate design — Interruptible service — "Cooperative interruptible service" program — Calculation of associated standby versus performance credits — Updating of avoided-cost basis. p. 12.

2. SERVICE, § 324

[N.H.] Electric — Interruptible service — "Cooperative interruptible service" program — Standby- versus performance-based contracts — Penalties for noncompliance. p. 12.

BY THE COMMISSION:

ORDER

On October 1, 1996, Granite State Electric Company (Granite State or the Company) filed 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 Granite State'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 Granite State during capacity shortages. Under the Settlement Agreement between Granite State and Commission Staff (Staff) approved by Order No. 20,684 (November 30, 1992) in Docket DR 92-188, Granite State is required to file updated short-term and long-term avoided costs and to recalculate the credits on or before October 1st of each year.

Granite State's CIS program consists of two types of contracts, CIS-1 and CIS-2. Through CIS-1, a customer commits to a firm interruptible load level with a seven year notice of termination provision, is paid regardless of whether or not an interruption actually occurs and is penalized in the event that an interruption is called and the customer fails to comply. CIS-2 does not require a commitment for a firm interruptible load level by the customer. Rather, the contract is performance-based, with higher credits paid in months when the company requests an interruption and the customer agrees to the request. Both contracts offer three options which differ in terms of frequency, duration and interruption notification period. A different credit is paid for each option.

[1, 2] In its October 1, 1996 filing, Granite State updated the data on program expenses and

Page 12

the total credited interruptible load to calculate new program cost factors which were then used to update the credit calculations. The long-term avoided cost value, used in establishing the credit levels in CIS-1 contracts, remained unchanged from 1995/96 at a level of $65.10 per kW while the short-term avoided cost values used in the CIS-2 contracts increased to $21.90 per kW-year from $15.00 per kW-year from 1995/96. Granite State has not proposed any other changes to the program.

Granite State proposes the following credits ($/kW-Month) and non-compliance charges ($/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	$ 0.46	$ 1.64
Option 2	$ 0.51	$ 1.81
Option 3	$ 0.35	$ 1.24

On November 13, 1996, Staff issued data requests to Granite State requesting additional information regarding the Company's CIS Program filing. On December 2, 1996, the Company filed responses which served to clarify issues about Granite State's CIS Program expenses and information provided in the Company's Least Cost Integrated Plan filing (Docket DR 96-180).

The Commission has reviewed Granite State's filing and will approve the updated avoided costs, credits and non-compliance charges. We find that the credits have been calculated in accordance with the formulas approved in Order No. 20,684. We are satisfied that Granite State's CIS Program continues to provide value to the Company and its ratepayers as the industry makes the transition to increased competition and that the updated avoided costs and resulting credits are reasonable.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Granite State's request for approval of its updated CIS-1 and CIS-2 credits is GRANTED; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Granite State 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 January 20, 1997 and to be documented by affidavit filed with this office on or before January 27, 1997; and it is

FURTHER ORDERED, that Granite State 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 January 27, 1997; 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 3, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 13, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Granite State shall file a compliance tariff with the Commission on or before January 27, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1997.

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*01/13/97*[97202]*82 NH PUC 14*Union Telephone Company

[Go to End of 97202]

82 NH PUC 14

Re Union Telephone Company

DR 95-311
Order No. 22,477

New Hampshire Public Utilities Commission

January 13, 1997

ORDER adopting stipulation in an investigatory proceeding relating to alleged excess earnings by a local exchange telephone carrier. The carrier thus is required to reduce its access rates by $140,460 annually, based on an actual capital structure of 100% equity and a rate of return of 11.18%.

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1. RETURN, § 43

[N.H.] Factors affecting reasonableness — Past earnings or losses — Allegations of excess earnings — Investigatory proceeding — Stipulation — Required reduction in revenues — Local exchange telephone carrier. p. 16.

2. RETURN, § 26.1

[N.H.] Capital structure — Use of actual versus imputed structure — Structure of 100% equity — Stipulation — Pursuant to overearnings investigatory proceeding — Local exchange

telephone carrier. p. 16.

3. RETURN, § 111

[N.H.] Local exchange telephone carrier — Stipulated rate of return of 11.18% — Pursuant to overearnings investigatory proceeding. p. 16.

4. RATES, § 158

[N.H.] Factors affecting reasonableness — Past earnings or losses — Allegations of excess earnings — Investigatory proceeding — Stipulation — Required reduction in revenues — Local exchange telephone carrier. p. 16.

5. REPARATION, § 37

[N.H.] Grounds for allowing — Subsequent reduction in rates — Refunds of overcollections of temporary rates — Local exchange telephone carrier. p. 16.

6. REPARATION, § 43.1

[N.H.] Method and award — Persons to benefit — Refunds of overcollections of temporary rates — Purchasers of access service only — Change in access rates only — No refunds to retail end users — Local exchange telephone carrier. p. 16.

APPEARANCES: Rothfelder Law Offices by Martin C. Rothfelder, Esq. for Union Telephone Company; the Office of the Consumer Advocate by Thomas S. Lyle and James R. Anderson, Esq. for residential ratepayers of New Hampshire; and, E. Barclay Jackson for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 7, 1995, the New Hampshire Public Utilities Commission (Commission) opened this docket to investigate the level of earnings of Union Telephone Company (Union), to audit Union's accounting procedures and practices, and to determine whether rates being charged by Union are just and reasonable. After a duly noticed Prehearing Conference held on December 19, 1995, the scope of which was enlarged at the request of the

parties and Commission Staff (Staff) to include the issue of temporary rates, Order No. 21,982 was issued, adopting a procedural schedule and approving as temporary rates, pursuant to RSA 378:27, all Union's approved tariffed rates that were in effect on that date. The procedural schedule, including data requests and responses, technical sessions, filed testimony, settlement discussions and final hearing dates, was revised several times subsequently as requested by the parties and Staff.

On June 3, 1996, Union filed a Motion for Confidential Treatment for certain responses to Staff's discovery requests. By Order No. 22,228 (July 9, 1996), the Commission granted confidential treatment to responses containing information regarding interexchange carrier service usage data; the Commission denied confidential treatment to responses containing information regarding compensation data which is already available to the public.

On July 24, 1996, Union filed a Second Motion for Confidentiality. The Commission granted the motion by Order No. 22,291 (August 27, 1996).

The OCA filed a Motion for Determination of Rate Case Responsibilities on August 14, 1996, seeking a prospective assignment of the entirety of rate case expenses to Union's shareholders. On August 22, 1996, Union filed an Objection to the OCA's motion. The Commission denied the OCA's motion without prejudice by Order No. 22,307 (September 4, 1996).

Staff filed the testimony of Jane A. Emerson, Dr. Todd M. Bohan, and Mark A. Naylor on August 22, 1996, and revised pages of Mr. Naylor's testimony on August 27, 1996. Amended testimony of Dr. Bohan and Ms. Emerson, correcting a mathematical error, was filed on October 10, 1996.

Union, the OCA and Staff participated in settlement discussions on September 26, 1996. As a result of those discussions, Union and Staff agreed upon a stipulation resolving all issues. The OCA did not join in that agreement, disputing cost of capital issues and the rate design issue regarding distribution of a refund. On October 28, 1996, Union and Staff filed the Stipulation. On October 31, 1996, Union filed testimony of Dr. James H. Vander Weide to rebut the OCA's cost of capital arguments.

Hearings on the Stipulation and contested issues were held on November 4 and 5, 1996. Briefs on the contested issues were filed by Union, the OCA and Staff on December 12, 1996. Union filed a Reply Brief on December 20, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Stipulation*

In order to resolve all issues raised in this docket, Staff and Union agreed as follows:

1. Union shall take actions to implement Staff's audit findings as reflected in Exhibit A of the

Stipulation.

2. Union shall implement reduced rates designed to reduce revenue by $140,460 annually, utilizing a rate of return of 11.18%. Staff witness Bohan supported this rate of return as a proper application of the Discounted Cash Flow (DCF) analysis. Staff indicated that a change in methodology was made to the DCF to provide heavier weighting of expected dividend and earnings growth as opposed to historical dividend and earnings growth, based on the significant changes occurring in the telecommunications industry. Staff's analysis used Union's actual capital structure, consisting of 100% equity, rather than imputing a debt component to the capital structure. The effect of imputing a debt component, Staff argued, would impede Union's ability to maintain and attract capital. Staff also pointed out that imputing a debt component purely to effectuate a rate of return reduction in order to benefit ratepayers does not properly consider shareholders' interests. Union rebuttal witness Dr. Vander Weide testified that the 11.18% rate of return is not excessive and is a proper result of the DCF analysis. Dr. Vander Weide further testified that his own application of the DCF analysis, using forecasted earnings growth data rather than historical data, resulted in a higher rate of return.

3. Union shall make a rate refund reflecting the difference between the temporary rates in effect since January 15, 1996 and the reduced rates approved pursuant to this Order,

less rate case expenses approved by the Commission. Currently, access rates contain a very large contribution to joint and common costs as compared to that contained in local service rates and therefore, Staff argued, in the absence of evidence to the contrary Union is overearning in the access area. Reducing access rates will bring those rates more in line with costs. The rate reduction is being applied to access rates and shall therefore be made, as a credit on future bills, to Union's access customers.

Union, Staff, and the OCA agreed, as provided in the Stipulation, that Union shall make a number of changes to its accounting procedures and practices such as, *inter alia*, cost sharing with affiliated companies, property leasing arrangements, competitive bids for services obtained from UNEX or other affiliates, and recognition of billing and collection revenues as regulated revenues. Union will continue to use FCC Part 64 cost allocation procedures but, in cooperation with Staff, agrees to review the basis for some of its cost allocations to insure adequate cost sharing with affiliate companies.

B. *OCA*

The OCA opposed the Stipulation as a resolution of the issues raised in this docket. The OCA argued that the Commission's Order of Notice and subsequent procedural order did not give adequate notice that reduction of access rates, rather than reduction of end-user rates, would be considered as a method of reducing Union's revenues. The OCA contended that retail end-users should receive the benefits of any revenue reductions. Reducing access rates could

possibly but will not surely decrease toll rates. It is therefore possible, according to the OCA, that retail end-users will not receive either direct or indirect benefits.

The OCA also argued that retail end-users, not access purchasers as provided in the Stipulation, should receive the refund of overcollected temporary rates. In the OCA's opinion, retail customers customarily receive any refunds of temporary rates and must receive them in this case because Order No. 21,982 approving temporary rates did not specify otherwise. The OCA suggested that a separate proceeding should consider whether refunds to customers other than retail customers is appropriate.

The cost of capital analysis by Staff and its resulting 11.18% cost of equity included in the Stipulation is disputed by the OCA. The OCA concluded that Staff's DCF analysis was faulty because the sample size was too small and did not include the 10-year historic growth rates customarily used. The OCA also argued that Staff's support of its amended DCF calculation should be supported by a different rationale than that used in Staff's initial testimony. Because Staff did not change its supporting rationale, the OCA reasons that Staff's amended DCF calculation is unsupported.

Staff's use of the 100% equity capital structure currently in place is also disputed by the OCA as inconsistent with prior Commission rulings. The OCA cited *Re New England Telephone and Telegraph Company*, 72 NH PUC 320, (1987) as having established an optimal capital structure for a local exchange carrier. As Union's actual capital structure does not fall within that range, the OCA argues, Staff should not use the actual structure but should impute a hypothetical structure. The range decided upon in *Re NET* was 40-45% debt and 60-65% equity. The OCA suggests imputing a capital structure of 50% debt and 50% equity.

Finally, the OCA contested admission of the testimony of Dr. Vander Weide as being late-filed direct testimony rather than rebuttal testimony.

III. COMMISSION ANALYSIS

[1-6] We have considered all testimony, exhibits and briefs, as well as the Stipulation. We are not persuaded by the OCA's claims of procedural flaws. The scope of this proceeding was properly noticed as an investigation into Union's earnings, which implies a remedy of rate reduction to lessen revenues should the investigation find overearning. As the notice did not specify one particular rate or class of customer for whom the remedy would apply, access rate reductions were not precluded from our consideration. Accordingly, no additional

notice was necessary to add it to this docket. Furthermore, access rate reductions are not an atypical remedy. We ordered access rate reductions in four telephone overearnings investigations commenced in 1995: DR 95-202, Wilton Telephone Company; DR 95-190, Granite State Telephone Company; DR 95-181, Kearsarge Telephone Company; and DR 95-197, Merrimack

County Telephone Company.

Neither are we precluded from considering the testimony of Dr. Vander Weide. Although some of his testimony was cumulative, we found the majority to be offered to rebut that of the OCA; the testimony was not offered to support the company's direct case. The OCA was not denied an opportunity to prepare a response to his testimony as it attended the technical session during which Mr. Vander Weide offered Union's position. The OCA also had opportunity to review the rebuttal testimony prior to the hearing. Our decision to allow this testimony and consider it in our deliberations is within our discretion pursuant to Puc Chapter 203.09(b), as is the extent of its probative value.

We are persuaded by the record before us that the Stipulation is a reasonable resolution of the issues presented and is in the public interest. Imputing a capital structure, as urged by the OCA, would be inappropriate given the circumstances of this company at this time. The DCF methodology as applied by Staff, using a small sample and forward-looking growth weightings, is an appropriate exercise of professional judgment and consistent with prior rate of return analyses approved by this Commission. In this case, Staff's judgment was ultimately supported by Union's rebuttal witness.

In addition, we find that, as in the other dockets concerning overearnings by independent telephone companies such as Union, it is appropriate to reduce access revenues. Thus, having concluded that access rates were too high and hence deciding to reduce Union's access revenues, we find that access purchasers are the customers to whom a refund of overcollected temporary rates is due. Moreover, we find that deduction of rate case expenses from the total refund amount is proper.

We recognize that access purchasers are not the retail end-users for whom the OCA advocates and we share the OCA's concern that end-users receive a benefit from reducing Union's revenues. In the competitive telecommunications market which is evolving, changes to the cost of a service should reduce the price charged to end-users. Consequently, we urge access purchasers to pass along to retail end-users the benefits received as a result of this order. We will hence monitor the conduct of the access purchasers to ascertain whether their actions comport with our intent.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation Agreement between Union and Staff is APPROVED.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DR 95-311, Order No. 21,982, 81 NH PUC 30, Jan. 15, 1996.

[N.H.] Re Union Teleph. Co., DR 95-311, Order No. 22,228, 81 NH PUC 525, July 9, 1996.
[N.H.] Re Union Teleph. Co., DR 95-311, Order No. 22,291, 81 NH PUC 654, Aug. 27, 1996.
[N.H.] Re Union Teleph. Co., DR 95-311, Order No. 22,307, 81 NH PUC 677, Sept. 4, 1996.

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[Go to End of 97203]

82 NH PUC 17

Re Statewide Electric Utility Restructuring Plan

Respondent: Public Service Company of
New Hampshire

DR 96-150
Order No. 22,478

New Hampshire Public Utilities Commission

January 14, 1997

ORDER addressing a number of procedural matters within a proceeding examining a restructuring of the state's electric utility industry

Page 17

and associated stranded costs of electric utilities on a case-by-case basis. Commission sets a hearing schedule, rules on various petitions for intervention, and both accepts and rejects various proffered testimony.

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1. PROCEDURE, § 28

[N.H.] Conduct of hearings — Evidentiary rulings — Acceptance or rejection of proffered testimony — Prefiling requirements — Electric industry restructuring proceeding — Examination of utility-specific stranded cost issues — Hearing schedule. p. 18.

2. EVIDENCE, § 23

[N.H.] Kinds and types — Proffered testimony — Factors affecting acceptance or rejection — Prefiling requirements — Scope of proceeding — Electric industry restructuring proceeding — Examination of utility-specific stranded cost issues. p. 18.

3. PARTIES, § 18

[N.H.] Intervenors — Limited versus full participation — Effect on proffered testimony — Electric industry restructuring proceeding — Examination of utility-specific stranded cost issues. p. 18.

4. EXPENSES, § 120

[N.H.] Electric utility — Industry restructuring proceeding — Cost issues — Stranded costs associated with the sale or divestiture of generating assets — Procedural rulings — Establishment of hearing schedule — Acceptance or rejection of proffered testimony. p. 18.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

[1-4] This order addresses various procedural issues relating to the interim stranded cost proceeding of Public Service Company of New Hampshire (PSNH) scheduled to begin at the New Hampshire Public Utilities Commission on January 17, 1997. These issues were raised prior to or during a prehearing conference conducted on January 3, 1997.

II. ISSUES AND POSITIONS

A. PSNH Motion to Strike

During the prehearing conference, PSNH orally moved to strike the testimony of the New Hampshire Municipal Association (NHMA) because such testimony was served on PSNH three days late.[1(5)] During the Commission's January 6, 1997 public meeting, we accepted the recommendation of the hearings examiner to deny PSNH's motion, but extended the deadline for PSNH's data requests by three days. NHMA's responses are due as scheduled on January 13, 1997.

B. Request for Official Notice

PSNH requested that the Commission take official notice of the entire record in DR 89-244 for the purpose of considering PSNH's claims regarding the Rate Agreement. *See*, N.H. Admin. Rules, Puc 203.09(f). We will grant this request.

C. Request for Additional Written Comments

Several parties requested the opportunity to submit post hearing memoranda following the interim stranded cost proceedings for each of the utilities. Again, we will address this issue at the conclusion of those hearings.

D. Reply Legal Memoranda

During the prehearing conference, PSNH pointed out that the current procedural schedule requires reply briefs to be filed by Saturday,

January 18, 1997. We have extended that filing deadline to January 21, 1997.

E. Request for Supplemental Testimony

During the prehearing conference, Cabletron Systems, Inc. (Cabletron) requested the opportunity to file supplemental testimony prior to PSNH's interim stranded cost proceeding. The basis for Cabletron's request is that it seeks to incorporate into its testimony the analysis of the Commission's consultant which was recently made available to the parties. To avoid unduly burdening the record in this proceeding, we deny this request as recommended by the hearing examiner.

F. Jac Pac Testimony

On December 30, 1996, James T. Rodier, Esq. filed a petition to intervene on behalf of Granite State Packing Co. Inc., d/b/a Jac Pac, along with the testimony of Charles E. Hunger. During the prehearing conference, the Office of Consumer Advocate objected to the introduction of the testimony as pre-filed by Jac Pac. The hearing examiner recommended that we exclude this testimony as it relates to a generic policy issue which may be presented to the Commission as written comment. We agree with this recommendation. Accordingly, we grant Jac Pac's intervention request, but deny the introduction of its "testimony" in PSNH's interim stranded cost proceeding.

G. Scope of PSNH Testimony

During the prehearing conference, the hearing examiner also heard argument regarding the scope of PSNH's proposed oral testimony during its interim stranded cost proceeding. PSNH requested the opportunity to call seven witnesses, although it only pre-filed the testimony of one witness, John W. Noyes.[2(6)] PSNH seeks to introduce testimony of six additional witnesses whose testimony was filed as part of its initial written comments dated October 18, 1996. As noted by the hearing examiner, the November 8, 1996 testimony of Mr. Noyes contains no reference to the previously filed testimony of any of the six other proposed witnesses.

During the prehearing conference, the City of Manchester (Manchester) objected to the scope of testimony proposed by PSNH.[3(7)] According to Manchester, PSNH's testimony should be limited to those matters which it raised in the pre-filed testimony of John W. Noyes dated November 8, 1996. The aforementioned testimony relates solely to the cost and revenue data submitted by PSNH as mandated by the Commission's Preliminary Plan. Manchester contends that PSNH should be precluded from presenting the testimony of any witnesses other than that of Mr. Noyes. Manchester further argues that PSNH failed to identify any additional factual issues that required formal adjudicative procedures despite being afforded several opportunities to do so. *See*, Order No. 22,244 (July 22, 1996); Order No. 22,316 (September 17, 1996); Order No. 22,364 (October 16, 1996).

By its own admission, PSNH acknowledges that Mr. Noyes' testimony "provides the calculations necessary for determining PSNH's interim stranded cost charges, assuming that the [PSNH] Customer First initiatives are not implemented." Noyes Testimony, p.2. This is the primary purpose of the interim stranded cost hearings, although in Order No. 22,364 we agreed that it is appropriate to allow testimony on the potential financial impact that various levels of interim stranded cost recovery may have on PSNH. Despite the fact that PSNH failed to pre-file testimony on this issue as directed in Order No. 22,364, we will allow PSNH to present the relevant portions of Mr. Forsgren's October 18, 1996 comments on this issue.

Similarly, we will permit PSNH to present those portions of Mr. Long's comments that address PSNH's own generation and purchase power contracts. Those portions of Mr. Long's testimony that address the PSNH bankruptcy, the "regulatory contract," and special contracts will be excluded.

Although we will not require PSNH to re-file redacted written testimony, only those portions of the written testimony of Messrs. Noyes, Forsgren and Long referenced above will be

received as evidence during the PSNH interim stranded cost proceeding.

All other issues in PSNH's October 18 written comments address either policy or legal questions which are therefore outside the scope of the interim stranded cost proceeding. As noted

in Order No. 22,364, the procedural schedule in the docket allows for written and oral comments on policy questions and the submission of briefs on issues of law. In our view, PSNH's assertions regarding the Rate Agreement and bankruptcy reorganization raise purely legal issues which do not require us to look beyond the record established in DR 89-244 and the applicable law, including RSA Chapter 362-C.[4(8)] Similarly, arguments regarding market power and corporate structure raise policy issues which have been the subject of an extensive written and oral comment process.

Finally on this matter, as noted by Manchester, we afforded PSNH with several opportunities to identify relevant factual issues for which it sought formal adjudication. In the last of our orders on this subject, we concluded that "PSNH once again failed to identify the factual issues for which they seek evidentiary hearings." Order No. 22,420 (November 25, 1996). We stand by that ruling.

H. Intervenor Testimony

The following intervenors filed testimony in PSNH's interim stranded proceeding: the City of Manchester (Manchester), Cabletron Systems, Inc. (Cabletron), the Office of Consumer Advocate (OCA), New Hampshire Municipal Association (NHMA), Freedom Energy, L.L.C. (Freedom) and Granite State Hydro Association (GSHA). To the extent that any of these intervenors pre-filed testimony relative to the Rate Agreement or the PSNH bankruptcy reorganization, our holding regarding the scope of this proceeding applies equally to such testimony.

I. Hearing Schedule

In order to establish a hearing schedule consistent with this order, we will hold a brief prehearing conference at 9:00 A.M. on Friday, January 17, 1997, one hour before the hearing is scheduled to start. We also announce our intention to schedule one (1) additional day to complete PSNH's interim stranded cost proceeding, if necessary. We have reserved Saturday, January 25, 1997 for this purpose. Under no circumstances, however, will we take more than four days.

The parties should be advised that hearing room time should not be used to reiterate every aspect of their pre-filed testimony, although we do expect that witnesses will summarize such testimony. With the addition of January 25th as a final hearing day, there are approximately twenty-four hours of hearing time available for direct and cross-examination of witnesses and questions by the Commission. As we have done in previous proceedings, we intend to divide this time roughly equally between PSNH and the intervenors. We will address this matter in more detail at the 9:00 A.M. prehearing conference on January 17th. In the meantime, we encourage the intervenors to consult with one another in order to propose a schedule which places reasonable time limits for the presentation of direct testimony and cross-examination of PSNH's witnesses.

Based upon the foregoing, it is hereby

ORDERED, that the foregoing procedural issues are resolved as set forth herein.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of January, 1997.

FOOTNOTES

[1]PSNH claims it did not receive the testimony until January 2, 1997; the filing deadline for intervenor testimony in the PSNH proceeding was December 30, 1996.

[2]Specifically, PSNH requested that the following witnesses be allowed to testify: John W. Noyes, Vice President of Business Strategy for Northeast Utility Service Company (NUSCO); Wilbur L. Ross, Senior Managing Director of Rothschild Inc.; John H. Forsgren, Executive Vice President and Chief Financial Office of PSNH; Henry A. Clark, III, Managing Director of Solomon Brothers Inc.; James F. Callahan Jr., Certified Public Accountant; Prof. Joseph P. Kalt; Gary A. Long, Vice President of Customer Service

and Economic Development for PSNH; and Frank P. Sabatino, Vice President of Wholesale Marketing for NUSCO.

[3]The New Hampshire Municipal Association (NHMA) joined in Manchester's objection.

[4]In its Legal Memorandum, PSNH asserts that the Rate Agreement cannot be understood and applied correctly without considering the practical circumstances that gave rise to it. Memorandum. p.3. As noted above, PSNH has requested that we take official notice of the entire record in DR 89-244. To the extent that we deem it necessary to examine the "practical circumstances" giving rise to the Rate Agreement, the record in that proceeding will provide the most reliable and relevant evidence.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,244, 81 NH PUC 564, July 22, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,316, 81 NH PUC 693, Sept. 17, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,420, 81 NH PUC 898,

Nov. 25, 1996.

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[Go to End of 97204]

82 NH PUC 21

Re Public Service Company of New Hampshire

Additional applicant: Bio-Energy Corporation

DR 95-247
Order No. 22,479

New Hampshire Public Utilities Commission

January 15, 1997

ORDER granting conditional approval to a renegotiated power purchase agreement between an electric utility and a wood-fired biomass qualifying facility. Finding the original rate order to be in excess of market prices, the commission agrees that the contract should be revised. However, noting the impact on employment in the logging and chipping sectors that could be involved, the parties are directed to establish a mitigation or "forest opportunity" fund as part of their new agreement, by which to address such local economic issues.

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1. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements — Modification and renegotiation — Buydown of long-term rate contract — Factors — Contract prices as exceeding market rates — Ratepayer savings — Mitigation fund as component of buydown — Wood-fired biomass qualifying facility. p. 23.

2. EXPENSES, § 122

[N.H.] Electric utility — Purchased power — Buydown of long-term rate contract — Factors — Contract prices as exceeding market rates — Ratepayer savings — Recovery of associated renegotiation costs — Opportunity for but no guarantee of — 50/50 sharing of savings — Wood-fired biomass qualifying facility. p. 23.

3. COGENERATION, § 17

[N.H.] Contracts — Long-term agreements — Modification and renegotiation — Buydown of long-term rate contract — Factors — Contract prices as exceeding market rates — Conditions for approval — Establishment of mitigation fund — For employee retraining or lost market opportunities — Wood-fired biomass qualifying facility. p. 23.

APPEARANCES: Gerald M. Eaton, Esq. and Rath, Young and Pignatelli by M. Curtis Whittaker, Esq. for Public Service Company of New Hampshire; Brown, Olson and Wilson by Robert A. Olson, Esq. for Bio-Energy

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Corporation; Office of the Consumer Advocate by Michael W. Holmes, Esq. for 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

This matter comes before the New Hampshire Public Utilities Commission (Commission) pursuant to the Commission's responsibilities under RSA 362-C:3 to ensure that the provisions of the Rate Agreement between Northeast Utilities Service Company (NU) and the State of New Hampshire are properly implemented. Section 12 of the Rate Agreement requires NU to use its "best efforts" to renegotiate thirteen high-cost rate orders issued by the Commission pursuant to the mandates of the federal Public Utility Regulatory Policies Act of 1978 (PURPA) and the State Limited Electric Energy Producers Act (LEEPA), RSA 362-A.

On June 8, 1994, the New Hampshire Legislature enacted legislation which foreclosed the Commission from any action regarding the existing rate orders until December 1, 1994, during which time a Legislative committee undertook its own efforts to resolve the issue. See, Laws of 1994, Chapter 362, Section 14 (more commonly referred to as Senate Bill 790). The Legislature further prohibited the Commission from approving buyout arrangements if they were executed after April 6, 1994. RSA 362-A:4-b.

Seven of the 13 rate orders identified in the Rate Agreement have been renegotiated by PSNH and the small power producers and approved by the Commission. *See*, Order No. 21,190 (April 19, 1994) approving five hydropower agreements, with a savings to ratepayers of $5.2 to $5.6 million, on a net present value basis and Order No. 21,368 (September 23, 1994) approving

the buyouts of TIMCO, Inc. and Bristol Energy Corp., with a savings to ratepayers of $60 million, on a net present value basis.

On September 6, 1995, Public Service Company of New Hampshire (PSNH) filed with the Commission term sheets representing the essential financial terms of an agreement reached between PSNH and Bio-Energy Corporation (Bio-Energy), one of the six remaining rate orders of the original thirteen designated for renegotiation in Section 12. On January 29, 1996, PSNH filed with the Commission the completed contract between itself and Bio-Energy (Contract).

Bio-Energy's existing rate order was issued by this Commission in 1985. *Re Bio-Energy Corporation*, 70 NH PUC 557 (1985). The rate order required PSNH to purchase energy from Bio-Energy's wood-fired qualifying facility in Hopkinton for 30 years, at specified rates which escalate to 29.56 cents/kWh off-peak and 39.55 cents/kWh on-peak by the year 2014. *Id.*

On September 18 and 19 and October 7, 1996, the Commission heard testimony from PSNH, the New Hampshire Timberland Owners Association (NHTOA) and the Commission Staff (Staff) relative to the renegotiated purchase power contracts for all six of the remaining Section 12 rate orders. In addition, during the month of November 1996, PSNH, the six small power producers, OCA, NHTOA and Staff filed briefs or comments; throughout the docket, people involved in the wood industry also submitted comments. Staff delivered an offer of settlement to PSNH on November 27, 1996, which was not accepted.

Notwithstanding the fact that testimony was presented concerning all six of the remaining rate orders, this decision relates only to the Bio-Energy Contract. We are not yet prepared to rule on the remaining five contracts because the issues raised by those contracts are more problematic when balancing the level of savings against the risks shifted to ratepayers and the potential economic harm to the wood products industry. The holdings contained herein have no precedential value with respect to the five remaining contracts now pending.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH requested that the Contract, which results in a savings to ratepayers of $48 million on a net present value basis, be approved without condition by the Commission. PSNH requested that the Rate Agreement be amended to allow PSNH to use 90% of the projected savings achieved through the Contract to amortize the cost of the financings necessary to make the required payments to Bio-Energy under the Contract.

B. *OCA*

The OCA expressed concern that the size of the upfront payments to Bio-Energy under the

Contract might lead to a conflict with Senate Bill 790. The OCA's concern was based on the unavailability of a future revenue stream to finance any major repairs to the Bio-Energy facility that may be necessary in the future. Based on this uncertainty, the OCA requested a commitment from Bio-Energy's owners to continue to operate the facility. In all other respects the OCA agreed with the recommendation of Staff.

C. *NHTOA*

With reservations, the NHTOA supported the Contract in light of the alternative of continued litigation and the uncertainty such litigation would create in the wood products industry. The NHTOA took the position that the near term capacity reductions caused by all of the renegotiated purchase power contracts would have a significant economic impact on wood fuel suppliers and the wood products industry. Citing PSNH's testimony that these contracts would result in the direct loss of 84 jobs, NHTOA argued that none of the contracts complied with the legal obligations created under RSA 362-A:8,II(b).

NHTOA maintained that RSA 362-A:8,II(b) required the establishment of a "Forest Opportunity Fund" and requested that the Commission officially "sanction the establishment of such a fund."

D. *Bio-Energy*

Bio-Energy argued that the negotiated Contract was the only means of meeting the "public interest" standard established by the Legislature.

E. *Staff*

Staff recommended approval of the Bio-Energy Contract without condition, due to the level of the projected ratepayer savings achieved under the Contract. Staff asserted that because the Bio-Energy Contract accounts for approximately one-third of all savings projected in the six renegotiated contracts, the issue of "best efforts" should be resolved as it relates to this particular small power producer. Similarly, regarding "light loading," Staff recommended that neither NU nor Bio-Energy face liability on a retroactive or prospective basis for dispatch during light load periods. Staff did recommend, however, the creation of a mitigation fund to meet the concerns raised by the Legislature in RSA 362-A:8,II(b).

III. COMMISSION ANALYSIS

[1-3] The issue for consideration is whether it is in the public interest to replace Bio-Energy's existing rate order with the negotiated purchase power contract presented in this proceeding. In order to determine if this Contract is in the public interest, we must balance the savings achieved to PSNH and its ratepayers, the risk shifted to ratepayers pursuant to the terms of the Contract

and the factors we are required to consider in the analysis of such contracts under RSA 362-A:8.

Given these parameters, we have identified six issues that must be addressed in analyzing whether the Contract is in the public interest: a) PSNH's requirement that the Commission "guarantee recovery" of all sums expended by PSNH to consummate the new Contract with Bio-Energy, including financing costs and the costs of negotiations; b) PSNH's requested modification to the Rate Agreement to allow PSNH to retain 90% of the savings achieved under the new Contract until all sums expended

by PSNH to consummate the Contract with Bio-Energy are recovered; c) The guarantee requested by PSNH and Bio-Energy that neither the Commission nor any other state agency or branch of state government take any action that in any way limits or threatens PSNH's or Bio-Energy's recovery or receipt of the funds to be financed or received pursuant to the Contract; d) PSNH's requirement that the Commission find that NU and its agent, PSNH, have met the "best efforts" obligation under Section 12 of the Rate Agreement; e) A release of PSNH from any retrospective or prospective liability relating to the issue of "light loading" and the release of Bio-Energy from the prospective threat of dispatch during periods of light loading; and f) Consideration of the factors set forth in RSA 362-A:8 II (b).

A. Guarantee of Recovery

With regard to PSNH's request that we guarantee recovery of the sums expended to consummate the new agreement, we cannot provide such a guarantee, given the uncertainty of cost recovery as the electricity industry moves towards competition, as well as our inability to bind future Commissions. *See*, RSAs 374-F and 365:28. While we cannot "guarantee" that PSNH will recover all of these costs, we do believe PSNH is entitled to the opportunity to seek recovery of these monies.

In any case, these costs are subject to recovery in the same manner as other monies expended for or on account of a small power producer obligation assumed pursuant to PURPA or LEEPA in the soon to be restructured electric industry. *See*, RSA 374-F:3,XII(b).

With regard to the amortization of the costs expended to consummate the agreement, we believe PSNH should be allowed to retain a portion of the savings achieved under the Contract to amortize this debt and that the debt should be placed in the account maintained for deferral of small power producer costs made pursuant to Paragraph B.(D) of ENf of the Fuel and Purchase Power Adjustment Clause (FPPAC). Thus, we will recommend to the Attorney General, who retains the authority to modify the Rate Agreement, that a modification be made to the Rate Agreement providing for a sharing of the actual savings achieved under the Contract between PSNH and ratepayers until the costs of the Contract are amortized. Any such modification, however, shall not affect the methodology for recovery of Paragraph B.(D) deferrals. Thus, all carrying costs of the debts incurred to consummate the Contract will be recovered through base

rates, as opposed to FPPAC or any similar purchase power clause.

B. Percentage of Savings Retained by PSNH

With regard to the issue of the percentage of savings to be retained by PSNH under this proposed modification to the Rate Agreement, PSNH requested that it retain 90% of the savings over a seven year period. The testimony of NU/PSNH on this issue, however, revealed that a 50/50 sharing of savings would only extend the recovery period by one year and that full amortization would occur under either scenario well within the ten year period required for regulatory assets under Generally Accepted Accounting Principles. We will, therefore, recommend to the Attorney General a modification of the Rate Agreement allowing PSNH to retain only 50% of actual savings until the debt is retired.

The methodology for retiring this debt assumes the continuation of FPPAC or some similar power adjustment clause for a period of at least eight years, which may or may not be the case. Thus, to the extent this methodology for recovery conflicts with cost recovery methodologies that exist in a restructured electric industry, recovery of these costs must comport with the restructured industry, with the cost recovery mechanisms then in place, and be consistent with the discussion of cost recovery contained herein.

C. Request to Bind Other Entities

We do not believe we have the authority to bind the State of New Hampshire, other state agencies or future Public Utilities Commissions. Therefore, we cannot provide as broad a

guarantee as PSNH has requested. It is possible that the Commission could take an action in a future docket that could indirectly impair PSNH's ability to recover these monies or threaten its financial viability, thereby indirectly impairing Bio-Energy's receipt of these monies.[1(9)] To the extent of our authority under current law, however, and without in any way restricting the ability of the Commission to take action in future dockets, we will accept the condition that this Commission will not take any action that directly threatens the recovery or receipt of these monies under the Contract, so long as that action is consistent with laws then in effect.

D. Best Efforts

With regard to "best efforts," Staff recommended that we not undertake an investigation into whether NU/PSNH used its best efforts under section 12 of the Rate Agreement with respect to Bio-Energy, based on the level of savings achieved under the Contract. This renegotiated Contract results in savings of approximately $48 million on a net present value basis. When

balancing that ratepayer benefit against the costs and uncertainty of litigation over best efforts, we believe it is appropriate to forego further inquiry into best efforts as it relates to the Bio-Energy Contract. We will accept Staff's recommendation to relieve PSNH of any liability under the best efforts clause as it relates to renegotiation of the Bio-Energy Contract.

E. Light Loading

With regard to the issue of "light loading," for the reasons cited in section 4 above, we will accept Staff's recommendation that NU/PSNH and Bio-Energy be released from all exposure for energy purchases from Bio-Energy during periods of light loading. This release would apply both retroactively and prospectively as it relates to the renegotiated Bio-Energy Contract.

F. Mitigation of Impact

The remaining issue for our examination of the public interest standard is consideration of the factors set forth in RSA 362-A:8. RSA 362-A:8,II(b) provides, in relevant part, that the "commission shall, in all decisions affecting qualifying small power producers ... consider the following factors in its decision:

> (1) The economic impact upon the state, including, but not limited to, job loss or creation through the utilization of indigenous fuels for electric generation.
>
> (2) The community impact including, but not limited to, property tax payments and job creation.
>
> (3) Enhanced energy security by utilizing mixed energy sources, including indigenous and renewable electrical energy production.
>
> (4) Potential environmental and health-related impacts."

We do not believe the Contract adequately addresses these concerns. Specifically, the new Contract does not address job losses that are expected to result from this new Contract in the logging and chipping sectors of the economy or the overall economic impact of the Contract on those sectors of the economy that rely on the Bio-Energy facility. In order to meet the concerns of the Legislature embodied in the foregoing statute, we will require the establishment of a mitigation or "Forest Opportunity Fund" to address these concerns as requested by the NHTOA.

We will direct PSNH, Bio-Energy and NHTOA, in consultation with OCA and Staff, to develop a fund that addresses these legislative concerns. The details of the fund, such as the level of funding, the source of the funding, access to the fund and its operation must be filed with the Commission within 30 days of the date of this order for our review and approval.

Although we have included PSNH in the development of the fund, it is our belief that Bio-Energy Corporation should bear a greater portion of the cost than should PSNH or its ratepayers to establish such a fund. Bio-Energy has received payments for its energy output that

are substantially in excess of market rates for power for the last twelve years. While it may

have no legal obligation to support such a fund, we believe Bio-Energy has an obligation to its employees, those industries it helped to create, the individuals that have come to rely on those industries for their livelihood, and the ratepayers and citizens of State of New Hampshire to moderate the effects of any reduction in production by the facility. We believe this is the type of action a principled corporate citizen should take in recognition of the benefits it has derived from a community.

G. Acceptance of Conditions

We realize that we have added conditions to the Contract. Accordingly, if either NU/PSNH or Bio-Energy chooses to withdraw from the Contract they have 30 days from the date of this order to notify us of that fact. Any such notification shall indicate which party chose not to consummate the agreement and the specific reason for making that choice.

Based upon the foregoing, it is hereby

ORDERED, that the purchase power contract and the interconnection agreement negotiated between Public Service Company of New Hampshire and Bio-Energy Corporation to replace Bio-Energy Corporation's existing rate order is APPROVED subject to the conditions set forth above; and it is

FURTHER ORDERED, that if either Northeast Utilities Service Company/Public Service Company of New Hampshire or Bio-Energy Corporation chooses to withdraw from the negotiated Contract because of any of these conditions they shall notify the Commission of that fact within 30 days of the date of this order; and it is

FURTHER ORDERED, that any such notification shall indicate which party chose not to consummate the agreement and the specific reason for making that choice; and it is

FURTHER ORDERED, that Bio-Energy Corporation and Public Service Company of New Hampshire establish a fund utilizing the input of the New Hampshire Timberland Owners Association to mitigate the effect of this Contract on Bio-Energy's employees, those industries it helped to create, and the individuals that have come to rely on those industries for their livelihood, and that the details of that fund be provided to the Commission within 30 days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1997.

FOOTNOTES

[1]For example, the Commission could disallow a significant replacement power cost due to management imprudence, which in turn could threaten PSNH's ability to meet financial obligations generally.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-002, Order No. 21,190, 79 NH PUC 213, 153 PUR4th 196, Apr. 19, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 93-179, Order No. 21,368, 79 NH PUC 531, Sept. 23, 1994.

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NH.PUC*01/15/97*[97205]*82 NH PUC 26*Kearsarge Telephone Company

[Go to End of 97205]

82 NH PUC 26

Re Kearsarge Telephone Company

DS 96-413
Order No. 22,480

New Hampshire Public Utilities Commission

January 15, 1997

ORDER suspending a local exchange telephone carrier's proposed introduction of digital services and of integrated services digital network (ISDN) service.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for digital services and integrated services digital network (ISDN) service — Suspension — To allow for

adequate investigatory period — Local exchange carrier. p. 27.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — As to digital services and integrated services digital network (ISDN) service — Local exchange telephone carrier. p. 27.

BY THE COMMISSION:

ORDER

[1, 2] On December 16, 1996, TDS Telecom on behalf of its affiliate, Kearsarge Telephone Company (Kearsarge), filed tariff pages and supporting materials for Integrated Services Digital Network (ISDN) Service - Primary Rate Interface (PRI) which offers customers a total of 24 digital communications channels within a single physical facility. Included within the 24 channels are 23 Bearer or B channels and one Delta or D channel. The B channel is a bi-directional synchronous channel capable of supporting digital transmission speeds of 64 kilobits per second (64 kbps) for both voice and data transmission simultaneously over the same digital facility. The D channel is a 64 kbps digital signaling channel that is used to transport signaling for the B channels. The configuration is commonly referred to as 23B+D.

Staff has conducted a preliminary review of the filing, but requests more time in which to make a recommendation. We will grant Staff's request for more time, but direct Staff to make a final recommendation no later than February 6, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Kearsarge Telephone Company are hereby suspended pending further Commission review:

Index, Fifth Revised Sheet 1

Index, Fourth Revised Sheet 2

Section 2, Original Sheets 16-26.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1997.

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82 NH PUC 27

Re Meriden Telephone Company

DS 96-414
Order No. 22,481

New Hampshire Public Utilities Commission

January 15, 1997

ORDER suspending a local exchange telephone carrier's proposed introduction of digital services and of integrated services digital network (ISDN) service.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for digital services and integrated services digital network (ISDN) service — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 27.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — As to digital services and integrated services digital network (ISDN) service — Local exchange telephone carrier. p. 27.

BY THE COMMISSION:

ORDER

[1, 2] On December 16, 1996, TDS

Telecom on behalf of its affiliate, Meriden Telephone Company (Meriden), filed tariff pages and supporting materials for Integrated Services Digital Network (ISDN) Service - Basic and

Primary Rate Interface (BRI and PRI, respectively). ISDN-PRI offers customers a total of 24 digital communication channels within a single physical facility. Included within the 24 channels are 23 Bearer or B channels and one delta or D channel. The B channel is a bi-directional synchronous channel capable of supporting digital transmission speeds of 64 kilobits per second (kbps) for both voice and data transmission simultaneously over the same digital facility. The D channel is a 64 kbps digital signalling channel that is used to transport signaling for the B channels. The configuration is commonly referred to as 23B+D.

Meriden also filed for ISDN-BRI. The ISDN-BRI differs by utilizing up to two B channels and one D channel. The D channel is a 16 kbps digital signaling channel used to transport signaling for the B channel with a maximum packet transmission rate of 9.6 kbps throughput.

Staff has conducted a preliminary review of the filing, but requests more time in which to make a recommendation. We will grant Staff's request for more time, but direct Staff to make a final recommendation no later than February 6, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Meriden Telephone Company are hereby suspended pending further Commission review:

Index, Third Revised Sheet 2

Section 7, Second Revised Sheet 1

Section 7, Original Sheets 4-19.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1997.

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NH.PUC*01/15/97*[97207]*82 NH PUC 28*Chichester Telephone Company

[Go to End of 97207]

82 NH PUC 28

Re Chichester Telephone Company

DS 96-415
Order No. 22,482

New Hampshire Public Utilities Commission

January 15, 1997

ORDER suspending a local exchange telephone carrier's proposed introduction of digital

services and of integrated services digital network (ISDN) service.

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1. SERVICE, § 433

[N.H.] Telephone — Proposal for digital services and integrated services digital network (ISDN) service — Suspension — To allow for adequate investigatory period — Local exchange carrier. p. 28.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed service offerings — To allow for adequate investigatory period — As to digital services and integrated services digital network (ISDN) service — Local exchange telephone carrier. p. 28.

BY THE COMMISSION:

ORDER

[1, 2] On December 16, 1996, TDS Telecom on behalf of its affiliate, Chichester Telephone Company (Chichester), filed tariff pages and supporting materials for Integrated Services Digital Network (ISDN) Service - Basic and Primary Rate Interface (BRI and PRI, respectively). ISDN-PRI offers customers a total of 24 digital communication channels within a single physical facility. Included within the 24 channels are 23 Bearer or B channels and one delta or D channel. The B channel

is a bi-directional synchronous channel capable of supporting digital transmission speeds of 64 kilobits per second (kbps) for both voice and data transmission simultaneously over the same digital facility. The D channel is a 64 kbps digital signalling channel that is used to transport signaling for the B channels. The configuration is commonly referred to as 23B+D.

Chichester also filed for ISDN-BRI. The ISDN-BRI differs by utilizing up to two B channels and one D channel. The D channel is a 16 kbps digital signaling channel used to transport signaling for the B channel with a maximum packet transmission rate of 9.6 kbps throughput.

Staff has conducted a preliminary review of the filing, but requests more time in which to make a recommendation. We will grant Staff's request for more time, but direct Staff to make a final recommendation no later than February 6, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Chichester Telephone Company are hereby suspended pending further Commission review:

Index, Eighth Revised Page 1

Index, Fifth Revised Page 1

Section 2, Original Sheets 4-22.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 1997.

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NH.PUC*01/17/97*[97208]*82 NH PUC 29*Bretton Woods Telephone Company

[Go to End of 97208]

82 NH PUC 29

Re Bretton Woods Telephone Company

DR 96-411
Order No. 22,483

New Hampshire Public Utilities Commission

January 17, 1997

ORDER approving a local exchange telephone carrier's proposed special Centrex service contract with a ski resort, so as to prevent local network bypass.

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1. SERVICE, § 463

[N.H.] Telephone — Private branch exchanges as substitutes for Centrex service — Special Centrex service arrangements to prevent local network bypass — Between telephone carrier and ski resort. p. 29.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and ski resort — Prevention of local network bypass — Cost analysis as supporting contract. p. 29.

BY THE COMMISSION:

ORDER

On December 13, 1996, Bretton Woods Telephone Company (BWTC) filed with the New Hampshire Public Utilities Commission (Commission) a special contract providing for Centrex service to the Bretton Woods Ski Area (the Ski Area). The filing was completed by an amendment filed on December 18, 1996. The filing is made pursuant to RSA 378:18.

In support of its petition, BWTC filed a brief contract overview, and a cost analysis associated with the proposed contract. The special contract filing was not accompanied by a Motion for Proprietary Treatment. The special circumstances in this case are that the Ski Area was formerly a Centrex customer and when the Ski Area converted to a private branch exchange (PBX) customer BWTC was left with considerable stranded investment, which was largely not reusable because of the unique circumstances of the rural and seasonal nature of the BWTC service area.

[1, 2] The Commission has approved several special contracts for Centrex service. One purpose of our approval was to allow telephone utilities to respond to competitive pressures, specifically the availability of competitive substitutes for Centrex in the form of PBX. Permitting a special contract enables BWTC to retain

revenues which contribute to shared and common costs.

BWTC's cost analysis included an opportunity cost analysis. That is, BWTC compared the contribution it would earn from providing Centrex if it won the competitive bid relative to the contribution it would earn from providing the PBX trunks and related services to a competitor if BWTC had lost the bid.

The Ski Area must pay the Federal Communications Commission's mandated End User Common Line charge, as do other business customers. BWTC has provided cost study details that, subject to a number of location-specific, engineering and business assumptions, demonstrate that the proposed rates for this service, when aggregated, exceed the case-specific incremental costs. The detail and associated expense of the submitted study is reasonable in the context of the de minimis revenue impact of $275.67.

Staff recommends Commission approval of the special contract. Staff makes this recommendation after evaluation of the assumptions on which the cost analysis is founded, many involving multi-year forecasts of growth, technology deployment, and competitive alternatives.

We have reviewed the petition and the Staff recommendation. We find approval of the proposed special contract to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that BWTC's Special Contract with the BWTC is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by BWTC of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by BWTC during the life of the Special Contract, the Commission may consider whether any changes should be made to the revenue requirements as a result of the discounted rates afforded the Ski Area.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of January, 1997.

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NH.PUC*01/20/97*[97209]*82 NH PUC 30*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97209]

82 NH PUC 30

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-220
Order No. 22,484

New Hampshire Public Utilities Commission

January 20, 1997

ORDER approving a proposed merger of a local exchange telephone carrier into Bell Atlantic Corporation. However, such approval is contingent upon the post-merger carrier complying with quality-of-service standards as promulgated by the National Association of Regulatory Utility Commissioners and on the new carrier continuing to maintain a strong local presence through retention of a state-specific company officer.

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1. CONSOLIDATION, MERGER, AND SALE, § 23

[N.H.] Grounds for approval — Economy and efficiency — Economies of scale — Elimination of duplicative research and development efforts — Local exchange telephone carriers. p. 33.

2. CONSOLIDATION, MERGER, AND SALE, § 56.1

[N.H.] Terms and conditions — Service requirements — Compliance with nationally recognized quality-of-service standards — Maintenance of state-specific company officer — Continuation of local operational control — Local exchange telephone carriers. p. 33.

3. TELEPHONES, § 3

[N.H.] Operations — On post-merger basis — Compliance with nationally recognized quality-of-service standards — Maintenance of state-specific company officer — Continuation

of local operational control — Local exchange carriers. p. 33.

APPEARANCES: Victor D. DelVecchio, Esq. for NYNEX; Glass and Seigle by Robert Glass, Esq. for MCI Telecommunications Corporation; David A. Fagundus, Esq. for AT&T Communications of New England; Office of Consumer Advocate by Thomas S. Lyle for residential ratepayers; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

New England Telephone and Telegraph Company (NET) filed with the New Hampshire Public Utilities Commission (Commission), on July 3, 1996, a petition for Approval to the Extent Necessary of Proposed Merger of A Wholly-Owned Subsidiary of Bell Atlantic Corporation into NYNEX Corporation (Petition). According to the Petition, Bell Atlantic Corporation (Bell Atlantic) will create a new subsidiary that will merge with and into NYNEX. NYNEX will survive the merger as a wholly-owned subsidiary of Bell Atlantic, and after the merger will continue to own New York Telephone and New England Telephone (NET).[1(10)]

The filing raises a number of issues, among them: whether the transfer of control of NYNEX to Bell Atlantic will have an adverse effect on the customers of NYNEX in New Hampshire, including any effect on rates, services and service quality; the effect, if any, on the affiliate agreements presently in existence for NYNEX; the impact on NYNEX's financial structure; the impact, if any, on the emergence of competition in the New Hampshire telecommunications market; the rate impact and accounting treatment of merger costs and employee downsizing; and, the extent of the Commission's jurisdiction regarding the Petition.

MCI Telecommunications Corporation (MCI) and AT&T Communications of New England (AT&T) sought and were granted full intervention. Attorney Mark Rufo, the Communications Workers of America, and Citizens for a Sound Economy (CSE) sought full intervenor status but, because they were not present at the prehearing conference, they were granted limited intervention. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. In addition, the Commission directed NYNEX to arrange for a Bell Atlantic representative familiar with the proposed merger and proposed post-merger operations to be present at the first day of hearings. *See*, Order No. 22,381 (October 28, 1996).

NYNEX, on September 12, 1996, filed supplemental comments responding to issues raised in the Order of Notice and on October 10, 1996, filed direct testimony of William F. Heitmann regarding the merger overall, Michael J. McCluskey regarding New Hampshire operations and William E. Taylor of National Economic Research Associates regarding competition and the economics of the merger. AT&T submitted direct testimony of Michael J. Morrissey on November 19, 1996 regarding potentially anti-competitive effects of the merger. Staff filed direct testimony of Todd M. Bohan regarding the economics and potential anticompetitive effects of the merger and Kathryn M. Bailey regarding quality of service standards on November 22, 1996. Ms. Bailey supplemented her testimony on December 2, 1996.

NYNEX sought proprietary treatment over certain information, filing an initial motion for protection on October 7, 1996 that was subsequently withdrawn and replaced by a revised motion for proprietary treatment filed on November 14, 1996. All full intervenors and Staff either concurred or took no position on the revised motion. Mr. Rufo objected. The Commission, at its November 25, 1996 public meeting, granted the revised confidentiality motion as being consistent with RSA 91-A:5 and N.H. Admin. Rules, Puc 208.

Limited intervenor Mr. Rufo, on November 4, 1996, served on NYNEX, with copies to the Commission, interrogatories and requests for production of documents. He also filed a request that the full Commission hear the case, that two-thirds vote of the shareholders was required pursuant to RSA 374:32 and that the proceeding be held in abeyance until NYNEX stated it would accede to Commission jurisdiction and that such a legal determination was beyond the proper authority of the Commission. NYNEX objected to the request that a vote of shareholders be taken, noting that there was in fact a shareholder vote, at which over 95% of NYNEX shareholders approved the merger. Finally, NYNEX objected to the jurisdictional motion,

arguing that the legal issue of the Commission's jurisdiction was well within the purview of the Commission to determine and NYNEX should not be forced to stipulate to jurisdiction over the merger transaction.

The Commission, on November 25, 1996, granted the request for a full Commission to hear the case. It denied the request for discovery, as Mr. Rufo is a limited intervenor. It also denied the request for a shareholder vote, noting that the petition stated there was no transfer of leases or property which would compel the need for a shareholder vote and, in addition, NYNEX's shareholders had already voted by 95.7% to approve the merger, according to NYNEX's objection. Finally, the Commission denied the request to hold the matter in abeyance pending resolution of the jurisdictional issue raised by NYNEX's stipulation. The Commission found that it was not improper for NYNEX to refuse to stipulate that this particular transaction if it generally believed the Commission had no jurisdiction under its statutory authority.

Mr. Rufo moved that he be granted full intervenor status and that NYNEX be compelled to respond to his interrogatories. He made no showing as to why he should be a full intervenor, and why the procedural schedule should be extended to accommodate his discovery request. Because the docket was rescheduled for hearings to begin December 2, 1996, the Commission denied both requests but encouraged Mr. Rufo to discuss with OCA and Staff his concerns, as is customary with limited intervenors.

The Commission heard testimony on December 2, 9 and 16, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

A. *NYNEX*

NYNEX testified that the proposed merger would result in the creation of the second largest telecommunications corporation in the United States, and would serve 12 states in the Middle Atlantic and Northeast regions, from Virginia to Maine. The merged entity, to be known as Bell Atlantic, would be governed by a Board of Directors made up of an equal number of representatives of NYNEX and the pre-merger Bell Atlantic. The merged entity would serve approximately 36.96 million access lines, employ over 133,000 people and have $51 billion in assets and $27.8 billion in operating revenues.

Approximately 3,000 employees are expected to lose their jobs in the merger through early retirements or termination. The personnel reductions will be at the management level and will be split about evenly between the two entities. NYNEX, therefore, will see a reduction of approximately 1,500 people, none of whom are responsible for New Hampshire operations such as installations or repairs.

NYNEX anticipates the merger will cost approximately $700 to $900 million to implement over the next three years, primarily due to the costs of severance packages, relocations and integration of the two business entities. NYNEX anticipates the merger to result in a savings to the companies of approximately $600 million per year by the third year, ultimately growing to $850 to $900 million per year. Approximately one-half of the savings will be due to personnel reductions, the other half due to consolidation of operations and systems and elimination of

redundancies.

Mr. McCluskey explained that a significant difference in the reorganized structure could be that the primary responsibility for construction, engineering, installation and repair may no

longer rest with the local state officer.

The legal standard for a merger in New Hampshire is that it cause "no net harm." *See, Re Eastern Utility Associates*, 96 NH PUC 236, 241 (1991). NYNEX testified that the merger would cause no net harm and in fact would result in benefits to customers in that the merged entity would be better equipped to offer new services, reduce pressure on price increases because of savings, and maintain a strong presence in a competitive market.

NYNEX opposed the Staff's recommendation that quality of service standards, based on those developed in 1992 by the National Association of Regulatory Commissioners (NARUC), be adopted along with automatic refund provisions if the standards are not met over a particular period of time. NYNEX argued that it was inappropriate to address such a requirement in this docket, that it was not necessary and that it was premature given further work needed to be done on the standards.

B. *AT&T and MCI*

AT&T filed testimony raising concerns about the potential for anti-competitive effects of the merger of two large Regional Bell Operating Companies (RBOCs) that otherwise would appear to have been competitors in the evolving competitive market. MCI voiced similar concerns at the pre-hearing conference but did not file testimony.

C. *OCA*

OCA did not file testimony in the docket but questioned witnesses regarding the potential loss of competition due to the merging of two large RBOCs. OCA also challenged NYNEX's assertion of savings to be achieved by the merger and questioned why ratepayers would not see a drop in rates if these benefits were to be achieved.

D. *Staff*

Staff witness Bohan questioned some of the assertions of benefits to be achieved by the merger and raised concerns that the merger of two RBOCs could diminish competition in the region rather than promote it as NYNEX asserts. Dr. Bohan also recommended that if the Commission were to approve the merger, it should do so conditionally, pending determination by

the Department of Justice (DOJ) and/or the state Attorneys General regarding the antitrust implications of the merger. Witness Bailey testified that the merger created a potential for net harm in the form of diminished service quality, given the merged company's need to concentrate on changeover of systems and reorganization of personnel, and the even smaller voice of New Hampshire's customers in a company that would be doubled in size. Ms. Bailey recommended adoption of the NARUC quality of service standards to ensure that the merged entity did not provide a lesser quality of service but would improve service that had been slipping in key categories. She also recommended an automatic refund system by which the merged company would refund certain amounts of customers' basic exchange charges in the event service fell below the standards for a specified number of months.

III. COMMISSION ANALYSIS

[1-3] We have reviewed the testimony and argument of the parties and Staff and will approve the proposed merger between NYNEX and Bell Atlantic, with conditions. Based upon the representations of NYNEX regarding the potential savings due to consolidation of management level positions and other duplicative operations, such as research and computer systems, the merger appears to produce benefits for the merged company and, presumably, for customers in an increasingly competitive environment. Although we accept NYNEX's testimony regarding benefits, we are concerned that there is also a potential for harm as a result of the merger and, therefore, will impose three conditions to ensure that harm does not occur.

First, the merger is approved subject to our review of the findings, if any, of the Department of Justice (DOJ) and/or the state Attorneys General. We will instruct NYNEX to contact us upon receipt of any determination by DOJ and/or the state Attorneys General to approve,

disapprove or condition the merger. We reserve the right to modify our approval and in fact reject the merger, if appropriate, after review of any finding made by either entity.

Second, we agree with Staff that the merger could result in harm to ratepayers, due to the necessary disruption of operations during the implementation of the merger. For that reason, we will grant Staff's request to adopt the NARUC-based quality of service standards (attached hereto) for the merged entity's operations in New Hampshire. While NYNEX has consistently met many of these standards, in some significant categories it is performing below acceptable levels and in others the trend has been a drop in service benchmarks. This has been a concern of the Staff well before the merger was announced, though the merger makes Staff's concerns all the more compelling. We will require, in order to ensure that ratepayers are not harmed as a result of the merger, that the standards as proposed by Staff be adopted.

We understand that revisions to the standards had been under consideration by NARUC. If the standards are amended in any way, we direct Staff to evaluate the changes, in consultation with the company and OCA, and make recommendations regarding the need to amend the

standards adopted herein. We also recognize that the individual local exchange carriers (LECs) are not covered by these standards. We direct Staff to investigate over the next six months whether quality of service standards should be imposed on the other incumbent LECs and/or competitive LECs authorized by N.H. Admin. Rules, Puc Chapter 1300.

We will not adopt the automatic refund provision Staff proposed. If the merged company fails to meet the standard in New Hampshire for the prescribed period of time, we fully expect Staff or other entities to request remedial action, most likely in the form of a show cause proceeding. Further, if there is evidence that service quality is dropping below current levels, though remaining above the standard, we direct Staff to contact the company and obtain a satisfactory explanation as to the cause of the decline and the remedial action necessary to bring the level of performance back to meet or exceed current levels. In those cases in which NYNEX is now exceeding the NARUC standards, the standards should not be considered a new, lower target for performance.

Third, at the hearing we obtained commitments from NYNEX and Bell Atlantic to maintain a strong local presence in New Hampshire with real authority, which is critical to our approval of the merger. We consider this local presence and local autonomy to be extremely important in order to ensure that New Hampshire customers receive the full benefits of this merger and that New Hampshire and its interests are not neglected in the merged company. It appears from the testimony of the Bell Atlantic witness, Daniel J. Whelan, that Bell Atlantic has operated under a corporate philosophy regarding the state operating companies that is similar to that of NYNEX, with a state officer vested with considerable authority over operations, budget matters and regulatory filings. We have been persuaded by NYNEX and Bell Atlantic testimony that the integration of the two entities should be relatively uncomplicated on this issue and we should not see a significant change in the role of the state officer in New Hampshire. Our approval is conditioned on the acceptance of the testimony that in the merged entity, the state officer's role in New Hampshire will not be significantly changed or diminished. Specifically, the primary responsibility for construction, engineering, installation and repair under the reorganized structure would rest with the local state officer.

Based upon the foregoing, it is hereby

ORDERED, that the proposed merger between NYNEX and Bell Atlantic is CONDITIONALLY APPROVED as delineated herein; and it is

FURTHER ORDERED, that NYNEX shall forward to the Commission the Department of Justice and the state Attorneys General findings, if any, for our review and further consideration.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1997.

January 21, 1997

RE: DR 96-220; New England Telephone & Telegraph Company/NYNEX

To the Parties:

Enclosed is a copy of Attachment 1, Quality of Service Standards, to Order No. 22,484 (January 20, 1997). Attachment 1 was inadvertently omitted from Order No. 22,484.

Very truly yours,

Thomas B. Getz
Executive Director and Secretary

ATTACHMENT 1

QUALITY OF SERVICE STANDARDS

1. GENERAL

1.1 Each exchange carrier shall provide telecommunications service to the public in accordance with its tariffs on file with the commission.

1.2 The exchange carrier shall employ prudent management and engineering practices, including but not limited to the employment of reliable procedures for forecasting future demand for service, conducting studies, and maintaining records to the end that reasonable margins of facilities and adequate personnel are available with the objective that service will meet the quality standards described herein.

1.3 Each exchange carrier shall make traffic studies and maintain records as required to determine that sufficient equipment and an adequate operating force are provided at all times including the average busy hour, busy season.

2. LOCAL EXCHANGE SERVICE
STANDARDS AND SURVEILLANCE
LEVELS

These rules establish service standards which shall be met by an exchange carrier. The rules also include surveillance levels which indicate a need for the utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. In the event that a specific service provided by the utility is not covered by these rules, the utility will be expected to meet generally accepted industry standards for quality on that service.

2.1 Service Measurements

Each exchange carrier shall make regular, periodic measurements to determine the level of service for each item included in these rules. Each utility shall provide the commission or its representatives with the measurements and summaries thereof for *the items included herein each month, by exchange*. Records of these measurements and summaries shall be retained by the utility for a period of at least two years.

2.2 Installation of Service

a. Ninety percent of the exchange carrier's primary service order installations (e.g. dial tone installations) shall be completed within three working days. The intervals commence with the receipt of application unless a later date is requested by the applicant.

Surveillance Level: Eighty-five percent in an exchange area for a period of three consecutive months.

b. Ninety-five percent of the exchange carrier's service orders shall be filled no later than 30 days after the customer has made such application except where the customer requests a later date. In the event of the exchange carrier's inability to so fill such an order, the customer will be advised and furnished the date when it will be available.

Surveillance Level: Ninety percent in an exchange area for a period of three consecutive months.

c. Each exchange carrier shall make commitments to customers as to the date of installation of all service orders and ninety percent of such commitments shall be met excepting customer caused delays and acts of God.

Surveillance Level: Eighty-eight percent in an exchange area for a period of three consecutive months.

2.3 Operator Handled Calls

a. All operator handled calls shall be carefully supervised. Calls requiring timing shall be accurately timed.

b. Each exchange carrier shall maintain adequate personnel to provide an average operator answering performance on a monthly basis as follows:

1. *Ninety* percent of toll and local assistance operator calls answered within ten seconds.

Surveillance Level: *Eighty-five* percent for an answering location for a period of three consecutive months.

2. Eighty percent of directory assistance and intercept calls shall be answered within ten seconds.

Surveillance Level: *Eighty percent* at an answering location for a period of three consecutive months.

3. Eighty-five percent of repair service calls, calls to the business office and other calls shall be answered within 20 seconds.

Surveillance Level: Eighty percent for an answering location for a period of three consecutive months.

4. An "answer" shall mean that the operator or exchange carrier representative is ready to accept information necessary to process the call. An acknowledgement that the customer is waiting on the line shall not constitute an "answer."

2.4 Network Call Completion Requirements

Sufficient central office and interoffice channel capacity and equipment shall be provided by the exchange carrier to meet the following requirements during the average busy season, busy hour without encountering blockages or equipment irregularities:

a. Dial tone within three seconds on ninety-eight percent of calls.

Surveillance Level: Failure to achieve *ninety-eight* percent for a central office or remote switch for a period of three consecutive months.

b. Proper completion of ninety-seven percent of correctly dialed intraoffice calls.

2.5 Transmission and Noise Requirements

All local exchange facilities shall meet accepted industry design standards and shall conform to the following transmission design parameters:

a. Subscriber Lines

All newly constructed and rebuilt subscriber lines shall be designed for no more than 8 dB transmission loss at 1000 + 20 Hz from the serving central office to the customer premises network interface. All subscriber lines shall be maintained so that transmission loss does not exceed 10 dB. Subscriber lines shall in addition be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on ninety percent of the lines. Subscriber lines shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message

weighting).

b. PBX and Multiline Trunk Circuits

PBX and multiline trunk circuits shall be designed and maintained so that transmission loss from the central office to the point of connection with customer equipment shall not exceed 5 dB, or 6.5 dB loss if provided through a coupling device provided by the exchange carrier. These circuits shall in addition be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on ninety percent of the lines. They shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

c. Interoffice - Local Calling Area

Excluding calls between central offices in the same building, 95% of the measurements on interoffice calls within a local calling area shall have from 2 to 10 dB transmission loss at 1000 ± 20 Hz and no more than

Page 36

30 dB metallic noise above reference noise level ("C" message weighting). This measurement shall be made from the line terminals of the originating central office to the line terminals of the terminating central office.

d. Intra-LATA Toll Calls

Ninety-five percent of the transmission measurements on interexchange calls established via trunk-side access connections shall have between 3 and 9 dB loss at 1000 ± 20 Hz, and shall have no metallic noise greater than 30 dB above reference noise level ("C" message weighting).

2.6 Customer Trouble Reports

a. Service shall be maintained by the exchange carrier in such a manner that the monthly rate of all customer trouble reports, excluding reports concerning interexchange calls or nonregulated customer premises equipment, does not exceed *two* per 100 local access lines per month per exchange.

Surveillance Level: Exceeding *2.5* per 100 local access lines, per month, per

exchange, for a period of three consecutive months.

b. At least ninety percent of out of service trouble reports on service provided by the exchange carrier shall be cleared within twenty-four hours, excluding Sunday, except where access to the customer's premises is required but not available, or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers.

Surveillance Level: Eighty-five percent in an exchange area for a period of three consecutive months.

c. The exchange carrier shall provide to the customer a commitment time by which the trouble will be cleared. At least ninety percent of the repair commitments shall be met excepting customer caused delays and acts of God affecting large groups of customers.

Surveillance Level: Eighty-five percent in an exchange area for a period of three consecutive months.

FOOTNOTES

[1]Though NYNEX and NET are separate entities, we will, for the purposes of this order, refer to them collectively as "NYNEX."

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DE 96-220, Order No. 22,381, 81 NH PUC 809, Oct. 28, 1996.

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NH.PUC*01/20/97*[97210]*82 NH PUC 37*Northern Utilities, Inc.

[Go to End of 97210]

82 NH PUC 37

Re Northern Utilities, Inc.

DR 97-004
Order No. 22,485

New Hampshire Public Utilities Commission

January 20, 1997

MOTION by natural gas local distribution company for confidentiality of the names of its gas suppliers as well as the terms of associated supply agreements in the course of its pending cost-of-gas adjustment proceeding; granted.

Page 37

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — For the duration of a pending cost-of-gas adjustment proceeding — Relative to the identities of gas suppliers — Relative to certain terms of associated purchase agreements — Factors — Competitive markets and sensitivity of commercial information — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 38.

BY THE COMMISSION:

ORDER

On January 10, 1996, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment of information that would identify Northern's gas suppliers and certain terms of the gas supply agreements negotiated by Northern with its suppliers. Northern seeks protection of this information as it relates to the pending revised Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket.

Northern states that its revised CGA filing contains confidential commercial information and trade secrets which fall within the exemption from public disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08. Northern also states that it does not disclose the identity of its suppliers or the terms of its gas supply agreements to anyone outside its corporate affiliates and representatives.

[1] The Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on the company's

representations, under the balancing test we have applied in prior cases, *e.g., Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits to Northern of non-disclosure in this case outweigh the benefits to the public of disclosure. The information should, therefore, be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the revised CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the revised CGA identifying information and contractual terms, Northern shall submit a redacted revised CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that, in future filings, Northern shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Puc 204.08(b); and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 1997.

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NH.PUC*01/20/97*[97211]*82 NH PUC 38*Contoocook Valley Telephone Company

[Go to End of 97211]

82 NH PUC 38

Re Contoocook Valley Telephone Company

DS 96-318
Order No. 22,486

New Hampshire Public Utilities Commission

January 20, 1997

ORDER approving a local exchange telephone carrier's proposed tariff revisions which would create separate categories of customer calling services (CCS), based on basic, enhanced, and advanced service features. The carrier may now introduce such services as remote call forwarding, call return, call trace, repeat dialing, and Caller ID. Moreover, the carrier voluntarily reduces its rates for certain of its existing CCS options.

1. SERVICE, § 449

[N.H.] Telephone — Special services — Custom calling service (CCS) — Separate categories for basic, enhanced, and advanced CCS — Introduction of call return, call trace, remote call forwarding, and Caller ID services — Associated line blocking services — Privacy concerns — Local exchange carrier. p. 41.

2. RATES, § 553

[N.H.] Telephone rate design — Custom calling service (CCS) — Separate tariffs for basic, enhanced, and advanced CCS — Introduction of call return, call trace, remote call forwarding, and Caller ID services — Promotional discounts — Associated line blocking charges — Voluntary rate reductions in existing CCS rates — Service order and connection charges — Local exchange carrier. p. 41.

BY THE COMMISSION:

ORDER

On September 30, 1996, Contoocook Valley Telephone Company (Contoocook or the Company) filed tariff pages revising the Custom Calling Services (CCS) section of its tariff by creating three types of CCS: Basic, Enhanced, and Advanced features, including establishment of CLASS features, and providing for a reduction in basic Custom Calling Service rates for effect October 31, 1996. In support of its filing, the Company filed forecasts of revenues and expenses associated with the proposed features. On October 30, 1996, the Commission issued Order No. 22,382, suspending the proposed tariff pages to allow Staff time to review the filing and supporting materials. On January 10, 1997, the Commission received a letter from Mr. Dennis D. Conley, Contoocook Valley Telephone's Director of Customer Services, urging the Commission to expedite its decision in this docket.

I. *Contoocook Valley Proposed Tariff Changes*

A. *New Services*

Contoocook proposes the introduction of the following Custom Calling Services: Remote Activation Call Forwarding, MultiRing Service, Anonymous Call Rejection, Call Return, Call Trace, Caller ID, Caller ID Blocking (Line Blocking and Per Call Blocking), Distinctive Ringing/Call Waiting, Repeat Dialing, Selective Call Acceptance, Selective Call Forwarding, and Selective Call Rejection.

B. *New Service Rates*

The Company proposes the following rates for new services for residence or business lines:

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

	Per Activation	*Monthly Rates*
Call Forwarding, Remote Activation		
Each line equipped	N/A	$1.90
MultiRing Service		
Each line equipped	N/A	$1.50
Anonymous Call Rejection		
Each line equipped	N/A	$2.25
Caller ID		
Each line equipped	N/A	$4.25
Line Blocking	N/A	N/A
Per Call Blocking	N/A	N/A
Call Return*		
Each line equipped	$.50	$2.25
Call Trace**	$3.00	N/A
Distinctive Ringing/Call Waiting		
Each line equipped	N/A	$2.25
Repeat Dialing***		
Each line equipped	$.50	$2.25
Selective Call Acceptance		
Each line equipped	N/A	$2.25
Selective Call Rejection		
Each line equipped	N/A	$2.25

*A monthly cap of $4.00 applies to per activation charges for Call Return.

**A monthly cap of $30.00 applies to per activation charges for Call Trace.

***A monthly cap of $4.00 applies to per activation charges for Repeat Dialing.

The proposed tariff pages specify that Call Return will be disabled if the telephone number of the most recent incoming call is blocked, a concern the Commission has addressed in previous dockets. The Company has agreed to file with Staff an acceptable methods and procedures document concerning the recording, storage method, duration of storage, and means of disposal for Call Trace.

C. *Current Services*

Contoocook proposes to lower the current rates of the following Existing Custom Calling Services: Call Forwarding, Busy Line, Call Forwarding, Don't Answer; Call Forwarding, Fixed; Call Forwarding, Variable; and Speed Calling 8, from $2.00 per month to $1.90 per month. Call Waiting and Three-Way Calling rates will be reduced from $2.00 per month to $1.45 per month. Assistance Line Service and Intercom Service each presently cost $1.89 per line for businesses and $.89 per line for residences, while the new proposed cost would be $.95 per month per line for both business and residence. The proposed cost for Toll Restriction (previously named Code Restriction) is increased to $1.90 per month per line for either business or residence from the present cost of $1.89 per month per line for business, and $.89 per month per line for residence. These new rates correspond to the service rates charged by Merrimack County Telephone (MCT). Since MCT and Contoocook have the same owner, the Company believes providing the same rates for the same services will ease their administrative burden. Overall, the rate reductions proposed by Contoocook will reduce revenue by $13,604.

D. *Withdrawn Services*

Contoocook's proposed tariff pages also delete several calling services including: Intercom Calling (an intragroup communications offering, different from the Intercom Service listed above), Group Speed Call, Distinctive Ringing, Call Pick Up, Call Hold, User Transfer, Reminder Service, Circle Busy Transfer, Preferential Busy Transfer, and Uniform Call Transfer. These services are primarily business related. The Company proposes to offer these services through an Enhanced Business Service which is addressed in a separate filing, DS 96-317.

E. *Change to Service Connection Charge*

Review of the materials in this filing reveal that the proposed tariff pages increase the Custom Calling Service Order Charge from $5.00 to $7.80. Staff discussions with the Company confirmed that a Custom Calling Service order charge refers to the $7.80 Central Office Charge and not the $10.80 Secondary Service Order Charge (Contoocook tariff Part VI, Section 1, Page 2, II. B). The Central Office Charge applies when one or more Custom Calling Services, subscribed to on a monthly basis, is the only service being ordered. Central Office Charges do not apply when Advanced Calling Services are used on a per activation basis or when one or

more Customer Calling Services, subscribed to on a monthly basis, are ordered in conjunction with other services for which Service Charges normally apply.

F. *Proposed Discounts and Promotions*

The proposed tariff pages also (1) provide for a discount of $1 for each custom service excluding the first custom service and (2) introduce a six-month promotional program, which may be offered annually in each exchange, waiving the proposed activation charge. Currently, the tariff allows for one fourteen-day free trial period per service per customer, which will no longer be offered. In the current tariff, no

package discounts are offered.

G. *Line Blocking Charges*

The new tariff pages propose that no service charge apply for the first application of Line Blocking to a customer's line for a period of 30 days prior to and 60 days following the initial introduction of Caller ID in an exchange, and for the first application of line blocking requested within 60 days of the installation of service at a customer's premises.

A service charge will not apply if the customer sends a letter to the Company requesting Line Blocking for concerns related to health or safety, or if the customer has Non-Published service or Non-Directory listed service. The Company may accept health and safety requests orally, or via fax or other electronic means. Staff expects the Company will exercise reasonable judgement given the nature of health and safety requests. The Company, before offering service, shall: serve notice upon the service list of DR 91-105, NYNEX PhoneSmart filing, and shall establish a supervisor point of contact to administer the special requests of Domestic Violence Agencies.

H. *Forecast Revenues and Costs*

Contoocook has provided forecasts of costs and revenues associated with the proposed rate changes for the Custom Calling Services listed above. The Company expects a net annualized increase in local service revenues of $11,065 based upon projected customer demand for new service offerings coupled with actual rate decreases for certain existing service offerings. The annual net revenue decrease associated with the 2,244 customers who subscribe to existing basic Custom Calling features is $13,604. The proposed change in the Custom Calling Services package discount will result in a rate decrease for 15 customers of approximately $1.10 per package. The proposed change in the discount structure is estimated to increase annual revenues by $666. The Company forecasts a 7% customer demand factor for the new Custom Calling

features proposed, based upon experience with Merrimack County Telephone customers. The increase in gross annual revenue is projected to be $24,003. The net increase is thus expected to be $11,065 which equals a .72% increase in total rates.

The Company's incremental cost study supports the proposition that proposed rates for each service are substantially above its incremental cost. Accordingly, if approved, these services will generate a significant contribution.

The Company requests that Puc 1601.05(j) regarding newspaper publication of tariff changes be waived and that all customers instead be notified via a bill insert at the time the services are introduced. Waivers of this kind have been granted to NYNEX and other LECs. Staff proposes Contoocook obtain Staff concurrence on the timing and content of the customer education materials.

Staff recommended that the Commission approve the introduction of Enhanced Custom Calling Services as proposed in Contoocook's tariff filing with the conditions discussed above and correction of the two citations during the compliance filing.

II. *Commission Analysis*

[1, 2] The Commission has reviewed the filing materials and the Staff recommendation and finds that the proposed introduction of Enhanced Custom Calling Services is in the public interest. We take note of the significant revenue reduction volunteered by the Company through their proposed rate reductions.

We believe the CLASS filings reviewed by this Commission: DR 91-105 (NYNEX), DR 94-281 (Union Telephone), DR 96-005 (Merrimack County Telephone) and DR 96-053 (Kearsarge Telephone), have established reasonable and sufficient procedures to address the privacy concerns of the public and the special concerns of Domestic Violence Agency personnel. We have incorporated these procedures into this order and accordingly do not find it necessary to delay introduction by a public comment period.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that tariff pages Part III-General, Section 1, First Revised Pages 1 through 8 and Original Pages 9 through 12 of

Contoocook Telephone Company are approved for effect on the date of this order; and it is

FURTHER ORDERED, that Contoocook file an acceptable methods and procedures document detailing the procedures for recording, storing, and disposing of Call Trace records; and it is

FURTHER ORDERED, that Contoocook establish a supervisory point of contact for processing the special requests of domestic violence agencies.

FURTHER ORDERED, that Contoocook serve notice on the service list of DR 91-105; and it is

FURTHER ORDERED, that a waiver of Puc 1601.05(j) requiring publication is granted and, in lieu thereof, Contoocook is ordered to notify its customers via bill insert or direct mail through a notice acceptable to Staff; and it is

FURTHER ORDERED, that Contoocook 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); 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 January 27, 1997 and to be documented by affidavit filed with this office on or before February 3, 1997; 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 10, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 17, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 19, 1997, 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 February 19, 1997, 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 January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contoocook Valley Teleph. Co., DS 96-318, Order No. 22,382, 81 NH PUC 811, Oct. 28, 1996.

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NH.PUC*01/27/97*[97212]*82 NH PUC 42*Public Service Company of New Hampshire

[Go to End of 97212]

Re Public Service Company of New Hampshire

DR 96-068
Order No. 22,487

New Hampshire Public Utilities Commission

January 27, 1997

ORDER determining that an industrial customer, Isaacson Structural Steel, Inc., qualifies for service under an electric utility's new load retention (LR) rate, even though the commission earlier had rejected a proposed special rate contract negotiated by the utility and the customer whose purpose had been to retain load and prevent bypass by the customer. Commission notes a legislative mandate to move away from special contracts when an appropriate tariff is available. Because the customer is deemed to now have a viable cogeneration option, it is deemed eligible for the LR service rate.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Special rate contracts versus load retention (LR) tariffs

Page 42

— Legislative preference for tariffed service — Eligibility of industrial customer for LR rates — Viability of cogeneration option — Electric utility. p. 44.

2. RATES, § 339

[N.H.] Electric rate design — Service to industrial customers — Means for retaining load — Special rate contracts versus load retention (LR) tariffs — Legislative preference for tariffed service — Eligibility of industrial customer for LR rates — Viability of cogeneration option. p. 44.

3. RATES, § 211

[N.H.] Special rate contracts — As means of retaining load — Legislative preference for load retention tariffs instead. p. 44.

4. COGENERATION, § 1

[N.H.] Cogeneration capability of industrial customers — As basis for eligibility for special load retention rates — Actual viability of customer's cogeneration options as a factor — Electric service. p. 44.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 13, 1997, the New Hampshire Public Utilities Commission (Commission) held a hearing to determine whether Isaacson Structural Steel Inc. (Isaacson) qualifies for service under either a special contract filed by Public Service Company of New Hampshire (PSNH) on March 12, 1996 and subsequently denied by the Commission on October 18, 1996 (*see* Order No. 22,373) or, in the alternative, whether Isaacson is eligible for PSNH's load retention tariff, Rate LR. Isaacson, on October 22, 1996, contested the Commission's findings in Order No. 22,373 that Isaacson did not appear to have a viable cogeneration option based on some of the input assumptions used in the analysis. Specifically, Isaacson did not agree that two of the input assumptions of the cogeneration model, the forecast of oil prices and the opportunity cost-of-capital, were invalid and requested a hearing on the merits.

By Order No. 22,460, the Commission granted Isaacson's request for a hearing. On January 9, 1997, Isaacson submitted the pre-filed testimony of Steven D. Griffin, Vice President and Controller of Isaacson, and Lee F. Carroll, a professional engineer and consultant to Isaacson concerning the cogeneration analysis. At the hearing, the Commission also heard testimony from Isaacson's Vice President and Chief Operating Officer, Arnold Hanson, as well as a representative of Public Service Company of New Hampshire (PSNH), Stephen R. Hall, Rates and Regulatory Services Manager, who had pre-filed testimony in support of NHPUC-129 at the time NHPUC-129 was filed.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Isaacson*

Isaacson contends that absent approval of either NHPUC-129 or a determination by the Commission that it is eligible for Rate LR, it will proceed with plans to install cogeneration. The original cogeneration analysis included one Caterpillar 545 kW unit with a second Caterpillar 175 kW unit to supplement or back-up the larger unit. Both units run on no. 2 diesel fuel. In the analysis submitted with NHPUC-129, Isaacson estimated a payback period of 3.7 years.[1(11)]

At the hearing, Isaacson stated that it would use a 45 kW diesel instead of a 175 kW diesel unit as its back-up generator. Based on PSNH electric rates at 12.44¢ per kWh, an initial capital

cost of $200,000, a 4% cost-of-capital, fuel oil costs of 65¢ per gallon and maintenance costs of 1.25¢ per kWh, Isaacson currently estimates that the payback period on cogeneration is 3.9 years if monthly

amortization is used for computing annual capital costs. PSNH computed capital costs on an annual basis in its analysis. Isaacson believes that the opportunity cost-of-capital of 4% is appropriate because it plans to fund the capital cost of cogeneration with short-term funds available in the Berlin City Bank that were earning 4% interest. Those funds are now earning even less interest and Isaacson states its cost-of-capital is now lower than what was used in the cogeneration analysis.

Isaacson also believes that the oil prices used in the cogeneration analysis were correct at the time of the filing. Prices are higher now, but Isaacson cites futures prices and information from its local oil dealer as support that no. 2 fuel oil will return to the 70¢ per gallon range next summer.

B. *PSNH*

Mr. Hall provided testimony on the cogeneration model and the inputs PSNH used to determine the eligibility of customers for service under a special contract or for service rendered under Rate LR, PSNH's load retention tariff that was approved by the Commission as part of DR 96-216. Mr. Hall also discussed the payback periods of various input scenarios that Staff had requested, and upon a record request by Staff, indicated PSNH would run the cogeneration model using four different oil/cost-of-capital scenarios. The results were filed by PSNH as Exhibit 7 on January 14, 1997. That exhibit indicates that under two scenarios, Isaacson's payback period would be less than 4 years.

C. *Staff*

Staff did not file testimony in the proceeding. Staff, however, questioned Isaacson about its opportunity cost-of-capital, the cost of installing cogeneration, including the need for back-up generation, and, Isaacson's fuel oil projections.

III. COMMISSION ANALYSIS

[1-4] Based on our review of the filing, including the testimony of Isaacson and the results of the different scenarios as shown in Exhibit 7, we find that Isaacson has a cogeneration option that qualifies it for service under either PSNH Rate LR or NHPUC-129.

Isaacson has demonstrated it is committed to lowering its electric costs. Support for this is

reflected in the steps Isaacson took to increase its power factor as Mr. Carroll had advised. We believe Isaacson has the ability and commitment to pursue cogeneration absent service under either Rate LR or NHPUC-129. The analysis of Exhibit 7 indicates payback periods that vary from 3.7 years to 4.6 years. Moreover, substantial savings accrue to Isaacson after five years of cogeneration.

Consistent with the directive of the Legislature to reduce special contracts when generally available tariff rates are available, RSA 378:38-a II, and based on Isaacson's position that it is essentially indifferent to whether it receives service under either Rate LR or NHPUC-129, we will direct PSNH to provide service to Isaacson under Rate LR. As we stated in Crown Vantage (Order No. 22,355), we believe PSNH, its customers and future potential suppliers are better served by having load connected to the grid than by that load being removed from the grid. *See* Order No. 22,355, at 12. We believe our approval today will ensure that Isaacson will be a participant in the future competitive electric industry in New Hampshire and is therefore in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that PSNH serve Isaacson Structural Steel, Inc. under PSNH's load retention rate, Rate LR; and it is

FURTHER ORDERED, that our previous approval of confidential treatment shall be amended to include only specific usage of Isaacson and the proprietary rights of PSNH's cogeneration model.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1997.

FOOTNOTES

[1]At the hearing, Isaacson agreed to waive any and all claims to materials that were accorded confidential privilege previously pursuant to Order No. 22,156 (May 17, 1996).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-068, Order No. 22,156, 81 NH PUC 390, May 17, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-114, Order No.

22,355, 81 NH PUC 746, Oct. 15, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-068, Order No. 22,373, 81 NH PUC 795, Oct. 18, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 96-068, Order No. 22,460, 81 NH PUC 1032, Dec. 23, 1996.

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NH.PUC*01/27/97*[97213]*82 NH PUC 45*IntraLATA Presubscription

[Go to End of 97213]

82 NH PUC 45

Re IntraLATA Presubscription

DE 96-090
Order No. 22,488

New Hampshire Public Utilities Commission

January 27, 1997

ORDER determining that payphone service providers (PSPs) have the authority to presubscribe to the intraLATA toll carrier of their choice, regardless of whether such PSP is a local exchange carrier itself or an independent entity.

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1. SERVICE, § 456

[N.H.] Telecommunications — Payphone service providers — Toll services — IntraLATA presubscription. p. 45.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Payphone service providers. p. 45.

BY THE COMMISSION:

ORDER

In Order No. 22,281 in this docket, the Commission deferred ruling on the question of

payphone presubscription until after the FCC completed its review, in Docket No. DE 96-128, of Section 276 of the Telecommunications Act of 1996 (the Act). The FCC completed its review and, on September 20, 1996, issued a Report and Order (*Report and Order*) resolving the issue.

In its *Report and Order*, the FCC affirmed the tentative conclusion made in its *Notice of Proposed Rulemaking*, 11 FCC Rcd 6716 (1996), that all payphone service providers (PSPs), whether LECs or independent companies, should have the right to negotiate with location providers for intraLATA carriage. This conclusion, the FCC ruled, is consistent with Section 276 and with the goal of the Act to bring competition to the payphone segment of the telecommunications industry. In Paragraph 263 of the *Report and Order*, the FCC declared: "payphone location providers will have ultimate decision-making authority in the selection of intraLATA carriers for payphones located on their premises *through their selection of a payphone service provider*." (Emphasis added.)

[1, 2] Pursuant to the FCC's ruling, we find that a PSP, whether LEC or independent, may presubscribe the PSP's payphone equipment to a particular intraLATA carrier, including itself if it is an authorized carrier. Consequently, a location provider retains authority to choose an intraLATA carrier only through its choice of the PSP. As a result, a location provider who prefers a particular intraLATA toll carrier will not choose a PSP that is presubscribed to some other carrier.

The Commission also deferred its decision on the timing of payphone presubscription pending the FCC's ruling. Consistent with

Order No. 22,281, payphone presubscription is to be available in New Hampshire no later than June 2, 1997, the date on which ILP goes into effect pursuant to Order No. 22,281.

Based upon the foregoing, it is hereby

ORDERED, that intraLATA presubscription for payphones shall proceed as described herein.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996.

82 NH PUC 46

Re Public Service Company of New Hampshire

DR 96-390
Order No. 22,489

New Hampshire Public Utilities Commission

January 27, 1997

MOTION by electric utility for protective treatment of a special interruptible service contract negotiated with Seacoast Mills, Inc.; granted as to customer-specific usage and cost data cited therein.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Relative to special interruptible service contract — Granted as to customer-specific load and incremental cost data relied upon therein — Electric utility. p. 46.

BY THE COMMISSION:

ORDER

On November 26, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Special Contract with Seacoast Mills, Inc. for interruptible service. Concurrent with the Special Contract, PSNH filed a Motion for Proprietary Treatment of the portions of the Technical Statement filed in support of the special contract (Information). According to PSNH, at the time of filing neither the Commission Staff nor the Office of the Consumer Advocate took a position

on the motion.

In its motion, PSNH contends that the Information should be afforded protective treatment because it comes under exemptions permitted by RSA 91-A:5,IV, as demonstrated by evidence submitted pursuant to N.H. Admin. Rules, Puc 204.08(b)(1) through (b)(4). PSNH states that the Information consists of load information, studies involving alternative sources, and commercial decision making criteria. The Information, therefore, pertains to details of the special contract regarding pricing and incremental cost information not reflected in tariffs of general application. PSNH also provides facts describing the benefits of non-disclosure.

[1] The information identified above is critical to the review of the Special Contract by the Commission, Commission Staff, and the Office of the Consumer Advocate. The Information is also sensitive commercial information in a competitive market. Thus, based on the representations in the motion, under the balancing test applied in prior cases, *e.g.*, *Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991) *et al.*, we find the benefits of non-disclosure to PSNH and Seacoast Mills appear to outweigh the benefits of disclosure to the public. The Information should consequently be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Confidential Treatment of the Information is GRANTED; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of January, 1997.

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NH.PUC*01/28/97*[97215]*82 NH PUC 47*Connecticut Valley Electric Company

[Go to End of 97215]

82 NH PUC 47

Re Connecticut Valley Electric Company

DR 96-425
Order No. 22,490

New Hampshire Public Utilities Commission

January 28, 1997

ORDER granting protective treatment to that section of an electric utility's least-cost integrated plan filing that explains its avoided costs and related market position.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Of avoided-cost and market position information — In context of integrated least-cost planning proceeding — Competitive disadvantages of disclosure — Electric utility. p. 47.

BY THE COMMISSION:

ORDER

On December 31, 1996, Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:38, its 1996 Least Cost Integrated Plan (LCIP). Concurrent with the LCIP, CVEC filed a Motion for Proprietary Treatment of the long-term avoided cost section (Avoided Costs Information) of the LCIP, specifically pages VI-1 through VI-7 and Figures VI.1 through VI.9 of the LCIP. According to CVEC, a good faith attempt was made to obtain the concurrence of the Commission Staff and the Office of the Consumer Advocate but no response was forthcoming before the filing of the motion.

In its motion, CVEC contends that the Report should be afforded protective treatment because it comes under the exemptions permitted by RSA 91-A:5,IV, as demonstrated by evidence submitted pursuant to N.H. Admin. Rules, Puc 204.08(b)(1) through (b)(4). CVEC stated that the Avoided Costs Information consists of estimates of market prices in the near term and estimates of CVEC's incremental costs of production in the long term, revealing market position information about both CVEC and its parent; that the Avoided Costs Information required significant effort and cost to produce and would take effort and cost to produce by CVEC's competitors in the emerging competitive market; and, that the Avoided Costs Information has been protected from dissemination by CVEC. CVEC also provides facts describing the benefits of non-disclosure.

[1] The information identified above is critical to the review of the LCIP by the Commission, Commission Staff, and the Office of the Consumer Advocate. The Avoided Costs Information is also sensitive commercial information in a competitive market. Thus, based on the representations in the motion, under the balancing test applied in prior cases, *e.g.*, *Re NET*, 74

NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991) *et al.*, we find the benefits of non-disclosure to CVEC appear to outweigh the benefits of disclosure to the public. The Avoided Costs Information should consequently be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's Motion for Confidential Treatment of the Report is GRANTED; and it is

FURTHER ORDERED, that this order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 1997.

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NH.PUC*01/28/97*[97216]*82 NH PUC 48*Contoocook Valley Telephone Company

[Go to End of 97216]

82 NH PUC 48

Re Contoocook Valley Telephone Company

DS 96-317
Order No. 22,491

New Hampshire Public Utilities Commission

January 28, 1997

ORDER approving a local exchange telephone carrier's proposed offering of enhanced business services.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex or Centrex-like services — Enhanced business services — Network solutions — Local exchange carrier. p. 48.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex or Centrex-like services — Enhanced business services — Network solutions — Pricing above incremental costs — Local exchange carrier. p. 48.

BY THE COMMISSION:

ORDER

On September 30, 1996, Contoocook Valley Telephone Company (CVT or Company) filed proposed tariff pages to introduce Enhanced Business Service (EBS) for effect October 31, 1996. In Order No. 22,384, (October 29, 1996) the Commission suspended the proposed tariff pages pending further review of the filing and supporting materials. On January 10, 1997, the Commission received a letter from CVT's Director of Customer Services, urging the Commission to expedite its decision in this docket. EBS is designed primarily for business customers who prefer network solutions to their telecommunications needs. EBS is also commonly referred to as Centrex service.

CVT requested that the Commission waive the notice requirements of Puc 1601.05(j) and instead allow the company to notify prospective customers via bill inserts, customer contacts and other marketing mechanisms.

[1, 2] In its filing, the Company presents an incremental cost study showing that the proposed rates for each service are substantially above its incremental cost. Accordingly, if approved, these services will generate a significant contribution towards joint and common costs.

The Commission Staff has investigated this filing, including accompanying operational, cost and revenue documentation and provided a recommendation to the Commission. The Company was highly responsive to Staff's requests for information and expeditiously amended proposed pages. These changes are reflected on the 1st Revised in Lieu of Original Pages 3, 17 and 18 transmitted to staff and on January 23, 1997 and filed with the Commission on January 24, 1997.

The recent Staff examination of the package takes into consideration the relative magnitude of this filing. The Company has approximately 8,000 total access lines; business lines are a much smaller subset. CVT projects that it will sell only 100 Centrex lines, which will generate $16,500 in recurring annual revenue.

The Commission has reviewed the filing materials and the Staff recommendation and finds that the proposed introduction of EBS is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that CVT's EBS filing is approved as modified to reflect the requested changes of staff, and therefore tariff pages Part III - General, Section 12: Original Pages 1,2,4-16 and 19; and 1st Revised in Lieu of Original Pages 3, 17 and 18 of Contoocook Valley Telephone Company are approved for effect on the date of this order; and it is

FURTHER ORDERED, that a waiver of Puc 1601.05(j) requiring publication is granted, and in lieu thereof, CVT is ordered to notify prospective customers via bill inserts, customer contacts, or other marketing mechanisms achieving at least equivalent public notice; 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 3, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 14, 1997, 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 April 14, 1997, 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 January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Contoocook Valley Teleph. Co., DS 96-317, Order No. 22,384, 81 NH PUC 814, Oct. 29, 1996.

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NH.PUC*01/31/97*[97217]*82 NH PUC 49*EnergyNorth Natural Gas, Inc.

[Go to End of 97217]

82 NH PUC 49

Re EnergyNorth Natural Gas, Inc.

DR 96-239

Order No. 22,492

New Hampshire Public Utilities Commission

January 31, 1997

ORDER approving as modified a natural gas local distribution company's proposed introduction of a new natural gas engine firm transportation rate, since renamed large volume 90 transportation service, the 90 referring to the minimum load to which the rate could apply.

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1. RATES, § 382

[N.H.] Natural gas rate design — New "gas engine firm transportation" rate — Renaming of to "large volume 90 transportation" service — Factors — Usage characteristics versus end use — 90 as referring to minimum eligible load — Separate transportation and sales rates for large volume 90 customers — Recovery of both marginal and embedded costs — Local distribution company. p. 51.

2. SERVICE, § 332

[N.H.] Natural gas — New "gas engine firm transportation" option — Renaming of to "large volume 90 transportation" service — Factors — Usage characteristics versus end use — 90 as referring to minimum eligible load — Separate transportation and sales rates for large volume 90 customers — Renaming of existing large-volume services as large volume 70 sales and transportation services — Local distribution company. p. 51.

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas,

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Inc.; Preti, Flaherty, Beliveau & Pachios by Deirdre M. O'Callaghan Esq. on behalf of Hannaford Bros. Co.; Gerald M. Eaton, Esq., for Public Service Company of New Hampshire; 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 25, 1996, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a petition, testimony and exhibits in support of a Natural Gas Engine Firm Transportation (NGEFT) tariff. The NGEFT rate was designed for high use commercial and industrial customers with dominant summer use and a high load factor. ENGI limited the availability of the rate to end-users employing natural gas for electric power production with a generation capacity of one megawatt or less. ENGI did not file a corresponding sales tariff.

By Order No. 22,283 (August 19, 1996), the Commission suspended the filing to investigate the proposed service and set a prehearing conference for October 1, 1996. Concord Electric Company, Hannaford Bros. Co. (Hannaford) and Public Service Company of New Hampshire (PSNH) each sought intervention. The Office of the Consumer Advocate is a statutory intervenor. Although Concord Electric Company filed for intervention it did not participate in the proceeding.

At the October 1, 1996 prehearing conference, a dispute arose among the parties and Staff concerning the scope of the proceeding. PSNH contended that the Commission's investigation should include the issue of "utility on utility" competition. The other parties and Staff objected. On October 6, 1996, the Commission issued Order No. 22,343 holding that the scope of this proceeding would be confined to an inquiry into whether the proposed rates are cost-based and just and reasonable. The Commission further held that it "[would] not undertake an examination of whether the tariffed rates enhance ENGI's [competitive] position with respect to electric utilities." Order No.22,343, at 3 (October 6, 1996).

On October 11, 1996, PSNH, pursuant to RSA 365:21 and RSA 541:3, requested rehearing or reconsideration of the above referenced holding on scope. On October 21, 1996 and October 22, 1996, Hannaford and ENGI, respectively, filed objections to the motion. On December 2, 1996, the Commission issued Order No. 22,426 denying PSNH's motion for rehearing.

On December 2, 1996, the parties and Staff met to discuss settlement of all outstanding issues. As a result of those discussions, ENGI, Hannaford and Staff entered into a settlement agreement (Settlement) resolving all of the issues in this proceeding.

The Settlement also proposes changes to existing tariff offerings reflecting the overall policy considerations agreed to in the Settlement. The Office of the Consumer Advocate did not participate in this proceeding and, although not a signatory to the Settlement, PSNH did not object to its implementation. The Settlement was presented to the Commission at a duly noticed hearing on December 31, 1996.

II. POSITIONS OF THE PARTIES AND STAFF

The NGEFT tariff was developed based on the marginal cost of service (COS) study conducted by James Harrison for ENGI in DE 95-121, the pending proceeding addressing the natural gas transportation cost of service studies for ENGI and Northern Utilities, Inc. Based on this cost of service study, the parties and Staff stipulated that the NGEFT rate covered both ENGI's marginal and embedded costs of service. They also agreed that the rate generally reflected the level of subsidies incorporated in the design of the existing firm transportation and sales rates in previous rate proceedings.[1(12)]

ENGI testified that the NGEFT tariff was developed when the Company was approached by a customer requesting service at a rate that would recognize the lower costs associated with a high load factor and dominant summer usage.

ENGI further testified that the customer intended to use the service to generate electricity and, therefore, the Company limited the service's availability to that end-use. Thus, the original NGEFT tariff restricted its availability to end-users employing natural gas for electric power production with a generating capacity of one megawatt or less.

In its testimony, Staff criticized this proposed restriction and recommended that the availability criteria in the proposed tariff be based on usage characteristics rather than end-use. The Settlement adopts Staff's recommendation, removing any reference to end-use and proposes to base the availability of the rate solely on usage characteristics. Given this fact, the name of the rate was changed from NGEFT to Large Volume 90 Firm Transportation; 90 referring to the customers' load factor. The parties and Staff also agreed that there should be a sales tariff corresponding to this new transportation offering and proposed a Large Volume 90 Sales tariff.

The Settlement also recommended that the names of the two other large volume tariff offerings be modified to mirror the title of the two new rates. Thus, the Settlement recommends that the current sales rate be renamed Large Volume 70 Sales; 70 reflecting the fact that service is limited to customers with a load factor of 70 or more. The Settlement also recommends minor editorial changes to the tariffs and initially included the addition of a provision requiring a dominant summer usage pattern. Similarly, the Settlement recommends corresponding changes to the current Large Volume Firm Transportation tariff to create a Large Volume 70 Firm Transportation tariff.

On January 28, 1997 the Commission received correspondence from ENGI indicating that the addition of the provision requiring dominant summer usage to the Large Volume Sales and Transportation tariffs would result in a number of customers currently served under those tariffs no longer qualifying for the rates. The correspondence further indicated that dominant summer usage was not a necessary component of the current Large Volume rates and was only inadvertently added to the language of these tariffs. ENGI asked that the Commission approve the proposed changes to the Large Volume tariffs without this language. Staff, Hannaford, PSNH, the Office of the Consumer Advocate concurred in this request.

In recognition of the fact that the public was not provided notice that this proceeding would involve a new sales service and editorial changes to two existing rates, the Settlement recommends that the Commission issue Orders *nisi* providing notice of these proposed changes and the opportunity to be heard upon request.

III. COMMISSION ANALYSIS

[1, 2] We agree with the parties and Staff that to the greatest extent possible rates should reflect the cost of service and that customers' end-use alone, unless the end-use imposes special costs, should not determine the rate charged for any service. Thus, we will approve the modified terms and conditions of service set forth in the Settlement for the Large Volume 90 Sales and Transportation tariffs. Further, because the Large Volume 90 Sales and Transportation tariffs are cost based and contain similar subsidy ratios between marginal and embedded costs as were approved for ENGI's other tariff offerings in previous rate proceedings, we find the rates just and reasonable.

We further find the proposed editorial modifications to, and renaming of, the current rates Large Volume Sales and Large Volume Firm Transportation to Large Volume 70 Sales and Large Volume 70 Firm Transportation are in the public interest. We make this finding based on ENGI's representation no customers currently receiving service under these tariffs will be affected by these changes. We agree with the parties and Staff, however, that the public did not receive notice that rate Large Volume 90 Sales and rates Large Volume Firm Transportation and Large Volume would be addressed in this proceeding. Thus, we will issue an order *nisi* to provide the public with notice and the opportunity to be heard upon request regarding these proposed rates.

Based upon the foregoing, it is hereby

ORDERED, that the Large Volume 90 Transportation tariff is just and reasonable and is, therefore, approved; and it is

FURTHER ORDERED, that an order *nisi* be issued approving the new rate Large Volume 90 Sales, and approving the editorial changes to and the renaming of the Large Volume Sales and the Large Volume Firm Transportation to Large Volume 70 Sales and Large Volume 70 Firm Transportation tariffs thereby providing the public with notice and the opportunity to be heard upon request regarding these rates.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1997.

FOOTNOTES

[1]In this context "subsidies" refer to that level of revenue above marginal cost required to cover the embedded cost of service.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-239, Order No. 22,283, 81 NH PUC 640, Aug. 19, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-239, Order No. 22,343, 81 NH PUC 731, Oct. 7, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-239, Order No. 22,426, 81 NH PUC 909, Dec. 2, 1996.

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NH.PUC*01/31/97*[97218]*82 NH PUC 52*Freedom Energy Company, LLC

[Go to End of 97218]

82 NH PUC 52

Re Freedom Energy Company, LLC

DE 94-163
Order No. 22,493

New Hampshire Public Utilities Commission

January 31, 1997

ORDER agreeing to consider a competitive electric supplier's petition for operating authority separate and apart from an ongoing statewide electric industry restructuring proceeding. A procedural schedule is adopted for addressing the petition, bifurcated into two phases, the first of which is to examine the petitioner's financial, managerial, and technical abilities, and the second of which is to examine the efficacy and benefits of the competitive provision of electric service in the affected area.

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1. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Proposal for competitive marketing or brokering — Consideration separate and apart from ongoing electric industry restructuring proceeding. p. 54.

2. ELECTRICITY, § 1

[N.H.] Proposal for competitive marketing or brokering — Consideration separate and apart from ongoing industry restructuring proceeding — Procedural schedule. p. 54.

3. SERVICE, § 320

[N.H.] Electric — Proposal for competitive marketing or brokering — Consideration separate and apart from ongoing industry restructuring proceeding — Procedural schedule. p. 54.

4. CERTIFICATES, § 102

[N.H.] Petition for operating authority — Electric service — Competitive marketing or brokering — Consideration separate and apart from ongoing industry restructuring proceeding — Bifurcated procedural schedule — First phase as addressing petitioner's abilities — Second phase as addressing benefits of such competition. p. 54.

5. PUBLIC UTILITIES, § 52

[N.H.] Petition for operating authority — By electric service marketer/broker — Consideration separate and apart from ongoing industry restructuring proceeding — Bifurcated procedural schedule — First phase as addressing petitioner's abilities — Second phase as addressing benefits of such competition. p. 54.

Page 52

APPEARANCES: James T. Rodier, Esq. on behalf of Freedom Energy Company, LLC; Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Carlos A. Gavilondo, Esq. on behalf of Granite State Electric Company; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of Westar Energy, Inc.; Deborah M. Barradale, Esq. on behalf of EnerDev, Inc.; Daniel W. Allegretti, Esq. on behalf of Enron Trade and Capital Resources; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.[1(13)]

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 14, 1996, Freedom Energy Company, LLC (Freedom), filed with the New Hampshire Public Utilities Commission (Commission), a Motion for a Prehearing Conference to develop a plan, in collaboration with the other parties to the docket, to advance its request to conduct business as a public electric utility in that area of the State currently served by Public Service Company of New Hampshire (PSNH). In support of its motion, Freedom cited the ruling of the New Hampshire Supreme Court affirming the Commission's Order No. 21,683, which found that the Commission is authorized to grant competing electric utility franchises if it determines that such a grant would serve the public good. *Appeal of Public Service Company of New Hampshire,* 141 N.H. 13 (1996).

By letter dated July 1, 1996, Freedom, in the interest of addressing concerns raised by the parties in response to its request to move forward with its petition, recommended that the Commission bifurcate the proceeding and allow Freedom in the first phase to present evidence pertaining to its financial, managerial and technical resources. Freedom proposed deferring to a subsequent phase of the docket the submission of evidence pertaining to the benefits of the competitive provision of electric service in that area of the state currently served by PSNH.

On August 2, 1996, the Commission issued an order of notice scheduling a hearing to allow the parties to address the efficacy of Freedom's proposal to bifurcate its request to provide service into two separate proceedings. After hearing from the parties the Commission, on December 31, 1996, issued a subsequent order of notice granting Freedom's request for a bifurcated proceeding, and scheduling a prehearing conference to establish a schedule for the Commission's investigation into Freedom's financial, managerial and technical expertise to operate an electric utility.

For this phase of the proceeding, all interventions previously granted remain in effect. Westar Energy, Inc. (Westar), an electric marketing company registered to do business in Kansas, however, first sought intervention on January 16, 1997, without opposition. As a potential investor and participant in Freedom's operations, Westar's request to intervene is granted. In addition, Enron Trade and Capitol Resources (Enron) sought intervention at the January 17, 1997 prehearing conference, without opposition. Enron, a competitive energy supplier, is granted full intervention.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Freedom*

Freedom stated that its general intent is to market or broker electric power transactions for end-users in PSNH's service territory and constructing, owning and operating transmission and distribution facilities when and if such facilities were required to serve its customers. In response to requests by other parties to suspend this proceeding, Freedom contended that RSA 374-F:4 authorized the Commission to move forward with Freedom's petition to provide competitive electric service in the State of New Hampshire, notwithstanding Docket DR 96-150, the electric

restructuring docket.

With regard to the Commission's test to assess Freedom's financial, managerial and technical expertise, Freedom stated it was

prepared to meet the Commission's "highest standards." In this regard, Freedom stated that it would enter into a service contract with Westar.

B. *Westar*

Westar generally supported Freedom's position. In response to requests from the Staff and the other parties to the proceeding to delay this proceeding in light of the issues being addressed in DR 96-150, Westar pointed out that the Commission had agreed to allow Freedom to proceed with this phase of the proceeding.

C. *PSNH*

PSNH argued that Freedom's petition to provide competitive electric service was premature and should be addressed in DR 96-150 as is the expressed intent of the Legislature in the passage of RSA chapter 374-F. PSNH also contended that Freedom had failed to file testimony in this proceeding setting forth exactly what type of business it proposed to operate and how it intended to accomplish that business plan.

D. *EnerDev*

EnerDev argued that it did not make sense to move forward with Freedom's petition while the Commission considered the restructuring of the electric industry in DR 96-150. EnerDev recommended that Freedom's petition be consolidated into DR 96-150.

E. *Enron*

Enron reiterated the positions of PSNH and EnerDev and stated it would file a motion to dismiss, should the Commission move forward with Freedom's petition.

F. *Staff*

Staff also contended that Freedom's petition was premature in light of the Commission's investigation into restructuring the electric industry in DR 96-150. Specifically, Staff indicated

that it could not conduct an investigation into Freedom's financial, managerial and technical expertise without knowing how the Commission intended to restructure the industry. That is, the test for determining whether to grant Freedom permission to operate as a public utility would depend on how the Commission decided to restructure the provision of electric service.

Based on Freedom's representation that it would meet the Commission's "highest standards," Staff and Freedom agreed to the procedural schedule set forth by the Commission in its order of notice with an adjustment to delay the filing of testimony by Staff and other parties until two weeks following the issuance of the final order in DR 96-150.[2(14)] Correspondingly, all events after the filing of testimony will also be delayed two weeks.

III. COMMISSION ANALYSIS

[1-5] We agree with Freedom that RSA 374-F:4 provides specific authorization for the Commission to consider petitions for the competitive provision of electric services outside the parameters of DR 96-150, the proceeding established to restructure the electric industry pursuant to the mandate of RSA chapter 374-F. Accordingly, we find no basis for delaying this proceeding further. As to arguments about the proper test to be applied to Freedom's petition, the parties may address the issue in testimony and in brief.

Thus, we adopt the following procedural schedule which is as recommended by Staff and Freedom except that the date for Staff and Intervenor Data Requests and Company Data Requests have been slightly delayed:

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

Data Requests by Staff and Intervenors	February 3, 1997
Company Data Responses	February 10, 1997
Technical Session	February 14, 1997
Testimony by Staff and Intervenors	March 10, 1997
Data Requests by the Company	March 17, 1997
Data Responses by Staff and Intervenors	March 28, 1997
Settlement Conference	April 1, 1997
Filing of Settlement Agreement, if any	April 4 , 1997
Hearing	April 9, 1997;

Based upon the foregoing, it is hereby

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

FURTHER ORDERED, that the Motions to Intervene by Westar and Enron are GRANTED full intervention.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 1997.

FOOTNOTES

[1]There are numerous other parties to this proceeding on both a limited and full basis. The appearances listed herein reflect the parties that appeared at the prehearing conference.

[2]The Legislature directed the Commission to issue its final order no later than February 28, 1997. RSA 374:4, II.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Freedom Electric Co., DE 94-163, Order No. 21,683, 80 NH PUC 314, 161 PUR4th 491, June 6, 1995.

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[Go to End of 97219]

82 NH PUC 55

Re Northern Utilities, Inc. - New Hampshire Division

DR 97-004
Order No. 22,494

New Hampshire Public Utilities Commission

January 31, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment

(CGA) filing, resulting in a surcharge of 14.9 cents per therm, which likely will increase customer bills by an average of 10%.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors affecting increase — Changes in commodity supply market — Increases in domestic markets and futures prices — Local distribution company. p. 57.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Stephen P. Frink, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 10, 1997, Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of distributing and transporting natural gas to customers in select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages reflecting the recalculation of Northern's Cost

of Gas Adjustment (CGA) for the period February 1, 1997 through April 30, 1997. The new CGA was recomputed to be a surcharge of $0.1490 per therm, which translated into an increase of approximately 10% in monthly customer bills. The mid-course increase was deemed necessary to avoid an undercollection of $1,450,998 during the current winter period.

On January 10, 1997, Northern filed a Motion for Protective Order and Confidential Treatment, which was granted by the Commission on January 20, 1997 in Order No. 22,485.

An Order of Notice was issued setting hearings for January 23, 1997. Northern informed customers of the impending change by publishing a copy of the Order of Notice in a local newspaper on January 13, 1997.

Apart from the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, there were no intervenors in this docket. The Commission held a hearing on the merits of Northern's filing on January 23, 1997.

II. POSITIONS OF NORTHERN AND STAFF

A. *Northern*

Northern witnesses Michael J. Harn, Rate Analyst, Joseph Ferro, Manager of Rate Services, and Francisco C. DaFonte, Gas Resource Marketing Analyst, testified at the January 23, 1997 hearing.

Mr. Harn detailed the proposed cost of gas adjustment calculations, addressing in particular the cause of the increase. Three major factors contributed to the increase: (i) an increase in domestic gas prices for November through January; (ii) an increase in the futures prices as quoted in the Wall Street Journal (WSJ); and (iii) an increase in the supplemental product prices. The net impact of these various influences is the proposed CGA charge of $0.1490 per therm, which is an increase of $0.0827 per therm over the current rate of $0.0663 per therm.

Mr. Harn testified that the natural gas futures prices quoted in the January 8, 1997 WSJ and used to calculate the revised CGA rate were substantially higher than those quoted in the October 8, 1996 WSJ and used in calculating the current CGA rate. The futures prices quoted in the January 22, 1997 WSJ did not vary significantly from those quoted on January 8, 1997 and, therefore, Northern did not refile an updated revised CGA rate.

In calculating the revised CGA, Northern chose not to include the anticipated Tennessee Gas Pipeline (TGP) refund that would result if an appeal of the TGP settlement rates approved by the Federal Energy Regulatory Commission (FERC) in RP95-112 is unsuccessful. Northern's talks with TGP representatives indicate a FERC decision is expected sometime this spring and Northern can anticipate a refund in excess of $460,000 sometime prior to next winter's CGA. Approximately 75 percent of the refund would be applicable to the winter period and would be included in 1997/98 winter CGA.

Mr. DaFonte explained some of the purchasing methods currently employed by Northern to mitigate price volatility and limit the risks inherent in the gas markets. The Company has attempted to mitigate some of the inherent price volatility in the domestic futures prices by contracting for a fair amount of Canadian supply, which is less volatile than the domestic prices. Northern is also utilizing underground storage to offset high spot prices and recover a portion of the long haul capacity demand charges. Northern has also built into all of its winter domestic supply contracts the opportunity to lock in at a fixed price at any time without charge. Northern exercised this option for the first time this winter, having contracted for 5,000 Dekatherms (Dth) per month at a price well below the current cost of gas, resulting in an estimated savings of $136,000. These savings are reflected in the cost of gas for the period. Northern intends to work in a collaborative effort with Staff and EnergyNorth to fully explore risk management tools and establish a hedging policy to be in place by next winter.

Mr. Ferro discussed the reasons Northern filed a revised CGA despite the fact that the projected undercollection is less than 10 percent (9.43%) of the forecasted period costs, a calculation commonly referred to as the "trigger mechanism." First, the projected $1.4 million undercollection is substantial and if collection were deferred until next winter's CGA, that

figure would increase by $60,000 due to the application of interest. The projected undercollection alone would increase next winter's rates by $0.0440 per therm. Second, changing the rate at this time would be reflective of the recent increase in natural gas and supplemental product prices caused by current market forces. Hence, ratepayers are likely to be more understanding of a rate change that immediately follows the events that caused the change. Third, reducing the undercollection reduces the problem of customers that have contributed to the over/undercollection leaving the system and thereby not contributing to the correction. And lastly, reducing the undercollection brings the fuel costs more in line with market prices and limits the influence the CGA rate might have on customers considering switching from firm sales to transportation.

Mr. Harn stated that the average residential space heating customer paid approximately $698 during the 1995/96 winter period. The current CGA charge of $0.0663 would result in a winter gas cost of approximately $778, an increase of $80 (11 percent). The proposed CGA surcharge of $0.1490 produces a winter cost of approximately $818, an increase of $120 (17 percent) above last winter's costs.

B. *Staff*

Staff has reviewed the filing and based on that review supported Northern's proposed 1996/97 Revised Winter CGA charge of $0.1490 per therm as just and reasonable.

Staff expressed concern that large volume firm sales customers that contributed to the projected undercollection and then switched to transportation service prior to next winter's CGA would not contribute to the recovery, and that the remaining customers would be burdened with those additional costs. Staff pointed out that approval of this proposed mid-course correction would reduce that risk.

III. COMMISSION ANALYSIS

Commission Report and Order No. 22,390 (October 31, 1996), approving the current CGA rate, stated that the Commission would expect Northern to make a mid-course correction should changes in the spot market gas prices result in gas costs markedly different from those projected in its winter CGA filing of October 10, 1996. The order specifically states that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger

mechanism, then Northern shall file a revised CGA. The order did not preclude Northern from filing a revised CGA should the deviation be less than 10 percent. Northern's filing is consistent with prior orders in that revised CGA rates based on deviations of less than 10 percent have been approved in the past.

[1] The Commission finds that the increase in Northern's gas costs were a direct result of an increase in the gas prices for November, December and January, and an increase in the futures prices as quoted in the Wall Street Journal for February, March and April. The Commission considers the projected undercollection of $1.4 million, a deviation of 9.43 percent above projected costs, to be substantial. Accordingly, we will approve the requested revised CGA rate of $0.1490 per therm as just and reasonable.

The Commission recognizes that fluctuations in gas prices can have a major impact on rates and commends Northern for having successfully taken steps to reduce price swings while minimizing gas costs. The Commission encourages Northern, Staff and EnergyNorth to continue to work together to develop a comprehensive work plan defining how various financial instruments may be used to manage price risks and the preparation of a position paper outlining the parties' policy recommendations for Commission review.

Based upon the foregoing, it is hereby

ORDERED, that twenty-first Revised Page 32, Sheet No. 1 and Sixteenth Revised Page 32, Sheet No. 2, superseding Twentieth Revised Page 32, Sheet No. 1 and Fifteenth 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 $.1490 per therm for the period of February 1, 1997 through April 30, 1997, is approved by this Order, effective

for bills rendered on or after February 1, 1997; and it is

FURTHER ORDERED, that the over/undercollection 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 Northern file properly annotated tariff pages in compliance with this 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 thirty-first day of January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc. — New Hampshire Division, DR 96-295, Order No. 22,390, 81 NH PUC 829, Oct. 31, 1996. [N.H.] Re Northern Utilities, Inc., DR 97-004, Order No. 22,485, 82 NH PUC 37, Jan. 20, 1997.

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NH.PUC*01/31/97*[97220]*82 NH PUC 58*Northern Utilities, Inc. - Salem Division

[Go to End of 97220]

82 NH PUC 58

Re Northern Utilities, Inc. - Salem Division

DR 97-005
Order No. 22,495

New Hampshire Public Utilities Commission

January 31, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a surcharge of 39.84 cents per therm, which likely will increase customer bills by an average of 13%.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors affecting increase — Changes in commodity supply market — Increases in propane supply costs — Local distribution company. p. 59.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Stephen P. Frink, on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On January 10, 1997, Northern Utilities, Inc., (Northern or the Company), a public utility engaged in the business of distributing and transporting gas to customers in select cities and towns of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) revised tariff pages reflecting the recalculation of Northern's Cost of Gas Adjustment (CGA) for the period February 1, 1997 through April 30, 1997. The new CGA was recomputed to be a surcharge of $0.3984 per therm, which translated into an increase of approximately 13% in monthly customer bills. The mid-course increase was deemed necessary to avoid an undercollection of $4,811 during the current winter period.

An Order of Notice was issued setting hearings for January 23, 1997. Northern informed customers of the impending change by publishing a copy of the Order of Notice in a local newspaper on January 13, 1997.

Apart from the Office of Consumer Advocate (OCA), which is a statutorily recognized intervenor, there were no intervenors in this docket. The Commission held a hearing on the merits of Northern's filing on January 23, 1997.

II. POSITIONS OF NORTHERN AND STAFF

A. *Northern*

Northern witnesses Michael J. Harn, Rate Analyst, and Joseph Ferro, Manager of Rate Services, testified at the January 23, 1997 hearing.

Mr. Harn detailed the proposed cost of gas adjustment calculations, addressing in particular the cause of the increase. The major factors that contributed to the increase were an increase in propane prices and an increase in the projected New Hampshire Division average cost of gas for the period February through April 1997. The New Hampshire Division's average cost of gas rate was employed for developing costs for the Town of Salem direct delivery customers, as approved in Order No. 22,391 (October 31, 1996). The net impact is the proposed CGA charge of $0.3984 per therm, which is an increase of $0.1338 per therm over the current rate of $0.2646 per therm.

Northern filed the revised CGA despite the fact that the projected undercollection is less than 10 percent (9.86%) of the forecasted period costs, a calculation commonly referred to as the "trigger mechanism." Mr. Harn explained that changing the rate at this time would be more reflective of the recent increase in propane prices caused by current market forces and would not inflate next year's CGA. Deferring the projected $4,811 undercollection until next year would increase next year's CGA by approximately $0.070 per therm, including carrying costs of $198 which would otherwise be avoided.

Mr. Ferro updated the Commission regarding the Company's plan to release the Copper Beach Road Development customers from utility propane service, as discussed in the 1996/97 Winter CGA hearing, DR 96-296. The Copper Beach Road Homeowners Association does not wish to be served by propane, either regulated or unregulated, and has filed a complaint with the Commission requesting that Northern be required to provide natural gas service. Northern expects the Commission to open a formal proceeding to investigate this complaint.

Mr. Ferro notified the Commission of a billing error involving the Salem Division. The 1996/97 Winter CGA rate was incorrectly input into the Northern billing program effective November 1, 1996. The billing error resulted in the Company undercharging its twenty-eight customers in the Salem Division by approximately $4,400. In January the CGA rate was corrected and each customer bill included a message explaining the change in rates. Northern has decided not to retroactively bill these customers; instead, it has decided that its shareholders should bear the $4,400 of costs. The Company does not consider the amount to be burdensome for the stockholders to bear, and believes that the administrative costs to retroactively bill these customers would reduce any gains that might be realized from recovery of those revenues. In addition, the Company feels that customer relations would suffer if the Company were to attempt to collect those charges retroactively.

B. *Staff*

Upon review of Northern's filing, Staff supported Northern's revised 1996/97 winter CGA filing. Staff pointed out that the Copper Beach Road Development may no longer be part of the Salem Division when next winter's CGA is calculated, depending on the outcome of the investigation of their complaint. The Copper Beach Development includes 11 of the Division's 28 customers and is responsible for a large percentage of the projected undercollection. Recovery of the projected undercollection at this time would include those customers, whereas next winter's may not.

III. COMMISSION ANALYSIS

Commission Report and Order No. 22,391 (October 31, 1996) approving the current CGA rate, states that should the monthly reconciliation of known and projected gas costs deviate from the 10 percent trigger mechanism, then Northern shall file a revised CGA. The order did not preclude Northern from filing a revised CGA should the deviation be less than 10 percent. Northern's filing is consistent with prior orders in that revised CGA rates based on deviations of less than 10 percent have been approved in the past.

[1] The Commission finds that the increase in Northern's gas costs were a direct result of an

increase in propane prices and in the New Hampshire Division's average gas costs. Accordingly, we will approve the requested revised CGA rate of $0.3984 per therm as just and reasonable.

Based upon the foregoing, it is hereby

ORDERED, that the Twelfth Revised Page 33, superseding Eleventh Revised Page 33, N.H.P.U.C. tariff of Northern Utilities Inc. (Northern) — Salem Division, providing for the Revised Winter 1996/1997 Cost of Gas Adjustment (CGA) charge of $0.3984 per therm for the period February 1, 1997 through April 30, 1997 is hereby approved, said rate to become effective for bills rendered on or after February 1, 1997; and it is

FURTHER ORDERED, that the over/undercollection 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 Northern file properly annotated tariff pages in compliance with this 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 thirty-first day of January, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc. — Salem Division, DR 96-296, Order No. 22,391, 81 NH PUC 834, Oct. 31, 1996.

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NH.PUC*02/03/97*[97221]*82 NH PUC 60*Statewide Electric Utility Restructuring Plan

[Go to End of 97221]

82 NH PUC 60

Re Statewide Electric Utility Restructuring Plan

Petitioner: Public Service Company of New Hampshire

DR 96-150

Order No. 22,496

New Hampshire Public Utilities Commission

February 3, 1997

ORDER determining that a petition for rehearing of Order No. 22,478 in this docket had already been granted *de facto* when the commission accepted testimony in adjudicative hearings beyond that contemplated by said order. For the prior order, see 82 NH PUC 17, *supra.*

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1. PROCEDURE, § 28

[N.H.] Conduct of hearings — Evidentiary rulings — Acceptance or rejection of proffered testimony — Limits on testimony — Effect of allowing additional testimony. p. 61.

2. EVIDENCE, § 23

[N.H.] Kinds and types — Proffered testimony — Acceptance or rejection — Limits on testimony — But subsequent acceptance of additional testimony notwithstanding. p. 61.

3. PROCEDURE, § 32

[N.H.] Rehearing — As to rulings on evidence or testimony — *De facto* granting of rehearing — Via acceptance of additional testimony — Original limits on such notwithstanding. p. 61.

BY THE COMMISSION:

ORDER

Page 60

On January 16, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Rehearing of Order No. 22,478 (January 14, 1997) in the above-captioned proceeding. PSNH asked the Commission to reconsider its decision to allow as part of PSNH's adjudicative hearings only certain testimony of Messrs. Noyes, Forsgren and Long. Among other things, PSNH argued that it had due process rights to present evidence as to all relevant issues and that the Commission had made errors of statutory interpretation and of fact.

During the first day of PSNH's adjudicative hearing, January 17, 1997, PSNH renewed orally its request to introduce additional testimony from Messrs. Noyes, Forsgren and Long as well as testimony from Messrs. Kalt, Ross and Clark. The request was opposed by Freedom Energy, the City of Manchester and the New Hampshire Municipal Association. The Retail Merchants Association, Cabletron Systems and the Granite State Hydropower Association supported PSNH's motion.

[1-3] Based on the arguments presented on January 17, 1997, we allowed the introduction of the additional testimony. We were persuaded by a number of intervenors and PSNH that the witnesses in question had testimony to offer that was relevant to issues of contested fact. As such, they were appropriately taken within the adjudicative phase of the docket. Accordingly, PSNH's Motion for Rehearing was effectively granted.

Based upon the foregoing, it is hereby

ORDERED, PSNH's Motion for Rehearing is GRANTED.

By order of the Public Utilities Commission of New Hampshire this third day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,478, 82 NH PUC 17, Jan. 14, 1997.

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NH.PUC*02/10/97*[97222]*82 NH PUC 61*Public Service Company of New Hampshire

[Go to End of 97222]

82 NH PUC 61

Re Public Service Company of New Hampshire

DR 97-006
Order No. 22,497

New Hampshire Public Utilities Commission

February 10, 1997

ORDER approving settlement under which an electric utility will buy out hydroelectric development rights from Northeast HydroDevelopment Corporation as to the McLane Dam in Milford. An original hydropower purchase agreement between the parties is now viewed as noncost-effective, given that the agreement's rates were much higher than going market rates and that the utility no longer needed additional capacity.

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1. COGENERATION, § 17

[N.H.] Contracts — Modification — Buyout of project development rights — Factors affecting approval — Lack of need for additional capacity — Noncompletion of project — Previously agreed upon rates as exceeding current market prices — Hydropower facilities. p. 63.

2. ELECTRICITY, § 5

[N.H.] Hydroelectric plant — Buyout of project development rights — Factors — Lack of need for additional capacity — Noncompletion of project — Previously agreed upon rates as exceeding current market prices — Cost-effectiveness of buyout. p. 63.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Page 61

On January 10, 1997, Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (Commission) a Joint Motion of Northeast HydroDevelopment Corporation and Public Service Company of New Hampshire for Expedited Approval of Settlement Agreement, and accompanying affidavits of Shelton B. Wicker, Jr. and Jason Hines. The Motion requests expedited approval of PSNH's buyout of purchase obligations which are included in a Settlement Agreement approved by the Commission in 1991 in DE 89-257 (1991 Settlement Agreement).

In March 1989, the Northeast HydroDevelopment Corporation (NHC) and the Town of Milford (Milford) entered into a purchase power agreement. Under the terms of the agreement, NHC agreed to repair the McLane Dam in Milford and install a run of the river hydroelectric facility at the dam site. PSNH opposed the agreement. Under the 1991 Settlement Agreement,

Milford agreed to purchase all of the plant's electricity for use at its municipal waste treatment plant.

Hearings in DE 89-257 were held in the summer and fall of 1990 on issues including the purchase power agreement and a petition to wheel power through PSNH's service territory. Following hearings, PSNH, NHC and Milford entered into the 1991 Settlement Agreement which was approved by the Commission in Order No. 20,316 (December 2, 1991).

The 1991 Settlement Agreement provided that 1) Milford and NHC nullify their power purchase agreement, 2) Milford purchase all of its electrical requirements from PSNH for 17 years, 3) PSNH purchase all of NHC's generation at the McLane Dam through December 21, 2009 and 4) PSNH contribute to the costs of reconstructing the dam, regardless of whether the hydroelectric facility was built at the site by NHC.

Key milestones and requirements of the 1991 Settlement Agreement included that 1) NHC's hydroelectric plant at the McLane Dam would be generating power by July 1, 1993, 2) NHC would start hydroelectric plant construction and dam repair by January 1, 1993, with substantial progress expected to be made by July 1, 1993 and 3) NHC would proceed in good faith to complete construction/repair and to begin generation by December 31, 1993, or by any later date if two of the three parties agree to changes in the performance dates specified in the 1991 Settlement Agreement.

Subsequent to the Commission's approval of the original Settlement Agreement in Order No. 20,316, NHC obtained Milford's approval in 1993 to push back the hydroelectric plant's online date to December 31, 1995. In December 1995, NHC again obtained Milford's agreement to move back the hydroelectric plant's online date, this time to December 31, 1997. In response to being notified in 1995 that NHC had obtained an extension for completion to December 31, 1997, PSNH indicated to NHC that it would review whether it still was obligated to purchase power from NHC pursuant to the original Settlement Agreement.

Upon this review and prior to the filing of the new Settlement Agreement in this proceeding, it was PSNH's position that it was no longer obligated to purchase output from NHC because 1) NHC did not commence physical repair of the dam by January 1, 1993, 2) NHC did not proceed continuously in good faith to complete repair of the dam and construction of the hydroelectric plant, and 3) little progress by NHC has taken place since March 1991.

Prior to the filing of the new Settlement Agreement in this proceeding, it was NHC's position that it was entitled to sell and PSNH was required to buy the output of the facility in accordance with the terms of the Settlement Agreement because 1) NHC did commence construction by January 1, 1993, 2) NHC has completed repair of the dam, 3) it has made substantial progress and acted in good faith to complete repair of the dam and construction of its hydroelectric plant in order to still be online and generating power by December 31, 1997 and 4) because NHC has properly received agreement from Milford to change the completion date in accordance with the terms of the Settlement Agreement, whereby agreement by two of the three parties is sufficient to change the Agreement's terms.

On January 10, 1997 PSNH filed a Joint Motion of Northeast HydroDevelopment

Corporation and Public Service Company of New Hampshire for Expedited Approval of Settlement Agreement.

II. POSITION OF THE PARTIES

PSNH and NHC jointly propose to settle their dispute regarding PSNH's obligation to purchase the output of McLane Dam under the terms of the original Settlement Agreement and the issue of NHC's performance under the original Settlement Agreement as follows for a new Settlement Agreement: Upon Commission approval, 1) PSNH will pay NHC a single, lump sum of $37,500 for closure of the site, payment of fees, and amounts owed to shareholders, 2) the original Settlement Agreement dated March 1, 1991 will be terminated, and 3) NHC will surrender its FERC license to the FERC upon receipt of $37,500 from PSNH.

Upon its review of the submitted materials in this proceeding, Commission Staff has recommended that the proposed Settlement Agreement be approved.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the materials and Staff's recommendations in this proceeding and find that the single, lump sum payment of $37,500 by PSNH to NHC for the development rights to the project is in the public interest. Our reasons for approving PSNH/NHC's Settlement Agreement include our consideration that, from a generation perspective, the McLane Dam Project could still be online and selling high priced power to PSNH by December 1997, for a period which would extend through 2009.

However, from a supply needs perspective, PSNH has no immediate or near term need for this power. As such, we find that it is in the public interest that both PSNH and NHC have arrived at an agreement to cease development of an unnecessary generation resource.

We also find that, from a financial perspective, in the 1991 Settlement Agreement the plant's power costs not only exceed market prices by more than $40,000 in the first year, but also exceed PSNH's projected costs by $190,000 over the life of the Agreement, on a net present value basis. As such, the single, up- front $37,500 payment to NHC is cost effective, as it enables PSNH to avoid a high priced power generation obligation.

Because NHC does not hold a long term rate order, this proposal does not appear to violate RSA 362-A:4-b which prohibits buy-outs of qualifying small power producers or cogenerators under long term rate orders.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed Settlement Agreement between the Northeast HydroDevelopment Corporation (NHC) and Public Service Company of New Hampshire (PSNH) in DR 97-006 is approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, PSNH 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 February 18, 1997 and to be documented by affidavit filed with this office on or before February 24, 1997; 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 3, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 12, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northeast Hydrodevelopment Corp., DE 89-257, Order No. 20,316, 76 NH PUC 727, Dec. 2, 1991.

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NH.PUC*02/10/97*[97223]*82 NH PUC 64*Exeter and Hampton Electric Company

[Go to End of 97223]

82 NH PUC 64

Re Exeter and Hampton Electric Company

Additional applicant: Kingston-Warren Corporation

DR 96-349
Order No. 22,498

New Hampshire Public Utilities Commission

February 10, 1997

ORDER adopting procedural schedule for addressing the joint petition of an electric utility and an industrial customer for authority to relocate the point of metered service for the customer, which relocation would result in a change in electric supplier for the customer. Under present circumstances, the customer is served by Public Service Company of New Hampshire, as the customer's premises straddle two different franchise areas.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Proposed changes in existing territorial assignments — Factors — Location of customer's premises in two different service areas — Procedural schedule for addressing proposal — Electric service. p. 64.

2. FRANCHISES, § 53

[N.H.] Amendment — Proposed changes in existing service area assignments — Factors — Location of customer's facilities as straddling franchise boundaries — Procedural schedule for addressing proposed changes — Electric service. p. 64.

3. SERVICE, § 286

[N.H.] Electric connections — Proposed relocation of point of metered service — Resulting in change of supplier — Factors — Customer's premises as straddling franchise boundaries — Procedural schedule for addressing proposed changes. p. 64.

4. PARTIES, § 18

[N.H.] Intervenors — Factors affecting standing — Existing service supplier versus competitive supplier — Proposed changes in territorial assignments — Intervention by other interested parties — Electric service. p. 64.

BY THE COMMISSION:

ORDER

[1-4] On October 28, 1996, Exeter & Hampton Electric Company (Exeter & Hampton) and Kingston-Warren Corporation (Kingston-Warren) (collectively, the Joint Petitioners) filed with the New Hampshire Public Utilities Commission (Commission) a petition for Declaratory Ruling (Petition). Public Service Company of New Hampshire (PSNH) provides electric service to Kingston-Warren. Kingston-Warren is located on land that straddles two franchise territories within the Towns of Exeter (served by Exeter & Hampton) and Newfields (served by PSNH).

The Joint Petitioners propose to relocate the point of metered service to Kingston-Warren land served by Exeter & Hampton. They also propose to construct lines that traverse and parallel railroad tracks on an easement leased from Boston and Maine Corporation to Kingston-Warren.

The Commission set a prehearing conference for January 30, 1997 and set a deadline for intervention requests.

PSNH and Great Bay Power Corporation (Great Bay) sought intervention. The Joint Petitioners objected to the intervention requests of PSNH and Great Bay. Prior to a ruling on those petitions, however, the Commission in its December 26, 1996 Order of Notice made all New Hampshire electric utilities mandatory parties to the proceeding. At the prehearing

Page 64

conference, Kingston-Warren stated it continued to object to PSNH's intervention and the Commission's order making PSNH a mandatory party and that it may appeal that determination but would not do so on an interlocutory basis.

Great Bay is a wholesale provider of electricity and a joint owner of the Seabrook Station nuclear power plant. It sought intervention arguing that its rights as a domestic utility pursuant to RSA 374-A and joint owner of Seabrook were conceivably at risk and warranted intervention. The Joint Petitioners opposed the intervention request, arguing that Great Bay had no substantial interests at stake, and did not meet the terms for intervention in RSA 541-A:32 or N.H. Admin. Rule, Puc 203.02(a)(2). On February 7, 1997, the Joint Petitioners withdrew their objection to Great Bay's intervention.

The Office of Consumer Advocate is a statutorily recognized intervenor. There were no other intervention requests.

Kingston-Warren argued that the proceeding should not be adjudicative but recognized that the Commission had granted PSNH's request, in part, by providing for evidence on the record regarding the Joint Petition.

PSNH suggested at the close of this docket that a rulemaking be commenced for treatment of these types of situations on a generic basis, though the determination in this docket regarding Kingston-Warren would go forward independent of a rulemaking proceeding.

Connecticut Valley Electric Company filed a statement of position in which it opposed the Joint Petition, arguing that because there was no indication that service provided by PSNH was inadequate, Exeter & Hampton should not be allowed to extend duplicative facilities into PSNH's territory to provide service to Kingston-Warren.

There were a number of disputes regarding discovery, which the Parties and Staff were instructed to discuss and resolve in a technical session following the prehearing conference. Staff submitted a letter on February 4, 1997, supplemented by letter dated February 10, 1997, delineating an expanded procedural schedule and other discovery related agreements. The schedule is as follows:

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

Rolling Data Requests and Responses	January 30, 1997 to February 21, 1997
Testimony by any Party or Staff	February 28, 1997
Data Requests	March 7, 1997
Notification of Expert Witnesses	March 12, 1997
Data Responses	March 14, 1997
Rebuttal Testimony by any Party or Staff	March 21, 1997
Hearing on the Merits 1:30 p.m.	March 24, 1997
10 a.m.	March 26 and 27, 1997

The Parties and Staff agreed that data requests and responses be conveyed by facsimile, overnight mail or hand delivery if volumi- nous or not conducive to facsimile, such as might be the case with a map.

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. We continue to find it appropriate for PSNH and other jurisdictional utilities to fully participate in this docket. Although we consider the interests of Great Bay to be somewhat more attenuated than those of the New Hampshire jurisdictional utilities, there are nonetheless interests of Great Bay that could be implicated in this docket and as such, we will grant the intervention request.

Based upon the foregoing, it is hereby

ORDERED, that Great Bay is granted full intervention in this case; and it is

FURTHER ORDERED, that the agreed upon procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1997.

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NH.PUC*02/10/97*[97224]*82 NH PUC 66*Tioga River Water Company

[Go to End of 97224]

Re Tioga River Water Company

DR 96-300
Order No. 22,499

New Hampshire Public Utilities Commission

February 10, 1997

ORDER adopting a procedural schedule relative to a water utility's petition for a 58% rate increase.

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1. RATES, § 640

[N.H.] Practice and procedure — Adoption of procedural schedule — Data requests — Settlement conferences — Hearings — Water utility. p. 66.

2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 50% — Adoption of procedural schedule. p. 66.

BY THE COMMISSION:

ORDER

On November 13, 1996, Tioga River Water Co. (Tioga) filed with the New Hampshire Public Utilities Commission (Commission), along with supporting testimony and exhibits, a petition for an increase in annual revenue of $3,964 or 58%. The Commission scheduled a prehearing conference for January 24, 1997, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff).

No requests for intervention were submitted to the Commission and no other parties or customers attended the prehearing conference.

[1, 2] At the prehearing conference, Staff requested and was granted by the Commission the opportunity to prepare a proposed procedural schedule and submit the schedule in writing to the Commission. The parties submitted the following proposed schedule.

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

Staff Data Requests to Tioga	February 3, 1997
Response to Staff Data Requests	February 10, 1997
Staff Testimony	February 21, 1997
Settlement Conference	February 28, 1997
File Settlement Agreement, if any	March 19, 1997
Hearing on the Merits, 10:00 A.M.	March 26, 1997

At the prehearing conference, Tioga indicated that it had not had a rate case since 1983 and that it was losing money. Tioga relies upon an affiliated company, Gilford Well, to provide services at no charge. Tioga requests that the proposed rate increase become effective as of January 1, 1997. It does not seek temporary rates.

Staff stated it particularly intended to review expenses, including testing fees, rate base additions, and individual customer metering. At the technical session Tioga and Staff also discussed the need for physical improvements to the system.

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 the proposed procedural schedule delineated above is approved.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1997.

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NH.PUC*02/10/97*[97225]*82 NH PUC 67*New Hampshire Electric Cooperative, Inc.

[Go to End of 97225]

82 NH PUC 67

Re New Hampshire Electric Cooperative, Inc.

Petitioner: Loon Mountain Recreation Corporation

DR 96-147
Order No. 22,500

New Hampshire Public Utilities Commission

February 10, 1997

ORDER denying rehearing of Order No. 22,404 (81 NH PUC 864) and affirming that the rate discounts contained in an electric cooperative's approved special rate contract with a ski resort are applicable only to actual ski operations and not to other electrical load at the resort such as streetlighting and employee housing.

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1. RATES, § 360

[N.H.] Electric rate design — Seasonal customers — Ski resorts — Service via special rate contracts — Discounts — Applicability of — Only to actual ski operations — Inapplicability to other, separately metered load — No applicability to streetlighting or employee housing — Electric cooperative — Affirmation of discount limits. p. 67.

2. RATES, § 211

[N.H.] Special contracts — Provisions for rate discounts — Discounts in exchange for interruptible service — Contract with ski resort customer — Applicability of discounts to actual ski operations only — Inapplicability to other, separately metered load — Electric cooperative — Affirmation of discount limits. p. 67.

BY THE COMMISSION:

ORDER

In Docket DR 94-259, the New Hampshire Public Utilities Commission (Commission) approved a special contract between Loon Mountain Recreation Corporation (Loon Mountain) and the New Hampshire Electric Cooperative, Inc. (NHEC). *See*, Order No. 21,812 (September 6, 1995). On May 8, 1996, Reduced Energy Specialists, Inc. (RES), on behalf of Loon Mountain, filed with the Commission a motion to enforce the terms and conditions of the special contract (Motion to Enforce), to which NHEC objected.

The essence of the dispute was whether the contract between Loon Mountain and NHEC applied to all of Loon Mountain's electric load or only to load related to its ski operations. The load that NHEC argued was not subject to the discounted special contract consists of five separately metered accounts: 1) an information booth on the Kancamagus Highway; 2) employee housing located in the area of Loon Brook Condominiums; and, 3) three separate street lighting

accounts.

The Commission, in Order No. 22,404 (November 6, 1996), denied the Motion to Enforce. Loon Mountain submitted a Motion for Rehearing of Order No. 22,404 on November 25, 1996, to which NHEC objected on December 4, 1996.

Loon Mountain argues that the Commission wrongly considered the testimony of an NHEC witness regarding the intent of the contract (and alternatively, did not give enough weight to the Loon Mountain witness regarding intent) and failed to recognize the pertinent terms of the contract regarding its applicability to all of Loon Mountain's load. Loon Mountain also asserts that the Commission was in error in the meaning it attached to certain metering and billing issues, among others.

NHEC urges the Commission to deny the Motion for Rehearing as the order is not unlawful or unreasonable and that Loon Mountain's arguments are restatements of positions taken at the hearing.

[1, 2] We are not persuaded by Loon Mountain's arguments that Order No. 22,404 requires rehearing. Loon Mountain points out

certain factual representations in the order to which it takes issue, arguing that we put too much weight on a particular point or failed to grasp that it was NHEC's omission of a particular item that led to the dispute over eligible load. Even assuming, arguendo, that Loon Mountain is correct on these points, our conclusion remains the same. As we stated in Order No. 22,404,

> We cannot conclude, based on the terms of the contract or the evidence presented, the contract was intended to provide discounted rates for the five accounts that serve other business needs of the Loon Mountain but are not related to snow making, ski lift operations or trail maintenance. Perhaps more importantly, we do not believe it would be appropriate for more than the ski operations to be included in the discount.

Loon Mountain failed to present evidence or argument that causes us to reconsider our decision to deny the Motion to Enforce. We therefore find that no good cause exists to grant such rehearing. *See* RSA 541:3. Accordingly, the Motion for Rehearing will be denied.

Based upon the foregoing, it is hereby

ORDERED, that Loon Mountain's Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 94-258 et al., Order No. 21,812, 80 NH PUC 568, Sept. 6, 1995. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-147, Order No. 22,404, 81 NH PUC 864, Nov. 6, 1996.

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NH.PUC*02/10/97*[97226]*82 NH PUC 68*Hampton Water Works Company

[Go to End of 97226]

82 NH PUC 68

Re Hampton Water Works Company

DE 95-238
Order No. 22,501

New Hampshire Public Utilities Commission

February 10, 1997

ORDER scheduling a prehearing conference at which to address the commission's authority to exempt a water utility from local zoning ordinances. The matter arose after the water utility wished to locate a new well within a town whose town council opposed such construction.

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1. WATER, § 12

[N.H.] Water utility — Construction and equipment — Siting of new well — Effect of municipal opposition — Zoning jurisdiction issues. p. 69.

2. ZONING

[N.H.] Municipal ordinances — Commission jurisdiction to enforce or waive — Prehearing conference at which to address jurisdictional issues — As to water utility's construction of new well. p. 69.

BY THE COMMISSION:

ORDER

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. The Town of Stratham opposed the petition and challenged the Commission's authority to grant it. A prehearing conference was held on

October 4, 1995 and the Commission issued a procedural order on October 17, 1995. Order No. 21,869 directed the filing of legal memoranda on October 25, 1995 with replies due November 9, 1995. At that time, the Commission noted that oral argument would be scheduled at the Commission's discretion.

At its November 20, 1995 public meeting, the Commission directed Hampton and the Town to pursue alternative dispute resolution. The first mediation session was held on December 1, 1995 and numerous mediation sessions were held thereafter. In May of 1996 the parties informed the mediator that an understanding had been achieved and that further sessions were unnecessary.

On January 10, 1997, Hampton notified the Commission that pursuant to mediation Hampton had submitted an application for a site plan to the Stratham Planning Board but that the Board has attached certain conditions that Hampton finds unacceptable. Consequently, Hampton seeks authority to continue development of a well in Stratham and asks the Commission to "exercise its authority pursuant to RSA 674:30 to exempt Hampton from any local zoning regulations which may delay or prohibit development of the well."

The Town, on January 24, 1997, objected to Hampton's request. The Town disputes the Commission's jurisdiction in this regard but argues, in the alternative, that Hampton must demonstrate the need for the well and that a prehearing conference should be held to resolve procedural issues.

[1, 2] It is regrettable that the parties have been unable to resolve their differences after the expense of considerable time, effort and money. As a result, we believe it is appropriate to hold a further prehearing conference to hear oral argument on the earlier legal memoranda addressing the Commission's authority to exempt Hampton from local zoning regulations. At such prehearing conference, we will hear argument on other procedural issues raised by the recent filings of the parties.

Based upon the foregoing, it is hereby

ORDERED, that a prehearing conference be held March 11, 1997 at 10:00 a.m. at 8 Old Suncook Road, Concord, New Hampshire as described above.

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

1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampton Water Works Co., DE 95-238, Order No. 21,869, 80 NH PUC 655, Oct. 17, 1995.

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[Go to End of 97227]

82 NH PUC 69

Re Tilton-Northfield Aqueduct Company

DF 96-210
Order No. 22,502

New Hampshire Public Utilities Commission

February 11, 1997

APPLICATION by water utility for authority to issue additional securities so as to finance a change in design for its new storage reservoir; granted.

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1. SECURITY ISSUES, § 58

[N.H.] Issuance of notes — Purposes — Additions and betterments — Water utility — Construction of new storage reservoir — Change in design parameters. p. 70.

2. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Storage reservoir — Change in design — To eliminate floating cover and liner in favor of a more permanent concrete tank. p. 70.

BY THE COMMISSION:

ORDER

The Petitioner, Tilton-Northfield Aqueduct Company (TNA or the Company), on January 15, 1997, filed a request with the New Hampshire Public Utilities Commission (Commission) for authority to issue additional securities for the financing of its compliance efforts with the Safe Drinking Water Act (SDWA). The Company had previously received Commission authorization for financing up to $3,124,398 by Order No. 21,876 in DF 95-185. On August 27, 1996, the Commission issued Order No. 22,296 in the present docket, providing for borrowing authorization for an additional $64,318 to provide for larger transmission mains in order to achieve acceptable fire flows.

[1, 2] This request for additional financing authority relates to a change from the Company's original intent to use a floating cover system to instead close in its storage reservoir. A new requirement by the New Hampshire Department of Environmental Services (DES) for a reservoir liner resulted in a reassessment of reservoir covering alternatives. The Company's engineers, Dufresne-Henry, Inc., provided cost comparisons of three alternatives including the proposed poured-in-place concrete tank as well as the floating cover with liner and a precast concrete tank. Commission Staff has reviewed the resulting proposal and worked with the Company in reviewing the alternatives. While a floating cover with liner has a lower initial capital cost than either tank option, it has a much shorter life. Floating cover and liner costs over the long term are not a great deal less than tank costs. They are, however, vulnerable to additional cost escalations from vandalism and ice damage, while tanks are virtually maintenance-free. TNA is therefore proposing, with DES' support, the lower cost of the two tank options, i.e., the poured-in-place option.

The Company, in consultation with Commission Finance Staff, has modified its financing request slightly since its January 15 filing in this docket. The Company now requests a total of $3,841,965 in borrowing authority for all of its proposed construction in furtherance of its compliance with the SDWA.

Staff has reviewed the filing and concludes that the terms and conditions for the financing are the same as those approved in Order No. 21,876. Based upon the Staff's review, we find the proposed use of the funds to be prudent and in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Tilton-Northfield Aqueduct Company is authorized to borrow up to a total of $3,841,965 under the terms and conditions set forth in Order No. 21,876; and it is

FURTHER ORDERED, that the use of these funds for compliance with the SDWA is in the

public interest; 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 February 18, 1997 and to be documented by affidavit filed with this office on or before February 25, 1997; 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 4, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 11, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 14, 1997, 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 an accounting with this Commission, each January 1 and July 1, duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing, until said proceeds are fully expended.

By order of the Public Utilities Commission of New Hampshire this eleventh day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tilton-Northfield Aqueduct Co., Inc., DF 95-185, Order No. 21,876, 80 NH PUC 673, Oct. 24, 1995. [N.H.] Re Tilton-Northfield Aqueduct Co., Inc., DF 96-210, Order No. 22,296, 81 NH PUC 661, Aug. 27, 1996.

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NH.PUC*02/11/97*[97228]*82 NH PUC 71*Merrimack County Telephone Company

[Go to End of 97228]

82 NH PUC 71

Re Merrimack County Telephone Company

DS 96-197
Order No. 22,503

New Hampshire Public Utilities Commission

February 11, 1997

ORDER authorizing a local exchange telephone carrier to introduce enhanced business services, a form of Centrex service.

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1. SERVICE, § 463

[N.H.] Telephone — Offering of Centrex-like "enhanced business services" — For those customers wanting network solutions to telecommunications needs — Local exchange carrier. p. 71.

2. RATES, § 566

[N.H.] Telephone rate design — New Centrex-like "enhanced business services" — Pricing above incremental cost — Local exchange carrier. p. 71.

BY THE COMMISSION:

ORDER

[1, 2] On June 14, 1996 Merrimack County Telephone Company (MCT) filed with the New Hampshire Public Utilities Commission (Commission) proposed tariff pages to introduce Enhanced Business Service (EBS) for effect July 15, 1996. In Order No. 22,241 (July 16, 1996) the Commission suspended the proposed tariff pages pending further review of the filing and supporting materials. The Commission suspended the tariff pages pending further investigation a second time in Order No. 22,351 (October 14, 1996). On January 10, 1997 the Executive Director of the Commission received a letter from Mr. Dennis D. Conley, Merrimack Valley Telephone's Director of Customer Services, urging the Commission to expedite its decision in this docket.

EBS is designed primarily for business customers who prefer network solutions to their telecommunications needs. EBS is also commonly referred to as Centrex service.

MCT requested that the Commission waive legal notice requirements, N.H. Admin. Rules, Puc 1601.05 (j), and instead allow MCT to notify prospective customers via bill inserts, customer contacts, and other marketing mechanisms.

MCT projects it will sell 300 EBS lines and 100 EBS features generating a projected annual recurring revenue of $28,000. Projected non-recurring revenue is $6,000.

In its filing, MCT's incremental cost study supports that the proposed rates for each service are substantially above its incremental cost. Accordingly, if approved these services will generate a significant contribution towards joint and common costs.

The Commission Staff has investigated this filing including accompanying cost, usage, and revenue documentation and provided a recommendation to the Commission. MCT was highly responsive to Staff's requests for information and expeditiously amended proposed pages. These changes are reflected on the 1st Revised in Lieu of Original Pages 3, 4, 5, 17, 23, and 24 transmitted to Staff on February 5, 1997.

The Commission has reviewed the filing materials and the Staff recommendation and finds that the proposed introduction of EBS is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MCT's EBS filing is approved as modified to reflect the requested changes of Staff, and therefore tariff pages Part III - General, Section 2, Original Pages 1, 2, 6-16, 18-22, 25-26; and 1st Revised in Lieu of Original Pages 3, 4, 5, 17, 23, and 24 of Merrimack County Telephone Company are approved for effect on the date of this order; and it is

FURTHER ORDERED, that a waiver of Puc 1601.05 (j), requiring publication is granted, and in lieu thereof, Merrimack County Telephone is ordered to notify prospective customers via bill inserts, customer contacts, or other marketing mechanisms; 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 24, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 31, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 2, 1997, 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 April 2, 1997, in accordance with N.H. Admin. Rules, PUC 1601.04 (b).

By order of the Public Utilities Commission of New Hampshire this eleventh day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Merrimack County Teleph. Co., DS 96-197, Order No. 22,241, 81 NH PUC 558, July 16, 1996. [N.H.] Re Merrimack County Teleph. Co., DS 96-197, Order No. 22,351, 81 NH PUC 742, Oct. 14, 1996.

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NH.PUC*02/18/97*[97229]*82 NH PUC 72*Northern Utilities, Inc.

[Go to End of 97229]

82 NH PUC 72

Re Northern Utilities, Inc.

DF 97-015
Order No. 22,504

New Hampshire Public Utilities Commission

February 18, 1997

ORDER authorizing a gas utility to amend an existing revolving credit agreement so as to extend its term and decrease the applicable borrowing rate.

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1. SECURITY ISSUES, § 111

[N.H.] Methods of financing — Revolving credit agreement — Amendment of — To take advantage of lower interest rates — Savings of $60,000 — Gas utility. p. 72.

BY THE COMMISSION:

ORDER

[1] The Petitioner, Northern Utilities, Inc. (Northern or the Company), requests authority

pursuant to R.S.A. 369:1 and 4 to amend its current Revolving Credit Agreement (the Agreement) which provides funds in an amount not to exceed $20,000,000 over a four year term. The current Agreement expires on March 17, 1997; the amendment would extend the term and decrease the borrowing rate. The purposes of the requested extension are to reduce short-term indebtedness and make additional capital expenditures.

Northern received proposals for revolving credit agreements from five commercial banks and selected the proposal that provided the lowest overall borrowing costs. Two significant changes to the terms of the current agreement are: 1) the margin added to the London

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Interbanks Offered Rates (LIBOR) LIBOR-based rates (at the date of the filing, the one month LIBOR rate as reported in the February 6, 1997 Wall Street Journal was 5.4375 percent) is reduced from .375 percent to .300 percent (Northern's interest rate at the date of the filing would be 5.8125 percent under the current terms compared to 5.7375 percent under the proposed terms); and (2) the Commitment Fee of 18.75 percent per annum on the unused portion of the $20,000,000 is reduced to 8.5 percent per annum. As a result of these changes, the Company estimates savings of approximately $60,000 over the next four years.

The proposed transaction will have no appreciable effect on the Company's debt-to-equity ratio. Common equity constitutes 48.47 percent of the total capitalization under both the current and proposed financing. Currently, long-term debt is 41.95 percent and short-term debt is 9.58 percent of the total capitalization. Under the proposed financing, the long-term debt and short-term debt would be 43.78 percent and 7.76 percent, respectively.

After reviewing the merits of the petition as set forth above, and in accordance with RSA 369, we find approval of the petition to be in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the petition of Northern Utilities, Inc. for authorization to extend the term of the current Revolving Agreement for an additional four year term at a rate of 30 basis points above LIBOR-based rates on outstanding debt and 8.5 basis points per annum on the unused portion of the commitment is approved pursuant to RSA 369:1 and 4; and it is

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

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

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

FURTHER ORDERED, that on or before January 1st and July 1st of each year, Northern shall file with this Commission a detailed statement, duly sworn to by its Treasurer, showing the disposition of proceeds of the Agreement until the whole of said proceeds have been fully accounted for; 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 newspaper of general circulation in that portion of the state in which operations are conducted, such publication to be no later than February 21, 1997 and to be documented by affidavit filed with this office on or before February 28, 1997; 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 4, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than March 6, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 8, 1997, 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 February, 1997.

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NH.PUC*02/19/97*[97230]*82 NH PUC 74*EnergyNorth Natural Gas, Inc.

[Go to End of 97230]

82 NH PUC 74

Re EnergyNorth Natural Gas, Inc.

DR 96-239
Order No. 22,505

New Hampshire Public Utilities Commission

February 19, 1997

ORDER approving a natural gas local distribution company's proposed introduction of a large volume 90 sales service tariff as an adjunct to its recently approved large volume 90 transportation service, the 90 designation meaning that only customers with a 90% load factor would qualify for the service rate.

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1. RATES, § 382

[N.H.] Natural gas rate design — New "large volume 90 sales" service — Eligibility for — Customers with a minimum 90% load factor — Separate transportation and sales rates for large volume 90 customers — Local distribution company. p. 74.

2. SERVICE, § 332

[N.H.] Natural gas — New "large volume 90 sales" service — Eligibility for — Customers with a minimum 90% load factor — Separate transportation and sales rates for large volume 90 customers — Renaming of existing large-volume services as large volume 70 sales and transportation services — Local distribution company. p. 74.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, EnergyNorth Natural Gas, Inc. (ENGI), filed with the New Hampshire Public Utilities Commission (Commission) on July 25, 1996 a petition, testimony and exhibits in support of a Natural Gas Engine Firm Transportation (NGEFT) tariff. The NGEFT rate was designed for high use commercial and industrial customers with dominant summer use and a high load factor. ENGI initially limited the availability of the rate to end-users employing natural gas for electric power production. By Order No. 22,492, the Commission accepted a settlement agreement filed by the Staff and the parties to the proceeding removing any end-use restrictions on the NGEFT tariff, and renaming the rate, Large Volume 90 Firm Transportation, which requires a 90% load factor. Furthermore, consistent with the renaming of this service, the parties and Staff proposed renaming ENGI's other large volume tariffs to similar language along with some minor editorial changes.

Thus, the parties have proposed that the current sales rate, Large Volume Sales, be renamed Large Volume 70 Sales, which reflects the fact that service is limited to customers with a load factor of 70% but less than 90%. Similarly, the parties and Staff proposed renaming the current Large Volume Firm Transportation tariff to Large Volume 70 Firm Transportation tariff.

We find the proposed Large Volume 90 Sales tariff just and reasonable and in the public interest. We further find the name changes to existing services and the editorial changes to these same services consistent with the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the Large Volume 90 Sales tariff is approved; and it is

FURTHER ORDERED, that the proposed editorial changes to and renaming of the Large Volume Sales to Large Volume 70 Sales are approved; and it is

FURTHER ORDERED, that the proposed editorial changes to and renaming of the Large Volume Firm Transportation service to Large Volume 70 Firm Transportation are approved; and

it is

FURTHER ORDERED, that the Petitioner shall file a compliance tariff with the Commission on or before March 21, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

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By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-239, Order No. 22,492, 82 NH PUC 49, Jan. 31, 1997.

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NH.PUC*02/19/97*[97231]*82 NH PUC 75*New Hampshire Electric Cooperative, Inc.

[Go to End of 97231]

82 NH PUC 75

Re New Hampshire Electric Cooperative, Inc.

DR 97-010
Order No. 22,506

New Hampshire Public Utilities Commission

February 19, 1997

ORDER authorizing an electric cooperative to apply a credit of 0.988 cents per kilowatt-hour to off-peak heating service customers, as a passthrough of a credit given the cooperative by its wholesale power supplier, Public Service Company of New Hampshire.

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1. RATES, § 327

[N.H.] Electric rate design — Off-peak service — Space and water heating customers — Implementation of credit mechanism — As passthrough of credits from wholesale power supplier — Three-year credit period — Electric cooperative. p. 76.

BY THE COMMISSION:

ORDER

On January 17, 1997, New Hampshire Electric Cooperative, Inc. (NHEC or the Company) filed with the New Hampshire Public Utilities Commission (Commission) a Proposal to Reduce Off-Peak Heating Rates (Proposal). The Proposal requests Commission approval of a Demand Side Management (DSM) Power Cost Credit of $0.00988 per kilowatt-hour (kWh) to be applied to the bills of NHEC members taking service on off-peak space and water heating rates associated with certain NHEC DSM programs.

During 1994, Public Service Company of New Hampshire (PSNH) and NHEC held negotiations regarding reduced wholesale power costs for certain types of loads which could potentially be lost to alternative fuels or self-generation. The result of these negotiations was an agreement to reduce wholesale costs for power to be resold to NHEC's member ski areas and sawmills which agreed to enter into special retail rate agreements. The same discussions also produced an agreement to reduce the cost of wholesale power used to meet the requirements of NHEC members who take service on off-peak space and water heating (off-peak heating) rates associated with certain NHEC DSM programs. The wholesale power cost reductions for ski area and sawmill loads began in 1994 and 1995, respectively, after Commission approval of the associated retail rates. See Order No. 21,436 (November 23, 1994) and Order No. 21,812 (September 6, 1995) in Dockets DR 94-258, DR 94-259, DR 94-260 and DR 94-261 and also Order No. 21,570 (March 13, 1995) and Order No. 21,733 (July 11, 1995) in Docket DR 95-031.

The results of the negotiations necessitated Federal Energy Regulatory Commission (FERC) approval of revisions to the *PSNH Amended and Restated Agreement with NHEC for Partial Requirements Resale Service* (APRA), the wholesale agreement between PSNH and NHEC. The details specific to the Proposal are described in Exhibit C, Original Sheet No. 5 and 6 of the APRA. PSNH will apply a credit to NHEC's wholesale power bill equal to $0.01/kWh for each kWh billed by NHEC to its members taking service under off-peak heating rates associated with particular

NHEC DSM programs and who are served through PSNH delivery points. The wholesale power cost reductions for the off-peak heating loads are effective for NHEC's retail sales

requirements from January 1, 1997 through December 31, 1999. Based on actual 1996 sales data, NHEC expects annual credits from PSNH for approximately 24,917,788 kWh or $249,178.

NHEC proposes to pass the wholesale credits from PSNH directly through to all of its off-peak heating members, whether they receive service through a PSNH delivery point or not, through the use of a DSM Power Cost Credit (Credit). Currently, NHEC states 134 of the approximately 7,300 members participating in NHEC's off-peak heating DSM programs are served by non-PSNH delivery points. The retail sales on off-peak heating rates for 1996 were 25,214,294 kWh.

NHEC proposes to assess a Credit equal to $0.00988/kWh to the bills of its off-peak heating rate members. NHEC calculated the Credit by dividing the total annual PSNH credit amount by the total annual off-peak heating sales of all NHEC members ($249,178/25,214,294 kWh). The energy charges for the rates involved will be reduced by $0.00998/kWh after adjusting for the effect of the New Hampshire Franchise Tax.

[1] We have reviewed NHEC's Proposal and the methodology used to determine the DSM Power Cost Credit to be applied to the off-peak heating rates of the Company's members. As a result, we are persuaded that the Credit of $0.00988/kWh is just and reasonable and in the public interest and that the methodology used by NHEC equitably apportions the $0.01/kWh wholesale credit from PSNH to all of the Company's members on off-peak heating rates whether or not those members take service through a PSNH delivery point. Noting that NHEC has already received the wholesale credit from PSNH for one month which the Company has not been able to pass through to its customers, we will extend the termination date of this approval to reflect a 36-month period to coincide with the length of time that NHEC will receive its wholesale credits from PSNH. Therefore, we shall approve the Credit effective March 3, 1997 through February 29, 2000, unless PSNH no longer provides the $0.01/kWh wholesale credit to NHEC.

We shall direct the Company to provide an annual report referencing this docket which illustrates the reconciliation of the wholesale credits received from PSNH to the DSM Power Cost Credits issued to its members.

Finally, consistent with treatment we have recently allowed for Unitil in Docket No. DR 96-034, we waive the application of Puc 1203.05(a), which requires generally that rate changes be implemented on a service rendered basis, and will allow NHEC to implement its DSM Power Cost Credit on a bills rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NHEC's request to apply a DSM Power Cost Credit of $0.00988/kWh to the bills of its off-peak space and water heating rate members associated with certain NHEC DSM programs is APPROVED; and it is

FURTHER ORDERED, that NHEC shall file an annual report illustrating the reconciliation of the wholesale credits received from PSNH to the DSM Power Cost Credits issued to its members; and it is

FURTHER ORDERED, that the Credit will be in effect until February 29, 2000 unless the $0.01/kWh wholesale credit is no longer provided by PSNH to NHEC; 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 February 21, 1997 and to be documented by affidavit filed with this office on or before March 3, 1997; 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 25, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 28, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective March 3, 1997 on a bills rendered basis, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that NHEC shall file a compliance tariff with the Commission on or before March 3, 1997, 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 February, 1997.

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 95-031, 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. 21,733, 80 NH PUC 449, July 11, 1995. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 94-258 et al., Order No. 21,812, 80 NH PUC 568, Sept. 6, 1995.

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NH.PUC*02/19/97*[97232]*82 NH PUC 77*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97232]

82 NH PUC 77

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-019
Order No. 22,507

New Hampshire Public Utilities Commission

February 19, 1997

ORDER rejecting a proposed special rate contract as between a local exchange telephone carrier and Digital Equipment Corporation for the provision of Centrex service. Commission explains that the uniqueness and complexity of the Centrex arrangement involved and the proposed 10-year term of the contract require more in-depth review than allowed for in the instant filing.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Proposed special rate contract — Factors affecting rejection — Ten-year term of contract — Complexity of Centrex arrangement at issue — Extent of administrative deficiencies — Local exchange carrier. p. 78.

2. RATES, § 213

[N.H.] Special service contracts — Rejection by commission — Factors — Defects in filing — Necessity of additional review time — Proposed 10-year term of contract — Complexity of service arrangements involved — Local exchange carrier — Centrex services. p. 78.

BY THE COMMISSION:

ORDER

I. BACKGROUND

On January 16, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with Digital Equipment Corporation (DEC) for Centrex services. In support of its petition, NYNEX filed a brief contract overview and a cost study associated with the special contract. The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the contract from public disclosure.

DEC is one of New Hampshire's largest employers and has historically evidenced significant technical and business sophistication. In DE 94-151, MCI Metro/ATS, for instance, it was revealed that DEC had constructed a fiber-optic private network to connect its buildings in Nashua, Merrimack, Hudson and Salem to each other, to the other local and long distance carriers, and to other DEC properties in Massachusetts. MCI Metro/ATS therefore sought approval to become a Competitive Access Carrier after DEC auctioned off and leased back its fiber optic network. At that time, DEC retained a number of PBXs connected to the MCI Metro network.

II. SUMMARY OF SPECIAL CONTRACT

The agreement covers DEC's premises and PBX/switch infrastructure in both New Hampshire and Massachusetts and provides analog lines, electronic business lines, analog Multi-Line Hunt Group (MLHG) lines, virtual numbers, and T-1 Terminations at Digital locations in New Hampshire. The change from DEC's existing PBX system to a new Centrex system is expected to cause significant disruption in DEC's day-to-day operations. For both this reason and the lower price, DEC requested a long-term contract. The contract term is 10 years, which would be the longest term for a special contract proposed to date.

The design of the Centrex network with DEC is unlike any other previously proposed and includes a DMS 100/200 host switch in Manchester with remote switches at DEC's New Hampshire locations. Currently, the NYNEX DMS 200 switch in Manchester serves as the Traffic Operator Position System (TOPS) for the three northern states. The DMS 200 will be upgraded to a DMS 100/200 to provide line-side terminations needed for Centrex. DEC will provide NYNEX point-to-point telecommunications service linking various DEC premises, for use by NYNEX in providing Centrex service to DEC. DEC will obtain this service from MCI Metro/ATS.

The DEC PBX/switch infrastructure will be transferred to NYNEX, including the associated power plant. Associated arrangements for housing the equipment and access to the equipment are covered. The inventory of spare parts will also be transferred; pricing of additional capacity in the future is a function of the quality and quantity of this inventory.

The central office investment and the outside plant are arguably dedicated to DEC. NYNEX believes it is unlikely that NYNEX would be able to reuse the investment at the end of the contract term, or before the end of the contract term. Accordingly, the cost studies employ full-life recovery, essentially setting the depreciation life equal to the contract term. DEC has the option of paying the portion related to capital investment in an upfront non-recurring charge or financing the charge over the contract term.

III. COMMISSION ANALYSIS

[1, 2] The special contract is filed pursuant to RSA 378:18-b, which allows the Commission only 30 days to determine whether the prices of the services are above the incremental costs of the services. Because of the abbreviated review period, the Commission has clearly communicated its expectation that such filings must be complete and accurate when filed. *See* Order No. 22,216 at 3 (July 2, 1996). In addition, this special contract is unique and involves a substantially greater degree of complexity than previously addressed Centrex contracts which essentially offered only volume or term discounts. We also observe that the parties envisioned regulatory approval of the Agreement by January 15, 1997, however, NYNEX did not file the Agreement until January 16, 1997.

In this filing, Staff found several issues which require clarification, correction and/or support, either with the original special contract or the cost support package. The issues include Cost Study Details with insufficient support, e.g., Common Switch Network Investment and Software Cost Expense, as well as mathematical and textual errors. Moreover, Contract issues such as the 10-year Term of Agreement, Termination Liability and Termination Reimbursement raise competitive and jurisdictional concerns. Further, the Contoocook portion of

the network raises a Telecommunications Act question with regard to provision of service in a rural telephone company service territory, and, the proposed EUCL treatment could produce rates below incremental costs.

Staff has, based on its analysis of the filing, consequently recommended that the Commission reject NYNEX's special contract with DEC, without prejudice. We have reviewed the petition and accept Staff's recommendation. Nonetheless, while the special contract proposal as filed is defective, which justifies rejection of the proposal, we direct Staff to work with NYNEX to cure the defects, should NYNEX elect to re-file the special contract.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with DEC is REJECTED, WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-187, Order No. 22,216, 81 NH PUC 501, July 2, 1996.

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NH.PUC*02/21/97*[97233]*82 NH PUC 79*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97233]

82 NH PUC 79

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,508

New Hampshire Public Utilities Commission

February 21, 1997

ORDER suspending a local exchange telephone carrier's proposed increase in rates (from 10 cents to 25 cents) for local sent-paid calls placed from pay telephone stations.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay stations — Proposed increase in local sent-paid calling rates — Necessity of suspension — To allow for adequate investigatory period — Local exchange carrier. p. 79.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate increase — To allow for adequate investigatory period — Necessity of prehearing conferences — Local exchange telephone carrier — Coin or pay station service. p. 79.

BY THE COMMISSION:

ORDER

[1, 2] On January 24, 1997, New England Telephone and Telegraph Company (NYNEX or Company) filed with the New Hampshire Public Utilities Commission (NHPUC or Commission)

tariff pages removing the coin sent-paid local calling rate, presently 10 cents, to coincide with deregulation and detariffing of payphone service in compliance with the Federal Communication Commission's Orders in CC Docket No. 96-128 which implement Section 276 of the Telecommunications Act of 1996.

The Company's Transmittal Letter also stated its intention to increase the payphone initial period local sent-paid rate to twenty-five (25) cents, effective February 23, 1997 for implementation on April 1, 1997. The Company has also performed and filed with the Commission an analysis of the incremental costs to provide its payphone service as a detariffed, deregulated payphone service. NYNEX asserts in its filing that the cost study indicates that the current 10 cent rate does not compensate NYNEX as a payphone provider for the cost of the call

which it states is 21 cents. NYNEX supports the 25 cent payphone local rate as more reflective of the cost to provide payphone service.

This filing raises, *inter alia*, the effects on NYNEX and payphone customers of moving the 10 cent payphone call to 25 cents, whether NYNEX's filing meets the requirements in the *1996 Telecommunications Act, Section 276 Provision of Payphone Service*, including the directive to remove subsidies in payphone service from telephone exchange service and access operations, as well as to provide nondiscriminatory wholesale service.

Based upon the foregoing, it is hereby

ORDERED, that the following New England Telephone and Telegraph Company tariff pages on NHPUC- No. 77 are hereby suspended:

Part M, Section 1, Second Revision of Page 29;

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 March 12, 1997 at 1:00 p.m. to discuss procedures for the conduct of this investigation immediately followed by a Technical Session; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, NYNEX notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than February 26, 1997 in a newspaper of general circulation in those portions of the state in which operations are to be conducted, publication to be documented by affidavit filed with the Commission on or before March 12, 1997; 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 the Office of the Consumer Advocate on or before

March 10, 1997, 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 make said objection on or before March 12, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 1997.

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NH.PUC*02/28/97*[97234]*82 NH PUC 80*Statewide Electric Utility Restructuring Plan

[Go to End of 97234]

82 NH PUC 80

Re Statewide Electric Utility Restructuring Plan

Petitioner: Connecticut Valley Electric Company

DR 96-150
Order No. 22,509

New Hampshire Public Utilities Commission

February 28, 1997

ORDER addressing the issue of appropriate interim charges by which an electric utility may recoup stranded costs associated with a new electric industry restructuring plan.

Although endorsing a regional average rate approach for the calculation of stranded cost charges in general, the commission notes the inapplicability of such to this electric utility, in that it owns no generating facilities and has relied solely on wholesale power purchases. For stranded cost assessment purposes, the utility is permitted to include above-market purchased power costs from certain qualifying facilities for 1998 and 1999, but is not allowed to include the same with respect to above-market contracts with an affiliate that the utility failed to timely notify of termination.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail

competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Utility as owning no generating facilities as a factor. p. 85.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Utility as owning no generating facilities as a factor. p. 85.

3. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with industry restructuring plan — Interim charges — Computation and cost elements — Utility as owning no generating facilities as a factor. p. 85.

4. RATES, § 321

[N.H.] Electric rate design — Impact of industry restructuring — Stranded costs — Recovery via interim charges — Computation and cost elements — Utility as owning no generating facilities as a factor. p. 85.

5. RATES, § 332

[N.H.] Electric rate design — Special charges — For the recovery of stranded costs — Associated with industry restructuring — Computation and cost elements — Utility as owning no generating facilities as a factor. p. 85.

6. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Inapplicability of regional average rate approach — Factors — Utility's reliance solely on purchased power. p. 85.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Inapplicability of regional average rate approach — Factors — Utility's reliance solely on purchased power. p. 85.

8. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with industry restructuring plan — Interim charges — Inapplicability of regional average rate approach — Factors — Utility's

reliance solely on purchased power. p. 85.

9. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with industry restructuring plan — Interim charges — Inclusion of nonmitigatable costs — Power purchase agreements — Above-market contracts with certain qualifying facilities — Exclusion of economically avoidable costs — Untimely terminated power purchase contracts with affiliate. p. 85.

10. RETURN, § 5

[N.H.] Sliding scale — As to stranded cost recovery associated with electric industry restructuring — Inapplicability to particular utility — Factors — Utility's reliance solely on purchased power — Nonownership of generating assets. p. 85.

11. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Reconciliation and true-up requirements. p. 85.

12. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Reconciliation and true-up requirements. p. 85.

Page 81

13. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with industry restructuring plan — Interim charges — Cost components — Reconciliation and true-up requirements. p. 85.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

The Legislature directed the New Hampshire Public Utilities Commission (Commission) to establish interim stranded cost charges for each utility, to remain in effect for no more than two years following the implementation of each utility's compliance filing. RSA 374-F:4,VI. As

explained in the Final Plan, when setting these charges, the Commission must apply essentially the same principles that will guide the setting of final stranded cost charges, though the Legislature made it clear that the Commission was authorized to set these charges "without a formal rate case proceeding ... " Final stranded cost charges are to be determined in the context of rate case proceedings and must be: (a) equitable, appropriate, and balanced, (b) in the public interest, and (c) substantially consistent with the interdependent principles in the legislation. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized the Commission to make "preliminary" findings in applying these guiding principles.

On November 8, 1996, Connecticut Valley Electric Company (CVEC) filed the testimony of William Deehan in support of its proposed interim stranded cost charges. On December 27, 1996, Cabletron Systems, Inc. (Cabletron) filed the opposing testimony of Andrew Weissman, and on January 3, 1997, La Capra Associates submitted a report entitled "Estimating Stranded Costs for New Hampshire Electric Utilities" which among other things developed interim stranded cost charges for each utility. On January 15, 1997, CVEC requested orally that the Commission strike certain parts of Cabletron's testimony on the grounds that Mr. Weissman is not a member of the New Hampshire bar. The Commission denied CVEC's motion. This order addresses CVEC's petition for interim stranded cost recovery.

On January 2, 1997, a prehearing conference was conducted to address procedural matters in CVEC's interim stranded cost proceeding. The Commission issued on January 10, 1997, a secretarial letter advising the parties of the time allotted to each party in the proceeding. A hearing relative to CVEC-specific issues was conducted on January 15, 1997 at which testimony was presented by witnesses for CVEC and Cabletron. On January 27-30, 1997, a hearing relative to certain generic interim stranded cost issues was conducted at which testimony was presented by witnesses for Unitil, GSEC, CVEC, PSNH, GSHA, Cabletron, Manchester, NHMA, Freedom, OCA and La Capra Associates. The positions of the parties and the Commission's analysis and findings on those generic issues are contained in Section V.F.3. of the Final Plan. The findings are, however, utilized in this order to determine appropriate interim charges for CVEC.

II. POSITIONS OF THE PARTIES

A. *CVEC*

Mr. Deehan testified that CVEC's rates are close to the New England regional average based on 1995 data and therefore satisfy one of the major criteria for full recovery specified in RSA 374-F:4 and the Commission's Preliminary Plan. Additionally, he testified that CVEC's rates would drop substantially if it is successful in its FERC action against the Wheelabrator QF located in Claremont. According to Mr. Deehan, CVEC's rates could drop between 14% and 18% if the Wheelabrator plant lost its QF status. Mr. Deehan also testified that CVEC's parent, Central Vermont Public Service Corporation (CVPS), has realized significant power cost savings for CVEC customers

through multiple renegotiations of its Hydro Quebec contracts.

CVEC's proposed interim stranded cost charges were developed by calculating the difference between CVEC's projected purchased power cost and its market price for the year 1998.[1(15)] This lost revenue approach to quantifying stranded costs reflects, according to CVEC, the net difference between CVPS's assets valued below and above prevailing and anticipated market conditions, and the results of mitigation efforts to date. The workpapers supporting these charges assume a continuance of the power cost obligations under the requirements contract with CVPS and a market price of 2.5¢/kWh for a net annual stranded cost of $11.5 million. CVEC recommended that the lost revenue calculation be performed annually and reviewed in a contested case in which CVEC has the burden of supporting its projected power costs and market prices.

With respect to the recommendations in the La Capra Associates report, Mr. Deehan testified that while Mr. Yoshimura correctly adjusted the regional average rate to reflect CVEC's customer mix, it failed to correct for other differences between CVEC and the "average utility." Those differences include customer density, size of individual customers, individual customer load shapes, terrain, mandatory QF burden, level of C&LM activities, vintage of transmission and distribution facilities, and differences in service quality. He also disagreed with the use of 1995 average prices as a proxy for 1998 prices, noting in particular that CVEC's ongoing base rate case and its Wheelabrator petition at the FERC could cause CVEC's average rates to diverge significantly from those reported for 1995. Finally, Mr. Deehan testified that the market price estimates for 1998 and 1999 in the La Capra Associates report are unreasonably high and result from a questionable attempt to forecast a market which does not exist and for which there is no reasonable proxy.

With respect to the financial impact on CVEC of not being allowed to recover all of its stranded costs, he stated that over time equity in the company will decrease to a point where CVEC will be in default of its loan covenants. Mr. Deehan also testified that an inability to pay dividends will prevent the company from attracting the capital to ensure system safety and reliability.

In its brief, CVEC argued that due to the history of its relationship with CVPS and FERC's approval of the power supply agreement, the Commission is preempted from preventing full cost recovery.

B. *Cabletron and Retail Merchants Association*

Much of Mr. Weissman's oral testimony addressed the alleged failure of CVEC to properly analyze the potential benefits of terminating its wholesale power contract with CVPS. Because the notice period is only one year, he believes that CVPS would have a significant hurdle to

overcome in persuading FERC that it had a reasonable expectation of continuing to provide service to CVEC for an extended period of time. According to Weissman, CVEC management should have terminated the agreement in 1993 or 1994 but did not do so because of a conflict of interest.

Mr. Weissman also argued that CVEC's justifications for not terminating the contract do not stand up to scrutiny. For example, he noted that CVEC faces virtually no downside risk from terminating the contract. At worst, it would continue to pay (for a limited time) the same stranded costs as it pays now; at best it would avoid altogether the above-market portion of its current power bill. Indeed, under FERC's stranded cost recovery standards, Mr. Weissman pointed out that it is CVPS that has the burden of rebutting the presumption that it had no reasonable expectation of indefinitely continuing to serve CVEC.

In his pre-filed testimony, Mr. Weissman argued that CVEC failed to address the statutory requirement to balance the interests of customers and shareholders in establishing the amount of any interim stranded cost charge. He also contended that CVEC did not address the requirement to provide immediate rate relief in setting the interim charge, or take into account any value in its distribution system.

The Retail Merchants Association

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participated in the hearing through cross-examination and joined Cabletron in support of its brief.

C. *OCA*

On the issue of contract termination, the OCA noted that the Commission in DR 83-200 found that "CVEC has the burden of proving that its purchases of wholesale power from CVPS under the RS-2 rate are reasonable." Also, "the wholesale rate must be justified by the utility as the product of reasonable efforts to secure the lowest cost in light of the appropriate alternatives available to the Company." Based in part on these warnings, the OCA argued that CVPS could not and should not have expected the power purchase agreement to continue indefinitely.

D. *La Capra Associates*

The La Capra Associates report to the Commission provides estimates of interim stranded cost charges which Mr. Yoshimura believes are consistent with RSA 374-F:4 and the methodology outlined in the Commission's Preliminary Plan. The key feature of Mr. Yoshimura's interim stranded cost methodology is the establishment of a total average rate target for each New Hampshire electric utility designed to achieve an overall rate decrease for those utilities with total average rates greater than the regional average rate. Under this approach, the

interim stranded cost charge is computed as the difference between (a) the average rate target and (b) the sum of the transmission and distribution costs and the market price of electricity. Mr. Yoshimura computed interim charges for each utility using three different average rate targets, i.e., 100%, 104.5% and 107.8% of the 1995 average regional rate, and the base case market price estimates of Mr. La Capra. Mr. Yoshimura also recommended that the interim stranded charges be modified every six months during the interim period.

On cross-examination, Mr. Yoshimura stated that he computed an adjusted regional average rate for each New Hampshire utility that reflected each utility's class mix but did not adjust for differences among utilities for QFs, C&LM, load shape, and vintage of T&D.

In order to encourage mitigation of stranded costs, Mr. Yoshimura recommended establishing an inverse relationship between the return on equity earned on the stranded assets and the level of the stranded cost charges. He proposed a maximum ROE of 11% for a utility with no stranded costs and a 1% reduction for each 1¢/kWh increase in the stranded cost charge. For the portion of the interim stranded cost charge used to offset the stranded costs associated with owned generation and regulatory assets, Mr. Yoshimura noted that his proposed sliding scale return on equity would only affect the allocation of interim stranded cost charge revenues between the return and depreciation components of the charge. During the period in which interim stranded cost charges are in effect, the sliding scale return on equity would not impact the level of interim stranded cost charges as these are computed so that the sum of interim stranded cost charges, T&D charges, and market prices equal a previously specified average rate target. Mr. Yoshimura did note that his sliding scale return on equity could be used to introduce incentives for electric companies to minimize final stranded cost charges, particularly by allowing electric companies to earn higher returns if such companies are able to increase the purchase value of divested generation resources; in this instance, the sliding scale return on equity could impact the level of final stranded cost charges.

Mr. Yoshimura recommended interim stranded cost charges of 3.32¢/kWh in 1998 and 3.19¢/kWh in 1999 for CVEC. In contrast, CVEC filed an interim stranded cost charge of 7.02¢/kWh in 1998; the Company did not file an interim stranded cost charge for 1999. He testified that most of the difference between his estimates and those of CVEC can be accounted for by differences in market prices, inconsistencies in power costs and projected sales data between those reported in CVEC's Appendix C data and those used by the Company to compute interim stranded cost charges, and differences in the T&D costs used in the computation of rates.

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III. COMMISSION ANALYSIS

A. *Termination of Wholesale Requirements Contract*

[1-13] The most significant issue addressed by the parties in this interim stranded cost proceeding relates to the question of whether CVEC is obligated to pay stranded costs to CVPS

after the notice period in the contract term. Because our findings on the issue could potentially eliminate the need to consider most other issues, we analyze first CVEC's obligations under its partial requirements contract and then proceed to review other matters as necessary.

CVEC's obligation to provide its customers with bundled electric service ends on the day its customers are given the opportunity to choose their power supplier. As of that date CVEC will no longer require service under its wholesale contract with its parent CVPS. Further, because the contract contains only a one year notice provision, and the law authorizing competition on January 1, 1998 was passed in 1996, CVEC had the capability to get out of the contract prior to the initiation of competition and avoid additional power costs.[2(16)] Its failure to do so bears directly on the level of stranded cost recovery, if any, that CVEC should be allowed to receive in the interim and future years.

The failure to give notice raises the important question of whether CVEC should be permitted to recover costs incurred under the contract for any period beyond the time when the contract would have terminated had CVEC given notice. We conclude based on the evidence before us that CVEC had nothing to lose, and everything to gain from terminating the contract, but chose not to because of a clear and unmistakable conflict of interest, a conflict noted by the Commission as early as 1986. *See*, 71 NH PUC 145, 148 (1986). Further, based on a review of the contract's termination clause and the history of the relationship between CVEC and CVPS, we find nothing to preclude us from prohibiting the recovery of such "extra" contract costs. For these reasons, we will deny CVEC's request to recover stranded costs related to its contract with CVPS. For the same reasons, Mr. Yoshimura's proposed sliding scale ROE is not relevant for CVEC because the Company owns no generation plants, and because the purchased power obligation between CVEC and its affiliated generation supplier should cease before the effective date of interim stranded cost charges.

We recognize that in Order 888 the FERC stated that a supplier could amend an existing contract to recover costs which are unamortized at the time of the contract's expiration. While some might argue that such an action is an "order" from the FERC and hence preemptive under the Federal Power Act, we disagree. We discuss these questions more fully in our Legal Analysis at Parts I.A.5.a. and I.A.6.

Notwithstanding the above, we have been directed by our Legislature to allow the recovery of "net nonmitigatable stranded costs associated with ... power acquisitions mandated by federal statutes or RSA 362-A." RSA 374-F:3, XII(b). Consequently, we will approve interim stranded cost charges for CVEC which provide for full recovery of the above-market portion of the Wheelabrator and other QF purchased power costs associated with existing long-term QF power purchase commitments entered into by CVEC and approved by the Commission. We are satisfied that CVEC has, thus far, taken, through its filing with the FERC, all appropriate steps to mitigate the Wheelabrator power costs. We expect the company to continue such efforts and will condition future recovery on such efforts.

B. *Regional Average Rate Analysis*

Given our decision to deny CVEC's request to recover above-market CVPS power costs in

1998 and 1999, our analysis and findings on the regional average rate approach to quantifying interim stranded costs are no longer relevant to this proceeding. CVEC's interim stranded costs are simply the above-market purchased power costs incurred in 1998 and 1999 from Wheelabrator and other QFs for which CVEC presently has long-term purchase contracts approved by the Commission, to the extent fully mitigated.

C. *Market Price of Power*

Several approaches to estimate the market price of electricity during the two-year interim period were proposed. A summary of these approaches, along with our analysis and findings, is presented in Section V.F.3.a. of the Final Plan. Consistent with those findings, we used the following transmission-adjusted market prices to estimate the above-market power costs associated with committed QF purchases: 4.49 ¢/kWh in 1998 and 4.62¢/kWh in 1999.

D. *Financial Impact*

CVEC's decision not to give notice of termination on or before December 31, 1996 was made, we believe, imprudently to protect CVPS's financial interest at the expense of New Hampshire customers. Our obligation to disapprove the pass through of imprudent projected power costs in 1998 should not be viewed as limited by concerns about the financial integrity of CVEC. Moreover, decisions allowing the pass through of imprudent costs only invite more imprudence, to the long-term detriment of the company, its shareholders, creditors and customers. As for 1999, we note that CVEC has until December 31, 1997 to terminate the contract and avoid all power costs in that year, in which case there would be no negative financial impact to CVEC.

E. *True-Up*

Although RSA 374-F does not explicitly require that we reconcile interim and final stranded cost charges, we believe that to do so would be equitable, consistent with the goals of the Legislature and in the public interest. Following the advice of our consultant, we will limit such reconciliations to variations in purchased power costs associated with QFs (such as the Wheelabrator facility) for which CVEC presently has long-term purchased power contracts approved by the Commission, retail sales, and market prices from those initially assumed in determining interim stranded cost charges. Reconciliation will be conducted annually and CVEC will have the burden of justifying any changes to the approved charges.

Based upon the foregoing, it is hereby

ORDERED, that CVEC's proposed interim stranded cost charges are denied; and it is

FURTHER ORDERED, CVEC recalculate and file by March 31, 1997, interim stranded cost charges to recover the projected above-market power costs associated with power purchases from the Wheelabrator generating facility located in Claremont and other QFs from which CVEC must purchase power pursuant to existing long-term purchase power contracts approved by the Commission; and it is

FURTHER ORDERED, that the above-mentioned charges be determined using the market prices referenced herein; and it is

FURTHER ORDERED, that such interim stranded cost charges filed pursuant to this Order be based on projected power purchase costs for 1998 and 1999 filed by CVEC in this proceeding, and subject to further true-up as described herein; and it is

FURTHER ORDERED, that CVEC shall give notice to terminate its existing requirements service contract with CVPS.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

FOOTNOTES

[1]Interim charges were initially provided on a class-by-class basis, without billing determinants. See Exhibit - WJD-2. Information subsequently provided by CVEC indicated a company average of 5.2¢/kWh in 1998 and 5.9¢/kWh in 1999.

[2]While notice could have been given any time, there is no possible reason why notice should not have been given any later than May 22, 1996, the day following passage of RSA 374-F.

EDITOR'S APPENDIX

Citations in Text

[F.E.R.C.] Re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities;

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Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95-8-000, RM94-7-001, Order No. 888, 168 PUR4th 590, Apr. 24, 1996.

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NH.PUC*02/28/97*[97235]*82 NH PUC 87*Statewide Electric Utility Restructuring Plan

[Go to End of 97235]

82 NH PUC 87

Re Statewide Electric Utility Restructuring Plan

Petitioners: Concord Electric Company;
Exeter and Hampton Electric Company

DR 96-150
Order No. 22,510

New Hampshire Public Utilities Commission

February 28, 1997

ORDER addressing the issue of appropriate interim charges by which two affiliated electric utilities may recover stranded costs associated with a new electric industry restructuring plan. Relying on a regional average rate approach for the calculation of stranded cost charges, the commission rejects assertions by the parent company of the two utilities that their rates were well below regional averages, such that full recovery of stranded costs is justified. To the contrary, the commission finds that the utilities have not pursued all available options for mitigating their purchased power costs vis-a-vis above-market contracts with affiliates.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Intercorporate relations as a factor. p. 91.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Intercorporate relations as a factor. p. 91.

3. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with industry restructuring plan —

Interim charges — Computation and cost elements — Intercorporate relations as a factor. p. 91.

4. RATES, § 321

[N.H.] Electric rate design — Impact of industry restructuring — Stranded costs — Recovery via interim charges — Computation and cost elements — Intercorporate relations as a factor. p. 91.

5. RATES, § 332

[N.H.] Electric rate design — Special charges — For the recovery of stranded costs — Associated with industry restructuring — Computation and cost elements — Intercorporate relations as a factor. p. 91.

6. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Regional average rate approach — Factors — Reliance on wholesale power purchased from parent company. p. 91.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Regional average rate approach — Factors — Reliance on wholesale power purchased from parent company. p. 91.

8. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with industry restructuring plan — Interim charges — Regional average rate

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approach — Factors — Reliance on wholesale power purchased from parent company. p. 91.

9. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with industry restructuring plan — Interim charges — Inclusion of nonmitigatable costs — Exclusion of economically avoidable costs — Admonishment for failure to pursue mitigation options as to power purchase contracts with parent company. p. 91.

10. BANKRUPTCY

[N.H.] Electric utilities — Impact of stranded cost recovery limits — As associated with

industry restructuring — Rejection of financial jeopardy projections. p. 91.

11. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Mitigation and true-up requirements. p. 91.

12. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Mitigation and true-up requirements. p. 91.

13. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with industry restructuring plan — Interim charges — Cost components — Mitigation and true-up requirements. p. 91.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

The Legislature directed the New Hampshire Public Utilities Commission (Commission) to establish interim stranded cost charges for each utility, to remain in effect for no more than two years following the implementation of each utility's compliance filing. RSA 374-F:4,VI. As explained in the Final Plan, when setting these charges, the Commission must apply essentially the same principles that will guide the setting of final stranded cost charges, though the Legislature made it clear that the Commission was authorized to set these charges "without a formal rate case proceeding ... " Final stranded cost charges are to be determined in the context of rate case proceedings and must be: (a) equitable, appropriate, and balanced, (b) in the public interest, and (c) substantially consistent with the interdependent principles in the legislation. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized the Commission to make "preliminary" findings in applying these guiding principles.

On November 8, 1996, Concord Electric Company (CEC) and Exeter & Hampton Electric Company (E&H) (collectively, Unitil or Unitil Companies) filed the testimony of Michael Schnitzer, James Daly and George Gantz in support of its proposed interim stranded cost charges. On December 16, 1996, Cabletron Systems, Inc. (Cabletron) filed the opposing testimony of Andrew Weissman, and on January 3, 1997, the Commission's consultant, La Capra Associates, submitted a report entitled "Estimating Stranded Costs for New Hampshire Electric

Utilities" which among other things developed interim stranded cost charges for each utility. This order addresses Unitil's petition for interim stranded cost recovery.

The Commission conducted a hearing relative to Unitil-specific issues on January 6-7, 1997 at which Unitil and Cabletron testified. On January 27-30, 1997, the Commission conducted a hearing relative to certain generic interim stranded cost issues, at which Unitil,

GSEC, CVEC, PSNH, GSHA, NHMA, Manchester, Cabletron, Freedom, the OCA and La Capra Associates testified. The positions of the parties and the Commission's analysis and findings on those generic issues are contained in Section V.F.3. of the Final Plan. The findings are, however, utilized in this order to determine appropriate interim charges for the Unitil Companies.

II. POSITIONS OF THE PARTIES

A. *Unitil*

Mr. Gantz testified that because the rates of the Unitil companies are about 20% below the New England regional average, Unitil has met one of the major criteria for full recovery specified in RSA 374-F:4 and the Commission's Preliminary Plan. Unitil customers, according to Mr. Gantz, already receive the near-term rate relief when compared to the region.

Mr. Gantz also testified that because shareholders have not profited from Unitil Power Company's (UPC) power supply activities, they should not be burdened with stranded costs resulting from state mandated retail access. Mr. Gantz argued that regulatory precedent and legal principles support 100% stranded cost recovery. Additionally, RSA 374-F does not mandate sharing of stranded costs among investors and customers, nor was it intended to require that value in transmission and distribution be utilized to offset generation-related stranded costs. However, on cross-examination, Mr. Gantz did agree that the Legislature expected, as a general matter, there would be some sharing of stranded costs among investors and customers.

Mr. Gantz requested that the Commission approve interim stranded cost charges of 4.38¢/kWh in 1998 and 1999 for CEC and 4.56¢/kWh in 1998 and 1999 for E&H. Mr. Gantz stated that the proposed charges, which he anticipated would recover about $100 million over the two-year interim period, reflect the net, verifiable and fully mitigated above-market portion UPC's power costs. He also proposed that these charges be adjusted semi-annually to track actual costs, sales and prices in order to avoid large over or under-recoveries, to promote rate continuity, and to maintain Unitil's financial integrity.

Mr. Daly described how UPC put in place a reliable and low cost resource portfolio and how management intends to change that portfolio to meet the challenges of retail competition. Specifically, Mr. Daly testified that in response to RSA 374-F, Unitil filed an Integrated

Resource Plan with the Commission which proposes to change UPC's resource mix from xx to 100% short-term resources at the earliest possible date. Mr. Daly explained that this strategy balances UPC's continuing contractual obligation to supply Unitil and the strong likelihood that many customers will switch to different power suppliers in 1998.

With respect to mitigation of above market power costs, Mr. Daly noted that UPC has renegotiated a number of contracts and terminated several others over the last few years. Mr. Daly disagreed, however, with those parties who believe termination of the System Agreement, a wholesale power contract between UPC and Unitil, provides additional mitigation opportunities. According to Mr. Daly, UPC's power costs would be fully recoverable based on FERC Order 888 and state and federal law. Consequently, he saw no benefit to the Unitil or their customers in giving notice of termination at this time. For essentially the same reason, neither Mr. Daly nor Mr. Gantz saw any possibility of UPC seeking a voluntary restructuring under the bankruptcy code, as had been suggested by Cabletron.

The testimony of Mr. Schnitzer provided an analysis of the "equitable, appropriate and balanced" standard in RSA 374-F and explained why Unitil shareholders have a reasonable expectation that the Commission will continue to provide full recovery of Unitil's prudently-incurred power supply costs. Mr. Schnitzer also addressed the financial implications of Unitil not receiving full recovery of its stranded costs.

Mr. Schnitzer testified that a 10% disallowance of stranded costs would eliminate the net income of Unitil and prevent the payment of dividends to its parent. Mr. Schnitzer also

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explained why a fully reconciling interim stranded cost recovery charge is essential to Unitil's financial integrity, and ensures savings from mitigation are passed to customers in a timely manner. According to Mr. Schnitzer, a failure to true-up an underestimate of the market price could have the same devastating effect on Unitil's financial health as a decision to disallow a portion of its stranded costs. Mr. Schnitzer supported Mr. Gantz's recommendation that Unitil's interim stranded cost charges be reconciled semi-annually.

Unitil found the La Capra Associates report to be a reasoned analysis but did not concur with all of the conclusions. In particular, Unitil differed with the report's treatment of UPC's ongoing Administrative and General (A&G) costs of managing the resource portfolio. Finally, Unitil asserted that excluding A&G costs from the definition of stranded costs is inequitable as it would require shareholders to absorb these costs without ever realizing any profits. Unitil also argued that the Filed Rate Doctrine and equity preclude the use of a contract-by-contract approach to the estimation of its stranded costs. According to Mr. Mueller for Unitil, the FERC approved rate billed to Unitil by UPC includes A&G expenses associated with the management of the power supply portfolio and therefore must be recovered through interim stranded cost charges.

B. *Cabletron and Retail Merchants Association*

Cabletron asserted that Unitil's interim stranded cost charge filing is based on the false premise that Unitil is assured of full recovery under the statute, does not provide for any sharing of the stranded cost burden between shareholders and customers, does not provide for an immediate reduction in stranded cost charges by bringing forward future power supply benefits; fails to satisfy the burden of proof expressly assigned to it by RSA 374-F:4,V; fails to net out any offsetting factors in determining the amount it seeks to charge customers; and fails to take into account the potential to earn premium returns on the sale of the distribution systems.

Contrary to Unitil's assertion, Mr. Weissman argued that UPC is not a low cost supplier of electric power. UPC's total power costs are very substantial and not below the regional average. Unitil's relatively low rates are, according to Mr. Weissman, primarily the product of low distribution costs. He noted Unitil is proposing to recover between $250 million and $350 million in stranded costs from customers over the long term in order to protect shareholder equity in distribution totaling no more than $10 million. That, according to Mr. Weissman, is a staggering amount and economically indefensible. Cabletron recommended that Unitil develop a mitigation strategy that specifically target contracts that are uneconomic in the early years but are likely to have positive economic benefit in later years. According to Mr. Weissman, such contracts provide greater opportunities for win-win solutions than might be the case with contracts which are uneconomic today and are expected to remain uneconomic in the future.

The Retail Merchants Association participated in the hearing through cross-examination and joined Cabletron in support of its brief.

C. *La Capra Associates*

The La Capra Associates report to the Commission provides estimates of interim stranded cost charges which Mr. Yoshimura believes are consistent with RSA 374-F:4 and the methodology outlined in the Commission's Preliminary Plan. The key feature of Mr. Yoshimura's interim stranded cost methodology is the establishment of a total average rate target for each New Hampshire electric utility designed to achieve an overall rate decrease for those utilities with total average rates greater than the regional average rate. Under this approach, the interim stranded cost charge is computed as the difference between (a) the average rate target and (b) the sum of the transmission and distribution costs and the market price of electricity. Mr. Yoshimura computed interim charges for each utility using three different average rate targets, i.e., 100%, 104.5% and 107.8% of the 1995 average regional rate, and the base case market price estimates of Mr.

La Capra. Mr. Yoshimura also recommended that the interim stranded charges be modified every six months during the interim period.

In order to encourage mitigation of stranded costs, Mr. Yoshimura recommended

establishing an inverse relationship between the return on equity earned on the stranded assets and the level of the stranded cost charges. He proposed a maximum ROE of 11% for a utility with no stranded costs and a 1% reduction for each 1¢/kWh increase in the stranded cost charge. For the portion of the interim stranded cost charge used to offset the stranded costs associated with owned generation and regulatory assets, Mr. Yoshimura noted that his proposed sliding scale return on equity would only affect the allocation of interim stranded cost charge revenues between the return and depreciation components of the charge. During the period in which interim stranded cost charges are in effect, the sliding scale return on equity would not impact the level of interim stranded cost charges as these are computed so that the sum of interim stranded cost charges, T&D charges, and market prices equal a previously specified average rate target. Mr. Yoshimura did note that his sliding scale return on equity could be used to introduce incentives for utilities to minimize final stranded cost charges, particularly by allowing higher returns to be earned if such utilities are able to increase the purchase value of divested generation resources; in this instance, the sliding scale return on equity could impact the level of final stranded cost charges. With respect to Unitil, however, Mr. Yoshimura noted that such an incentive mechanism would not be applicable because Unitil does not own generation plant and its shareholders do not earn profits from generation sales supplied by power purchases.

Mr. Yoshimura recommended interim stranded cost charges of 2.76¢/kWh in 1998 and 1999 for CEC and 2.83¢/kWh in 1998 and 1999 for E&H. Unitil requested interim charges of 4.38¢/kWh in 1998 and 1999 for CEC and 4.56¢/kWh in 1998 and 1999 for E&H. Most of the difference between his estimates and those of Unitil can be explained by differences in market prices and by the exclusion of transmission costs, A&G costs, and short-term, avoidable market purchases of power. In addition, Mr. Yoshimura noted inconsistencies in power costs and projected sales data between those reported in Unitil's Appendix C data and those used by the Unitil to compute interim stranded cost charges

In response to Unitil's assertion that the report's treatment of UPC's A&G costs is unfair, Mr. Yoshimura stated that A&G expenses are avoidable going forward costs and therefore are not strandable. Further, Mr. Yoshimura noted that the recovery of such costs through stranded cost charges would be anti- competitive since other power marketers must either recover their A&G expenses through market prices or charge them to earnings.

III. COMMISSION ANALYSIS

A. *Mitigation*

1. *Renegotiation/Termination of Contracts*

[1-13] Despite Unitil's testimony to the contrary, the record does not support a finding that Unitil has pursued fully all opportunities to mitigate its above market power costs. There was testimony that a significant number of UPC's contracts have terms which extend well beyond the end of the century and that the prices under some of those contracts are likely to be below the then prevailing market prices. We agree with Mr. Weissman that, notwithstanding the current

low market prices, those contracts have considerable potential market value and that a sound mitigation strategy would include either the immediate sale of those contracts, or contract renegotiation in order to reduce charges in the near term in return for the supplier being released from the obligation to sell power at a below market rate. Accordingly, we intend to examine closely UPC's mitigation efforts as part of our review of Unitil's true-up filing.

2. *Voluntary UPC Restructuring/ Termination of System Agreement*

As to the bankruptcy issue, we note at the outset that UPC is a FERC regulated entity and

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therefore not subject to our jurisdiction. Even if this were not the case, we are not persuaded that UPC is faced with an immediate cash flow problem that would warrant consideration of a voluntary bankruptcy filing.

With respect to the option of terminating the System Agreement, Unitil's obligation to provide its customers with bundled electric service ends on the day those customers are given the opportunity to choose their power supplier. As of that date Unitil will no longer require service under its wholesale contract with its affiliate UPC. However, since Unitil is required to give UPC seven years notice of termination, its right to terminate will not affect its costs during the interim period. Put another way, the issue of whether Unitil should be allowed to levy charges for any period beyond the time when the contract would have terminated is not relevant to the setting of interim charges. We do, however, find in the Legal Analysis at Part I.A.5. that Unitil's final stranded cost charges should recover no more than six years, beginning January 1, 1998, of stranded cost payments to UPC.

B. *Market Price of Power*

Several approaches to estimate the market price of electricity during the two-year interim period were proposed. A summary of these approaches, along with our analysis and findings, is presented in Section V.F.3.a. of the Final Plan. Consistent with those findings, we used the following transmission-adjusted market prices to estimate Unitil's interim stranded cost charges: 4.39¢/kWh in 1998 and 4.52¢/kWh in 1999 for CEC, and 4.41¢/kWh in 1998 and 4.54¢/kWh in 1999 for E&H.

C. *Regional Average Rate Analysis*

Cabletron argued that the La Capra Associates and Unitil analyses of rates relative to the regional average are flawed for two reasons. First, Cabletron contended that the statute requires

the analysis to be based on competitive as opposed to average regional rates. Second, Cabletron believes the analysis of regional rates should look forward in time to 1998 and 1999 and not back to 1995. We disagree on both counts. Our reasons are given in Section V.F.3.b. of the Final Plan.

We find Mr. Yoshimura's treatment of A&G expenses to be appropriate and not a violation of the Filed Rate Doctrine. As noted above, on January 1, 1998 Unitil will no longer be obligated to meet the energy service requirements of retail customers, and UPC will no longer be obligated to manage its power supply portfolio in a way that satisfies those energy requirements. To the extent UPC chooses to continue as a power marketer and incur administrative expenses, nothing in this order or the accompanying Final Plan denies UPC the opportunity to recover those expenses through market-based prices.

As a general rule, we will not treat economically avoidable costs as stranded costs. This rule will apply whether those avoidable costs are incurred by a jurisdictional utility or by a non-jurisdictional entity, such as an affiliated wholesale power supplier or an affiliated service company. *See*, Legal Analysis at Part I.A.6.a.

D. *Financial Impact*

Because we have accepted the La Capra Associates base case interim charges for Unitil, and those charges provide for the full recovery of stranded power costs, our decision today should have no adverse effect on Unitil's financial position. Further, excluding from interim stranded cost charges ongoing A&G costs will not cause Unitil financial hardship because those costs can be avoided or, in the alternative, recovered through market prices.

E. *True-Up*

Although RSA 374-F does not explicitly require that we adjust the interim stranded cost charge estimates to reflect actual cost and sales data, we believe that to do so would be equitable, consistent with the goals of the Legislature and in the public interest. Following the advice of our consultant, we will limit the reconciliation to variations in non-affiliated purchased power costs, retail sales, and market prices from

those initially assumed in the estimation of the interim charges. Reconciliation will be conducted annually and Unitil will have the burden of justifying any changes.

Based upon the foregoing, it is hereby

ORDERED, that Unitil's proposed interim stranded cost charges are denied; and it is

FURTHER ORDERED, that Unitil recalculate its interim stranded cost charges using the

method and the market prices proposed by La Capra Associates in this proceeding and referenced herein, appropriately adjusted to reflect actual 1996 cost and revenue data from the Company's 1996 FERC Form 1 to determine the average rate target, and based on projected power purchase costs for 1998 and 1999 filed by Unitil in this proceeding, subject to further true-up as described herein; and it is

FURTHER ORDERED, the above-mentioned charges be determined using the market prices referenced herein; and it is

FURTHER ORDERED, that Unitil file the resulting interim stranded cost charges by March 31, 1997; and it is

FURTHER ORDERED, that CEC and E&H shall give notice of termination of its full requirements contract with UPC.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

EDITOR'S APPENDIX

Citations in Text

[F.E.R.C.] Re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95-8-000, RM94-7-001, Order No. 888, 168 PUR4th 590, Apr. 24, 1996.

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NH.PUC*02/28/97*[97236]*82 NH PUC 93*Statewide Electric Utility Restructuring Plan

[Go to End of 97236]

82 NH PUC 93

Re Statewide Electric Utility Restructuring Plan

Petitioner: Granite State Electric Company

DR 96-150
Order No. 22,511

New Hampshire Public Utilities Commission

February 28, 1997

ORDER directing an electric utility to refile charges designed to allow recovery of stranded costs associated with an electric industry restructuring plan adopted by the commission which requires the divestiture of generating facilities and assets. Commission endorses a regional average rate approach for the calculation of stranded cost charges and allows such costs to include power purchase contract costs and nuclear decommissioning costs. However, the commission also notes that economically avoidable costs cannot be considered stranded costs, such that employee severance and retraining costs, as well as post-shutdown costs associated with nuclear facilities, are not subject to the interim stranded cost charges.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges — Computation and cost elements. p. 98.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges — Computation and cost elements. p. 98.

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3. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Interim charges — Computation and cost elements. p. 98.

4. RATES, § 321

[N.H.] Electric rate design — Impact of industry restructuring — Stranded costs — Associated with the sale or divestiture of generating plant — Recovery via interim charges — Computation and cost elements. p. 98.

5. RATES, § 332

[N.H.] Electric rate design — Special charges — For the recovery of stranded costs — Associated with industry restructuring — Computation and cost elements. p. 98.

6. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges — Regional average rate approach. p. 98.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges — Regional average rate approach. p. 98.

8. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Interim charges — Regional average rate approach. p. 98.

9. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Interim charges — Inclusion of nonmitigatable costs — Power purchase agreements — Plant decommissioning — Fixed above-market gas pipeline demand charges — Exclusion of economically avoidable costs — Post-shutdown nuclear plant costs — Employee severance and retraining. p. 98.

10. RATES, § 332

[N.H.] Electric rate design — Special charges — For the recovery of stranded costs — Associated with industry restructuring — Regional average rate approach — Rejection of front-loading proposal. p. 98.

11. REVENUES, § 5

[N.H.] Electric utility — Impact of industry restructuring — Effect of interim charges for the recovery of associated stranded costs — Financial projections. p. 98.

12. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges — Cost components — Mitigation and true-up requirements. p. 98.

13. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Divestiture of generating assets — Treatment of associated stranded costs — Interim charges —

Cost components — Mitigation and true-up requirements. p. 98.

14. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs — Associated with the sale or divestiture of generating plant — Under industry restructuring plan — Interim charges — Cost components — Mitigation and true-up requirements. p. 98.

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BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

The Legislature directed the New Hampshire Public Utilities Commission (Commission) to establish interim stranded cost charges for each utility, to remain in effect for no more than two years following the implementation of each utility's compliance filing. RSA 374-F:4,VI. As explained in the Final Plan, when setting these charges, the Commission must apply essentially the same principles that will guide the setting of final stranded cost charges, though the Legislature made it clear that the Commission was authorized to set these charges "without a formal rate case proceeding... " Final stranded cost charges are to be determined in the context of rate case proceedings and must be: (a) equitable, appropriate, and balanced, (b) in the public interest, and (c) substantially consistent with the interdependent principles in the legislation. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized the Commission to make "preliminary" findings in applying these guiding principles.

On November 8, 1996, Granite State Electric Company (GSEC) filed the testimony of Peter Flynn and Jennifer Kenney in support of its proposed interim stranded cost charges. On December 19, 1996, Cabletron Systems, Inc. (Cabletron) filed the opposing testimony of Andrew Weissman, and on January 3, 1997, La Capra Associates submitted a report entitled "Estimating Stranded Costs for New Hampshire Electric Utilities" which among other things developed interim stranded cost charges for each utility. On December 31, 1996, GSEC submitted a motion to designate certain parts of Cabletron's testimony as written comments or legal argument. This order addresses GSEC's petition for interim stranded cost recovery.

On December 30, 1996, a prehearing conference was conducted to address procedural matters in GSEC's interim stranded cost proceeding. The Commission issued on January 6, 1997, a letter advising the parties of the time allotted to each party to the proceeding. A hearing

relative to GSEC-specific issues was conducted January 8-9, 1997 at which testimony was presented by witnesses for GSEC and Cabletron. On January 27-30, 1997, a hearing relative to certain generic interim stranded cost issues was conducted at which testimony was presented by witnesses for Unitil, GSEC, CVEC, PSNH, GSHA, Cabletron, Manchester, NHMA, Freedom, OCA and La Capra Associates. The positions of the parties and the Commission's analysis and findings on those generic issues are contained in Section V.F.3. of the Final Plan. The findings are, however, utilized in this order to determine appropriate interim charges for GSEC.

II. POSITIONS OF THE PARTIES

A. *GSEC*

GSEC buys from its affiliate power supplier, New England Power Company (NEP), under a contract containing a 7-year notice provision. NEP's charges to GSEC reflect NEP's portfolio of generation resources, comprising owned generation and purchased power contracts. Since GSEC pays NEP for its allocated share of NEP's total resource cost, GSEC's stranded cost charges will depend on the level of NEP's stranded costs. NEP's stranded costs will depend in turn on the extent to which NEP's generation portfolio costs exceed market prices and the success of NEP's mitigation efforts.

Ms. Kenney's pre-filed testimony included a bottom-up analysis of NEP's stranded costs. She also calculated GSEC's share of those costs and the base contract termination charge that would compensate NEP for those costs. The first two years of this base contract termination charge constitute GSEC's interim stranded cost charges. NEP separates its stranded costs into four categories: utility generation, regulatory assets, purchased power contracts, and post-

shutdown costs related to nuclear power plants.[1(17)] In addition to these generation-related costs, Ms. Kenney included in the base contract termination charge to GSEC payments in lieu of property taxes, employee severance and retraining costs arising out of restructuring, and a provision for damages from claims by or against third parties associated with NEP's generating business. All of these commitments are assumed to be zero in GSEC's estimate of the base contract termination charge. Assuming that retail access begins in 1998, NEP's base contract termination charge to GSEC is 2.8¢/kWh throughout the 1998-2000 period. Such a contract termination charge would provide retail customers with a 0.4¢/kWh rate reduction because, according to Mr. Flynn, customers currently pay approximately 3.2¢/kWh for NEP's sunk costs. For that reason, GSEC contended that its proposed interim stranded cost charge meets both the near-term rate relief principle and the "equitable, appropriate and balanced" standard in RSA 374-F:4.

Ms. Kenney testified that the contract termination charge to GSEC will be recovered from retail customers through two components, a "Fixed Component" and a "Variable Component."

The Fixed Component recovers GSEC's share of the net book value of NEP's generation plant plus NEP's generation-related regulatory assets. The Variable Component recovers GSEC's share of nuclear decommissioning costs, power purchases and sales, and several ancillary cost items. The Fixed and Variable Components, which are estimated at 1.49 and 1.31¢/kWh, respectively, for 1998, are expected to recover $20 million annually.

Ms. Kenney also addressed the potential financial implications to GSEC of not receiving full recovery of its stranded costs. According to Ms. Kenney, a Commission decision to deny the full and current recovery by GSEC of contract termination charges could have devastating effects on its financial health. A 7% disallowance of the contract termination charge would eliminate GSEC's ability to issue any long-term debt, and cause it to incur more costly forms of capital. A disallowance of 12% would eliminate GSEC's pretax earnings available for common shareholders. Any disallowance in excess of that figure would leave GSEC with insufficient revenues to pay interest on debt.

Mr. Flynn testified that GSEC's rates are about 12% below the New England regional average based on 1995 data and that they therefore meet one of the major criteria for full recovery specified in RSA 374-F:4 and the Commission's Preliminary Plan. On cross-examination, Mr. Flynn agreed that NEP did not subtract from its sunk generation costs the expected operating profits from the use of those assets. He also agreed that the requested interim charges reflected accelerated recovery of NEP's sunk generation costs. In support of GSEC's request for full stranded cost recovery, he testified that the charge complies with the "equitable, appropriate and balanced" standard, provides near term rate relief, permits retail choice within the timeframe established by the Legislature, and enables GSEC to maintain its financial integrity.

Mr. Flynn explained that near term rate relief and full stranded cost recovery are not incompatible since some customers would benefit from GSEC's proposed standard offer service while others would realize savings from the marketplace. He estimated that standard offer customers would save about 0.9¢/kWh relative to today's rates, whereas customers accessing the market would save 1.2¢/kWh on a market price of 2.5¢/kWh.

Mr. Flynn testified that the contract termination charges shown in Schedule 1 to Ms. Kenney's testimony do not include a credit to customers for the residual value of NEP's generation business after stranded costs have been fully recovered. However, he noted that NEP has agreed to sell, spin-off or otherwise dispose of its generating business and credit the resulting value against its stranded cost. He believes that the sale is likely to realize the greatest value for NEP's assets and thus will minimize stranded cost charges.

B. *Enron*

In response to questions from Enron, Mr. Flynn agreed that the value NEP receives from

the sale of its assets will be affected by any obligations placed on the new owners as part of the purchase package. He testified that NEP will have an obligation to provide standard offer power at 3.2¢/kWh and one of the options for supplying that power is to tie the obligation to the asset. If NEP decides to obligate purchasers of its assets to provide standard offer power at 3.2¢/kWh, and those purchasers expect market prices to be higher than the standard offer price, he agreed that NEP would not maximize the value of its assets and stranded costs would not be minimized.

Mr. Flynn also agreed that if NEP's market price forecast of 2.3¢/kWh proved to be correct, under NEP's proposal customers would not be credited the difference between the 3.2¢/kWh standard offer price and the 2.3¢/kWh power cost until the year 2001.

C. *Cabletron Retail Merchants Association*

Cabletron contends that NEP overstated its stranded costs because it amortized its net investment over too short a time period (i.e., NEP is proposing accelerated recovery of its net investments), and it failed to take into account expected operating profits from selling the output of its generating units prior to the sale of those units. Further, Cabletron asserted that despite the excellent financial position of GSEC's parent, the proposed interim stranded cost charges do not provide for any sharing of the burden between shareholders and customers. As Mr. Weissman testified, the parent company's stock has consistently traded well above book value, meaning that investors have had the opportunity to cash out their investment at prices that more than fully protect the original investment. Under these circumstances, allowing NEP 100% recovery of its stranded investment in GSEC would, according to Mr. Weissman, create the potential for a huge windfall.

According to Cabletron, the net book value of NEP's owned generation as of December 31, 1997 must be offset either by the sale value of the assets as of that date or, if the sale has not taken place, the net profits associated with the sale of energy and capacity prior to the sale of those units. Cabletron testified that a market value of about $3.0 to $2.0 billion for NEP's generating assets would reduce the interim charge to somewhere in the range of 0.45¢ to 1.3¢/kWh. Further, to the extent that net profits from the sale of energy are low or zero because of aggressive competition, an outcome which Mr. Flynn believed was likely, Cabletron argued that the resulting stranded cost charges are anti-competitive since the associated revenues could be utilized by NEP to unfairly undercut competitors.

In short, while GSEC's relatively low rates and its parent company's willingness to divest its generation are factors supporting higher recovery than might otherwise be appropriate, Cabletron believes that every utility must absorb some significant portion of their stranded costs. Cabletron recommended that GSEC bear at least 20-25% of stranded costs reasonably calculated, with the remainder born by customers.

The Retail Merchants Association participated in the hearing through cross-examination and joined Cabletron in support of its brief.

D. *La Capra Associates*

The La Capra Associates report to the Commission provides estimates of interim stranded cost charges which Mr. Yoshimura believes are consistent with RSA 374-F:4 and the methodology outlined in the Commission's Preliminary Plan. The key feature of Mr. Yoshimura's interim stranded cost methodology is the establishment of a total average rate target for each New Hampshire electric utility designed to achieve an overall rate decrease for those utilities with total average rates greater than the regional average rate. Under this approach, the interim stranded cost charge is computed as the difference between (a) the average rate target and (b) the sum of the transmission and distribution costs and the market price of electricity. Mr. Yoshimura computed interim charges for each utility using three different average rate targets, i.e., 100%, 104.5% and 107.8% of the 1995 average regional rate, and the base case market price estimates of Mr. La Capra. Mr. Yoshimura also recommended

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that the interim stranded charges be modified every six months during the interim period.

In order to encourage mitigation of stranded costs, Mr. Yoshimura recommended establishing an incentive mechanism which featured an inverse relationship between the return on equity (ROE) earned on owned generation investments and the level of stranded cost charges. He proposed a maximum ROE of 11% for a utility with no stranded costs and a 1% reduction for each 1¢/kWh increase in the stranded cost charge. For the portion of the interim stranded cost charge used to offset the stranded costs associated with owned generation and regulatory assets, Mr. Yoshimura noted that his proposed sliding scale return on equity would only affect the allocation of interim stranded cost charge revenues between the return and depreciation components of the charge. During the period in which interim stranded cost charges are in effect, the sliding scale return on equity would not impact the level of interim stranded cost charges as these are computed so that the sum of interim stranded cost charges, T&D charges, and market prices equal a previously specified average rate target. Mr. Yoshimura did note that his sliding scale return on equity could be used to introduce incentives for utilities to minimize final stranded cost charges, particularly by allowing higher returns to be earned if such utilities are able to increase the purchase value of divested generation resources; in this instance, the sliding scale return on equity could impact the level of final stranded cost charges.

Applying the approach to GSEC, Mr. Yoshimura recommended interim stranded cost charges of 1.80¢/kWh in 1998 and 1.67¢/kWh in 1999. These compare with 2.80¢/kWh in 1998 and 1999 submitted by GSEC. He testified that most of the difference between his estimates and those of GSEC can be accounted for by differences in the market price of electricity and the elimination of front-loaded cost recovery. He also excluded post shutdown costs at nuclear power plants, certain transmission costs associated with specific generating units, and various fixed costs associated with natural gas pipeline demand charges, all of which were included in GSEC's numbers.

Mr. Yoshimura also testified that his recommended charges do not include amounts for payments in lieu of property tax settlements or employee training and severance costs. In his view, such expenses should be included in stranded cost charges only if the Commission determines that it is in the public interest.

III. COMMISSION ANALYSIS

A. *Proposed Interim Charges*

[1-14] GSEC testified that its proposed interim stranded cost charge of 2.8¢/kWh for 1998 is higher than it otherwise would be because of a deliberate decision to front load the recovery of NEP's sunk costs. Although Mr. Flynn would not accept that front-loading is equivalent to a rate increase, he did agree that GSEC's proposal if adopted would result in less near-term rate relief, an outcome which we find to be unacceptable. Moreover, there is no legal entitlement to front-loaded recovery. We also reject GSEC's argument that early recovery of stranded cost charges would help maintain stable rates if market prices rise in response to a tightening of capacity or an increase in fuel prices in the future. Any increase in market prices relative to those used in the development of the interim charges will be offset by a corresponding "true-down" of the interim charges.

GSEC's witnesses also agreed that its calculation of interim stranded cost charge does not reflect expected operating profits from the sale of energy and capacity from owned generation assets prior to the sale of those assets. While we acknowledge NEP's decision to sell its generating assets prior to 1998, in which case future expected operating profits will be reflected in the sale price, we are concerned that a delay in making the sale could unnecessarily increase the interim charges. A better approach is to include those expected profits in the estimated interim charge, as La Capra Associates did, and make adjustments after the sale has taken place and the market value of the assets has been established.

As stated in our Final Plan at Section V. A., we will not treat economically avoidable costs as stranded. This rule will apply whether

those avoidable costs are incurred by a jurisdictional utility or by a non-jurisdictional utility, such as an affiliated wholesale power supplier or an affiliated service company. Therefore, GSEC's request to recover through stranded cost charges payments in lieu of property taxes, and employee severance and retraining costs is rejected. Nor will we approve in advance the recovery of costs associated with possible future damage claims made against NEP. To the extent such claims arise, we will review the circumstances and, if appropriate, provide for the recovery of GSEC's allocated share. For a discussion of this issue see our Legal Analysis at Part I.A.5.

We also reject GSEC's request to recover through interim charges post shutdown costs at nuclear units. As we stated in our order on PSNH's interim stranded cost charges, unless the definition of nuclear decommissioning is revised to include such costs, these costs do not qualify for recovery through interim stranded cost charges.

We agree with GSEC that NEP's above-market fixed costs associated with natural gas pipeline demand charges cannot be avoided by shutting down the units and therefore are legitimate stranded costs. We will revise the La Capra Associates' methodology to allow for the recovery of above-market fixed costs associated with natural gas pipeline demand charges in a manner similar to that allowed for above-market purchase power costs. We note that such a revision will not change the overall level of interim stranded cost charges; rather, this revision will only reduce the amount of interim stranded cost charge revenue available to offset the depreciation and return on owned generation and regulatory assets. This revision will be made when we update interim stranded cost charges to reflect 1996 cost and revenue data.

For these reasons, we will deny GSEC's request. Instead, we will approve the base case charges proposed by La Capra Associates, which do not suffer from the same deficiencies. The market prices underlying these charges are the same prices which we found to be reasonable in Section V.F.3.a of the Final Plan. Further, because GSEC's average rate is below the adjusted regional average, the approved interim charges provide for the full recovery of stranded costs as we have calculated them.

Finally, we note that GSEC and the Campaign for Ratepayers Rights recently filed a proposed settlement agreement which addresses, among other things, interim stranded cost charges. Since the proposed settlement was filed after the close of the record in this proceeding, and since the majority of the parties in this proceeding have not been afforded the opportunity to fully explore the issues raised by the proposed settlement, we will consider the merits of the settlement agreement separately. Interested parties will be afforded an opportunity to present comments on the proposed settlement.

B. *Mitigation*

GSEC's obligation to provide its customers with bundled electric service ends on the day those customers are given the opportunity to choose their power supplier. As of that date GSEC will no longer require service under its wholesale contract with its affiliate NEP. However, since GSEC is required to give NEP seven year notice of termination, its right to terminate will not affect its costs during the interim period. Put another way, the issue of whether GSEC should be allowed to recover costs for any period beyond the time when the contract would have terminated is not relevant to the setting of interim charges. We do, however, find in our Legal Analysis at Part I.A.5. that GSEC's final stranded cost charges should recover no more than six years, beginning January 1, 1998, of stranded cost payments to NEP. It is also clear from the cross-examination of witnesses Flynn and Kenney by Enron that attaching conditions to the use of the divested NEP generation assets may lower the sale price and correspondingly increase the interim stranded cost charges for GSEC customers. We place GSEC on notice that we intend to address this issue, and make the necessary adjustments, in the proceeding to true-up the

approved interim charges.

In addition, the mitigation incentive mechanism and the associated ROEs proposed by La Capra Associates and described in Steps (6) and

(7) on pages 40-43 of its report are reasonable and we will adopt them.

C. *Market Price of Power*

Several approaches to estimate the market price of electricity during the two-year interim period were proposed. A summary of these approaches, along with our analysis and findings, is presented in Section V.F.3.a. of the Final Plan. Consistent with those findings, we used the following transmission-adjusted market prices to estimate GSEC's interim stranded cost charges: 4.51¢/kWh in 1998 and 4.65¢/kWh in 1999.

D. *Regional Average Rate Analysis*

Cabletron argued that the La Capra Associates analysis of rates relative to the regional average is flawed for two reasons. First, Cabletron contended that the statute requires the analysis to be based on competitive as opposed to average regional rates. Second, Cabletron believes the analysis of regional rates should look forward in time to 1998 and 1999 and not back to 1995. We disagree on both counts. Our reasons are given in Section V.F.3.b. of the Final Plan.

E. *Financial Impact*

Because the La Capra Associates base case interim charges provide for the full recovery of NEP's stranded costs as we have calculated them, our decision today should have no adverse effect on the financial position of GSEC or its parent. As Cabletron correctly noted in its brief, the proposed contract termination charge is the product of an agreement between NEP and GSEC which bears no correlation to actual NEP revenue requirements. Consequently, we find GSEC's prediction of dire financial consequences to be baseless.

F. *True-Up*

Although RSA 374-F does not explicitly require that we adjust the interim stranded cost charge estimates with actual stranded costs, we believe that to do so would be equitable, consistent with the goals of the Legislature and in the public interest. We will limit the

reconciliation to variations in non-affiliated purchased power costs, nuclear decommissioning costs, above- market fixed fuel costs associated with natural gas pipeline demand charges, retail sales, and market prices from those initially assumed in the estimation of the interim charges. Other portions of the interim charge (i.e., owned generation, affiliated power purchases and regulatory assets) will not be subject to reconciliation during the interim period. With the exception of affiliate power purchases, this is consistent with the current treatment of those costs. Reconciliation will be conducted annually and GSEC will have the burden of justifying any changes.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's proposed interim stranded cost charges are denied; and it is

FURTHER ORDERED, that GSEC recalculate its interim stranded cost charges using the method and the market prices proposed by La Capra Associates in this proceeding, appropriately adjusted to reflect actual 1996 cost and revenue data from the Company's 1996 FERC Form 1 to determine the average rate target, and based on projected power purchase costs, nuclear decommissioning costs, and above-market fixed fuel costs associated with natural gas pipeline demand charges for 1998 and 1999 filed by GSEC in this proceeding, subject to further true-up as described herein; and it is

FURTHER ORDERED, that GSEC recalculate its interim stranded cost charges based on a market electricity price of 4.51¢/kWh for 1998 and 4.65¢/kWh for 1999;

FURTHER ORDERED, that GSEC file the resulting interim stranded cost charges by March 31, 1997; and it is

FURTHER ORDERED, that GSEC shall give notice of termination of its full requirements contract with NEP.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

FOOTNOTES

[1]Post-shutdown costs are costs incurred after plant closure but before decommissioning.

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Re Statewide Electric Utility Restructuring Plan

Petitioner: Public Service Company of New Hampshire

DR 96-150
Order No. 22,512
175 PUR4th 331

New Hampshire Public Utilities Commission
February 28, 1997

ORDER directing an electric utility to file interim stranded cost charges based on a regional average rate approach.

The interim charges are to be set equal to the difference between (a) an average rate target equal to 107.8% of the 1995 adjusted regional average rate, and (b) the sum of the market price of electricity and the utility's transmission and distribution costs. Stranded costs are defined as net sunk generation costs (including regulatory assets) that cannot be recovered through market prices. Expressly excluded from the definition of stranded costs are all costs that can be avoided by prudent management actions and all fixed costs incurred after May 21, 1996, the effective date of the state electric restructuring statute (RSA 374-F).

Commission finds that the regional average rate approach results in an equitable, appropriate, and balanced measure of stranded cost recovery, is consistent with the restructuring legislation, fulfills the requirements for near-term rate relief, is authorized by long-standing statutes, and is consistent with the reasonable expectations of shareholders. Nevertheless, the commission makes an exception to the regional average approach to allow for full recovery of nonmitigatable costs associated with certain purchases from qualifying facilities.

Commission rejects claims that its 1990 order approving an electric rate plan for resolving the Chapter 11 bankruptcy proceeding of Public Service Company of New Hampshire (PSNH) obligates the commission to exempt PSNH from the regional average rate approach to setting interim stranded cost charges.

Responding to concern over the failure of the utility to achieve the maximum level of mitigation of stranded costs, the commission adopts a sliding scale return-on-equity incentive mechanism.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Associated stranded costs — Interim

charges — Method of computation — Cost elements. p. 111.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Retail competition — Associated stranded costs — Interim charges — Method of computation — Cost elements. p. 111.

3. EXPENSES, § 120

[N.H.] Electric utilities — Industry restructuring — Associated stranded costs — Interim charges — Method of computation — Cost elements. p. 111.

4. RATES, § 321

[N.H.] Electric rate design — Industry restructuring — Associated stranded costs — Interim charges — Method of computation — Cost elements. p. 111.

5. RATES, § 332

[N.H.] Electric rate design — Special

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charges — Recovery of stranded costs associated with industry restructuring — Interim charges — Method of computation — Cost elements. p. 111.

6. BANKRUPTCY

[N.H.] Chapter 11 reorganization — Electric rate agreement — State commission approval — Effect on stranded cost policy pursuant to industry restructuring. p. 114.

7. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs associated with industry restructuring — Regional average rate approach — Interim charges. p. 114.

8. ELECTRICITY, § 1

[N.H.] Industry restructuring — Stranded cost recovery — Regional average rate approach — Interim charges. p. 114.

9. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Stranded cost recovery — Regional average rate approach — Interim charges. p. 114.

10. COGENERATION, § 17

[N.H.] Utility purchases from qualifying facilities — Effect of electric industry restructuring — Nonmitigatable costs — Stranded cost recovery — Interim charges — Full recovery. p. 114.

11. ELECTRICITY, § 1

[N.H.] Industry restructuring — Stranded cost recovery — Regional average rate approach — Projected financial impact. p. 114.

12. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Stranded cost recovery — Regional average rate approach — Projected financial impact. p. 114.

13. REVENUES, § 5

[N.H.] Electric utility — Effect of industry restructuring — Stranded cost recovery — Regional average rate approach — Projected financial impact. p. 114.

14. EXPENSES, § 120

[N.H.] Electric utility — Stranded costs associated with industry restructuring — Mitigation requirements — Incentive mechanism. p. 116.

15. ELECTRICITY, § 1

[N.H.] Industry restructuring — Stranded cost recovery — Mitigation requirements — Incentive mechanism. p. 116.

16. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Stranded cost recovery — Regional average rate approach — Mitigation requirements — Incentive mechanism. p. 116.

17. RETURN, § 45

[N.H.] Factors affecting reasonableness — Risks of business — Industry restructuring — Retail competition — Mitigation of associated stranded costs — Sliding scale incentive mechanism — Electric utility. p. 116.

18. RETURN, § 26.4

[N.H.] Cost of equity — Factors considered — Mitigation of stranded costs associated with industry restructuring — Sliding scale incentive mechanism — Electric utility. p. 116.

19. RETURN, § 5

[N.H.] Sliding scale — As incentive to mitigate stranded costs — In response to industry restructuring — Electric utility. p. 116.

20. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Associated stranded costs —

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Interim charges — Reconciliation and true-up requirements. p. 116.

21. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Retail competition — Associated stranded costs — Interim charges — Reconciliation and true-up requirements. p. 116.

22. EXPENSES, § 120

[N.H.] Electric utility — Industry restructuring — Associated stranded costs — Interim charges — Reconciliation and true-up requirements. p. 116.

23. RATES, § 321

[N.H.] Electric rate design — Industry restructuring — Recovery of associated stranded costs — Interim charges — Reconciliation and true-up requirements. p. 116.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

The Legislature directed the New Hampshire Public Utilities Commission (Commission) to establish interim stranded cost charges for each utility, to remain in effect for no more than two years following the implementation of each utility's compliance filing. RSA 374-F:4,VI. As explained in the Final Plan, when setting these charges, the Commission must apply essentially the same principles that will guide the setting of final stranded cost charges, though the Legislature made it clear that the Commission was authorized to set these charges "without a formal rate case proceeding ... " Final stranded cost charges are to be determined in the context

of rate case proceedings and must be: (a) equitable, appropriate, and balanced, (b) in the public interest, and (c) substantially consistent with the interdependent principles in the legislation. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized the Commission to make "preliminary" findings in applying these guiding principles.

On November 8, 1996, Public Service Company of New Hampshire (PSNH) filed the supplemental testimony of John Noyes in support of its proposed interim stranded cost charges. Although Mr. Noyes' supplemental testimony only referenced his October 18, 1996 testimony, PSNH subsequently requested, and the Commission approved, that it be allowed to present in this interim proceeding the October 18 testimony of James Callahan, Joseph P. Kalt, John Forsgren, Henry Clarke, Wilbur Ross, and Gary Long. On December 30, 1996, the Office of the Consumer Advocate (OCA), City of Manchester (Manchester), Freedom Energy Company (Freedom), Cabletron Systems, Inc. (Cabletron), Retail Merchants Association (RMA), Granite State Hydro Association (GSHA) and the New Hampshire Municipal Association (NHMA) filed the testimony of Paul Chernick, Sheree Brown, James Rodier, Andrew Weissman, Robert Winship, and George Sansoucy respectively. Finally, on January 3, 1997, La Capra Associates submitted to the Commission a report entitled "Estimating Stranded Costs for New Hampshire Electric Utilities" which among other things developed interim stranded cost charges for each utility. La Capra Associates was hired by the Commission to assist it in the development of policy to restructure New Hampshire's electric utility industry. This order addresses PSNH's petition for interim stranded cost recovery.

On January 3, 1997, the Commission conducted a prehearing conference to address procedural matters in this interim stranded cost proceeding. The Commission issued Order No. 22,478 on January 14, 1997 advising the parties of the scope of the hearing and the time allotted to each party. On January 16, 1997, PSNH submitted a motion for rehearing of Order No. 22,478. On January 17, 1997, the Commission

orally granted PSNH's motion.

The Commission conducted a hearing relative to PSNH-specific issues on January 17, 21, 22, and 23, 1997, at which PSNH, OCA, Manchester, Cabletron, Freedom, GSHA, and La Capra Associates testified. On January 27-30, 1996, the Commission conducted a hearing relative to certain generic interim stranded cost issues, at which Unitil, GSEC, CVEC, PSNH, GSHA, Manchester, Cabletron, Freedom, NHMA, the OCA and La Capra Associates testified. The positions of the parties, and the Commission's analysis and findings, on those generic issues are contained in Section V.F.3. of the Final Plan. The findings on market price are utilized in this order to determine appropriate interim charges for PSNH.

On February 4, 1997, the OCA petitioned the Commission to reopen the hearing in this proceeding. In addition, the OCA requested that the Commission subpoena its former Chairman, Larry Smukler, who was one of the State negotiators in the PSNH bankruptcy. In light of our

decision on the Rate Agreement, as explained in the Final Plan and the Legal Analysis at Part I.B. we will deny the request.

On February 7, 1997, PSNH requested additional time for discovery and further adjudicative hearing time. We will deny PSNH's request because, as we have noted before, we believe we have provided more than sufficient opportunity for PSNH and all of the other parties to this docket to present their views through a variety of procedural mechanisms, given the time frames imposed on us by the law. We reiterate that these are "interim" stranded cost charges at issue here, and that we have provided a mechanism for reconciliation. See p. 39 herein. We also note that even though the Legislature specifically indicated that the interim stranded costs were to be set "without a formal rate case proceeding," RSA 374-F:4,VI(a), we have conducted the interim stranded cost proceeding in essentially the same manner as rate case proceedings, and we have provided an opportunity for prefiled testimony, discovery, cross-examination, rebuttal testimony and briefs. We also note that we had our consultant prefile, in testimony form, the advice which he was going to provide to us and made him available for cross-examination. We therefore see no reason to grant PSNH's request.

II. POSITIONS OF THE PARTIES

A. *PSNH*

Mr. Callahan submitted prefiled testimony on October 18, 1996 explaining the potential impact of cost disallowances on PSNH's ability to utilize certain accounting standards. He stated that if the Commission ordered stranded cost recovery based on the methodology used in the La Capra Associates report, FAS-71 could no longer be applied to PSNH's regulatory assets, forcing it to write off those assets, which would likely trigger defaults under the various loan indentures and ultimately the bankruptcy of PSNH.

Referring to the testimony of La Capra Associates, Mr. Callahan stated that the proposal to defer an additional $200 million of depreciation and amortization will not allow that deferral to continue to reside on PSNH's books as a regulatory asset. The lack of an assurance of recovery will not only result in a write-off of $200 million, according to Mr. Callahan, but also the entire $700 million that Mr. Forsgren testified was at risk.

Mr. Callahan also testified that if the Commission issued a decision that the market price of electricity is higher than PSNH's management believes, PSNH's management would be required to use its own lower estimate when performing a FAS 121 long-lived asset impairment analysis.

In his October 18 testimony, Mr. Forsgren described the impact of a hypothetical write-off of $250 million on PSNH's common equity, on bond ratings, on its ability to issue new preferred stock, on the required equity ratios and earnings coverage tests, and on the ability to pay off existing debt. In his January 17, 1997 direct testimony, he focused on the potential financial impact on PSNH if the Commission adopted the La Capra Associates recommendation to lower its rates to 104.5% of the adjusted regional average rate. Mr. Forsgren testified that in such an event, the accounting standards would not allow PSNH to utilize FAS 71.

Elimination of FAS 71 would, according to Mr. Forsgren, require removal from PSNH's balance sheet of substantially all of its regulatory assets, resulting in an after tax write-off of approximately $434 million. He further testified that adoption of the La Capra Associates recommendation would reduce future cash flows to a point that PSNH could not cover its non-T&D assets and obligations. Mr. Forsgren estimated an after-tax loss, based on FAS 121, ranging from $270 million to $450 million. The sum of the FAS 71 and FAS 121 impacts would exceed PSNH's current common equity.

Because PSNH is required by its financial covenants to maintain a common equity level of about 30% after June 30, 1997, the above-mentioned write-offs would result in a default on its debt payments. He also testified that North Atlantic Energy Corporation's (NAEC) financial covenants also will be affected.

In such a situation, he asserted that each of the creditors would be in a position to accelerate its debt and force PSNH to make a bankruptcy filing. In light of this prospect, Mr. Forsgren recommended that the Commission utilize a cost-based mechanism for determining the level of stranded cost recovery.

On cross-examination, Mr. Forsgren explained that it is not the amount of the disallowance that is important but the lack of a cost basis for the charges in the La Capra Associates report. Mr. Weissman disagreed, suggesting that the write-off could be limited to the difference between the revenues from the stranded cost charges and the revenues that would have been recovered under regulated rates.

In response to a question from the bench, Mr. Forsgren stated that approximately $150 million can be written-off by PSNH without triggering a violation of NAEC or PSNH debt covenants. However, PSNH noted that the Commission would not be complying with its obligations under the Rate Agreement if it were to disallow costs of that magnitude.

On the issue of mitigation, Mr. Forsgren agreed that PSNH had not conducted a detailed economic analysis of its generating units to determine their worth in the open market. Nor had it offered any of its excess capacity for sale in order to reduce the level of stranded costs on its system. PSNH believes that the sale of capacity in the current surplus market would have little effect on the level of stranded costs.

Mr. Noyes submitted prefiled testimony on October 18, 1996 and again on November 8, 1996 which addressed several aspects of PSNH's proposed interim stranded cost charges. His October 18 testimony described the events which led to PSNH's bankruptcy, the various conflicting interests that had to be satisfied in order to consensually resolve that bankruptcy, and the contribution the Rate Agreement made to the bankruptcy resolution. With regard to the latter, Mr. Noyes disagreed with the Commission's finding in Order No. 22,364 that the issues raised by the Rate Agreement are matters of law. Mr. Noyes testified that the circumstances which led to the resolution of the bankruptcy are crucial to an understanding of the state's obligations under the Rate Agreement. Without a factual understanding of the events that led to PSNH's bankruptcy and to the development of the Rate Agreement, he believes that the arguments put

forward by the OCA and others have superficial appeal.

In his November 8, 1996 filing, Mr. Noyes requested that the Commission approve an interim stranded cost charge of 5.2¢/kWh and 5.9¢/kWh in 1998 and 1999, respectively. According to Exhibit SJWN-1, those charges produce revenues totaling about $384 million and $454 million in 1998 and 1999, respectively. If the acquisition premium is also treated as a stranded cost, stranded cost revenues over the two-year interim period increase to about $1.075 billion.

Mr. Noyes testified that the proposed stranded cost charges recover three broad categories of costs: public policy costs; regulatory assets; and above market generation costs. Public policy costs are further broken down into non-QF and above-market QF costs. According to Mr. Noyes, the above-market owned generation costs were derived by comparing the aggregate embedded generation cost for all units less the aggregate market value of the output of those units. He also recommended that a portion of the above-market QF costs be assigned to Unitil and therefore excluded the associated

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costs from the proposed charges.

Mr. Noyes also testified that the regulatory asset component of the interim charges assumes Commission approval of the six pending renegotiated QF contracts. That component does not, however, reflect the effect of refinancing of the Seabrook deferred return and QF deferrals. In rebuttal of Mr. Chernick's direct testimony, Mr. Noyes stated that PSNH has achieved significant cost reductions in O&M in recent years in anticipation of future competition and therefore the recommended 20% cost reduction had no realistic foundation. He was also critical of Mr. Chernick's value for Merrimack, his capital structure, his failure to make tax adjustments, and his cost of dismantling PSNH power plants. Finally, he stated that Mr. Chernick's value for Newington would not even cover the plants' fuel costs.

Mr. Noyes' rebuttal of Ms. Brown's testimony focused on changing the amortization period for the Acquisition Premium, which he believes is not provided for in the Rate Agreement. He also noted that Ms. Brown's securitization proposal would require the approval of several parties before it could be implemented.

In response to the five point recommendations offered by Mr. Weissman, Mr. Noyes submitted the following counter proposal to the Commission:

(i) accept PSNH's top-down methodology for developing sunk costs and base the unbundled T&D rates on the embedded costs of transmission and distribution;

(ii) utilize a reasonable market price of competitive power when developing interim stranded cost charges;

(iii) implement a true-up of the interim stranded cost charge that would allow savings from securitization to be passed through to customers;

(iv) encourage the parties to reach a negotiated settlement of the stranded cost issue in order to allow retail competition to be introduced consistent with the legislative timetable.

Mr. Long submitted prefiled testimony on October 18, 1996 which described the various types of generation costs incurred by PSNH, including owned generation and purchased power. In addition, he provided justification for continued recoverability of such costs once the industry is restructured. Finally, he described why special contracts are useful in mitigating stranded costs.

Professor Kalt stated that his October 18, 1996 testimony addressed the economic consequences of less than full stranded cost recovery. On cross-examination, he testified that it would be economically irrational for utilities to use stranded cost revenues to subsidize their competitive activities because such actions would at best reduce the level of profits or at worst produce a loss. Professor Kalt also testified that New Hampshire customers would not be harmed competitively if utilities were allowed to recover all of their stranded costs through wires charges.

Mr. Clarke, the Managing Director of Salomon Brothers Global power Group, provided testimony on the resolution of the bankruptcy and on why PSNH investors have a reasonable expectation of recovering their investment.

Mr. Clarke testified that investor expectations are important for four reasons. First, the definition of stranded costs in HB 1392 refers to "assets that electric utilities would reasonably expect to recover if the existing regulatory structure ... continued ... ." Second, the fulfillment of investor expectations is good business practice. Third, any action by the state which prevents investor expectations from being fulfilled is likely to be deemed a breach of contract. And finally, for securitization to work, the state must be able to create an expectation for the investment community that there is little risk involved. If the state fails to live up to investor expectations created by the Rate Agreement, these same investors are unlikely to provide the necessary funds to make securitization a viable concept for New Hampshire.

Mr. Clarke stated that any discussion of PSNH's stranded costs would be incomplete without a complete understanding of the Rate Agreement, how it evolved, what the concerns were of the various parties to the bankruptcy and how they were dealt with. According to Mr. Clarke, the clear intention of the parties to the

Rate Agreement was that NU's entire investment in PSNH would be recovered through rates, with a return.

Mr. Clarke alleged that it was the state that proposed the creation of large regulatory assets in order to keep rate increases to a minimum. Such regulatory assets deferred the recovery of the initial investment in PSNH and of the ongoing power purchase costs. The state, according to Mr.

Clarke, committed to the future recovery of these deferrals. Without such a commitment, he believes no rational investor would have invested $2.3 billion to resolve the bankruptcy, the financial accounting standards would have prevented these regulatory assets to be placed on PSNH's books, and the state would not have resolved the bankruptcy without costly litigation. On cross-examination, Mr. Clarke agreed that the Official Committee of Unsecured Creditors had neither requested nor received a written commitment from the state that the deferrals would be fully recovered.

Mr. Clarke also agreed that the primary concern of the Official Committee of Unsecured Creditors was the agreed level of revenues during the fixed rate period and not the nature of the obligations thereafter. He added, however, that the buyer of the estate was keenly interested in the obligations during both periods.

B. *GSHA*

Mr. Winship testified about two issues: the history and background regarding the QF industry and the contracts and rate orders in New Hampshire; and the legal enforceability of contracts and rate orders.

C. *Manchester*

Manchester contended that PSNH's interim charges do not meet the legislative goals or conform with the policy principles established in RSA 374-F:3. In its brief, Manchester argued that PSNH's interim stranded cost charges ignore the legislative mandate to balance competing interests, provide little near term rate relief, disregard the requirement to mitigate, and otherwise contravenes virtually every one of the interdependent policy principles. To rectify these shortcomings, Manchester proposed an interim stranded cost charge that reflects the refinancing of PSNH regulatory assets and recovery over a longer amortization period.

In the absence of such authorization, Manchester recommended that the Commission consider extending the amortization schedules and reducing the return on the unamortized balances. Manchester recommended that the Commission, in its Final Plan, support the introduction of legislation which would authorize the implementation of a securitization program.

Manchester noted that neither securitization nor longer amortizations would result in the write-off of regulatory assets. According to Manchester, a regulatory asset will be capitalized under FAS 71 if it is probable that future revenue in an amount "at least equal to the capital cost" will result from the inclusion of the asset's cost in rates. Manchester stated that amortization of the investment, without a return, would not trigger a write-off of the asset.

Manchester also argued that the redistribution of PSNH's QF power costs among utilities or among all customers in the state would advance the legislative goal of an "equitable, appropriate and balanced" stranded cost charge. In addition, Manchester proposed that the Acquisition Premium be allocated to generation, transmission and distribution based on the percentage of capital investment to total investment for each of these functions and recommended that the

amortization period for the generation portion be extended from thirteen to eighteen years. It also recommended that the return on the unamortized balance be reduced. Again, Manchester noted that such changes would not trigger a write-off of the Acquisition Premium.

Finally, Manchester advised that the inclusion of a true-up mechanism would provide additional assurance of ultimate recovery of regulatory assets but cautioned that such a mechanism must be carefully structured so as to avoid providing the incumbent firm with an unfair competitive advantage.

D. *Cabletron and Retail Merchants Association*

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Mr. Weissman testified that because of the bankruptcy, PSNH has much less of a case for full recovery than other utilities.[1(18)] For instance, he asserted that in agreeing to honor PSNH's QF contracts, NU essentially made the PURPA mandate irrelevant. Therefore, PSNH cannot now use the PURPA mandate to justify full recovery of these costs. In addition, he testified that at the time the acquisition occurred in 1992, NU's management knew or should have known that, except to the extent that NU was able to protect itself through the Rate Agreement, there was a significant risk NU would not be able to recover its investment in PSNH. According to Mr. Weissman, NU's management made a calculated decision that the potential benefits of the acquisition were worth the risk. NU recognized that it was taking extraordinary risks, and negotiated an explicit Agreement with the state before its bid was finalized, to give it certain contractually defined protections for a limited time period. Mr. Weissman contends that the state has no binding legal obligation to provide any relief, beyond the explicit provisions of the Rate Agreement.

Mr. Weissman asserted that PSNH made serious quantification errors in developing its interim stranded cost charges. First, he noted that PSNH had used 1995 book costs instead of forecasted 1998 costs to develop its total power cost. Second, he argued that PSNH failed to analyze whether some of its units would be uneconomic and therefore candidates for closure. This failure to perform a unit-by-unit analysis of net operating profits is likely to overstate stranded costs because the positive contribution to fixed costs from economic units would be reduced by the negative contribution from uneconomic units.

In addition, Mr. Weissman stated that PSNH made no meaningful effort to comply with the mitigation requirement in RSA 374-F, including consideration of the future value of generation assets and entitlements or the current value of its distribution franchise. He recommended that PSNH be directed to undertake a contract-by-contract analysis to determine the potential for negotiated reductions in stranded power costs. Second, Mr. Weissman asserted that PSNH failed to address the statutory requirement to balance the interests of customers and shareholders in establishing the amount of any interim stranded cost charge. Nor, he argued, did PSNH address the requirement to provide near term rate relief to customers.

Mr. Weissman made a five-point recommendation. The Commission should set for PSNH an interim stranded cost charge and, if agreement could be reached among the parties, a final stranded cost charge. However, the amount of both charges would be subject to the following adjustments. First, the amount of the charges would be based in part on the condition that PSNH write-off the maximum amount of shareholder equity without violating restrictions in its bond indentures. In addition, PSNH would have to amortize its regulatory assets over extended time periods. Second, PSNH must agree to sell at least 50% of its existing owned generation and power contracts before the end of 1997 in order to reduce stranded cost charges. The amount of the interim charge would be revised upward or downward if the proceeds from the sale differ from the values previously estimated. Third, the sale of those assets would be conducted by a neutral third party. Fourth, PSNH must agree to a plan in which NU agrees to share in the amount of any loss.

The Retail Merchants Association participated in the hearing through cross-examination and joined Cabletron in support of its brief.

E. *Freedom*

Mr. Rodier submitted prefiled testimony on December 30, 1996 which rebutted PSNH's assertion that it has certain contractual rights relative to stranded cost recovery under the Rate Agreement. He stated that the finding requiring a return to traditional ratemaking after the fixed rate period and the Commission adjusting rates as it deems appropriate is equivalent to a conditionally approved Rate Agreement.

F. *NHMA*

NHMA argued that because PSNH failed to demonstrate that its requested stranded costs

are non-mitigatable, it did not meet the burden of proof required to support full recovery. In support of that position, NHMA noted that PSNH's Chief Financial Officer, Mr. Forsgren, testified that despite the company's request to recover in excess of $800 million of stranded cost over the two-year interim period, he did not see the need for any special analysis or task force to assess mitigation possibilities. In addition, NHMA noted, without ever conducting a detailed review of the economics of each unit or developing a divestiture plan, Mr. Forsgren testified that there are no significant assets that could be retired or sold. He even went as far as to say that it would be premature for PSNH to explore these opportunities. NHMA also noted that PSNH had failed to estimate the value of its power plant sites or conduct an analysis of the additional value that could be created by undertaking repowering projects at those sites.

G. *OCA*

Mr. Chernick's December 30, 1996 testimony addressed three broad issues. First, Mr. Chernick discussed the Commission's rationale for including the Acquisition Premium in PSNH's rates, including a computation of the rate level necessary to justify keeping the Acquisition Premium in rates. Second, he explained how he estimated the stranded costs of PSNH's generation resources, purchases, nuclear decommissioning, and regulatory assets. Third, in conclusion, Mr. Chernick recommended that PSNH's interim stranded cost charge be set at approximately 1.5¢/kWh.

Mr. Chernick calculated the stranded costs of PSNH's own generation by estimating the net book value of PSNH's plant, including PSNH's share of production plant at affiliated utilities, less the 1998 present-worth value of that plant. The net book value was derived from net plant as of December 31, 1995, adjusted for estimated capital additions and depreciation expense in 1996-97. Mr. Chernick concluded that all PSNH generation is economic to operate and that every hydroelectric, peaking and fossil steam unit is worth more in the competitive market than its net book value.

With respect to QF purchases, Mr. Chernick calculated the associated stranded cost by subtracting from PSNH's projected payments his market price estimate and multiplied the resulting unit cost by PSNH's annual projections of capacity and energy purchases. Mr. Chernick then levelized the resulting above-market costs over the remaining 19 year period of the purchases, and assumed that buydowns and retirements would reduce the above-market cost by 10%.

With respect to regulatory assets, Mr. Chernick reassigned the Yankee Atomic costs to decommissioning costs, excluded the FAS 109 asset on the grounds that it is a benefit to shareholders, treated the deferred Seabrook return as an increase in the book value of Seabrook, and reduced the QF deferral balance by $120 million to reflect anticipated savings resulting from buydowns. He also testified that PSNH should be permitted to recover the Acquisition Premium if rates fall at or below the thresholds in DR 89-244.

Mr. Chernick testified that because PSNH failed to provide a full derivation of its stranded cost, he is unable to provide a complete explanation of why his stranded cost estimate differs from that proposed by PSNH. Nonetheless, Mr. Chernick identified the following differences:

(i) PSNH included in its estimate certain "current income taxes" without defining those costs;

(ii) PSNH computed interim stranded costs as of December 31, 1995 rather than January 1, 1998. Mr. Chernick stated that this results in higher net plant, lower present value of operating margins, and higher stranded costs;

(iii) PSNH adds rather than subtracts accumulated deferred taxes to stranded costs;

(iv) PSNH includes a number of cost components that are either not generation costs or are not stranded including C&LM, non-generation environmental costs such as PCB and toxic waste remediation at distribution facilities, franchise costs, uncollectibles; and a

portion of FAS 106 and 109 and ITC.

H. *La Capra Associates*

The La Capra Associates report to the Commission provides estimates of interim stranded cost charges which Mr. Yoshimura believes are consistent with RSA 374-F:4 and the methodology outlined in the Commission's Preliminary Plan. The key feature of Mr. Yoshimura's interim stranded cost methodology is the establishment of a total average rate target for each New Hampshire electric utility designed to achieve an overall rate decrease for those utilities with total average rates greater than the regional average rate. Under this approach, the interim stranded cost charge is computed as the difference between (a) the average rate target and (b) the sum of the transmission and distribution costs and the market price of electricity. Mr. Yoshimura computed interim charges for each utility using three different average rate targets, i.e., 100%, 104.5% and 107.8% of the 1995 average regional rate, and the base case market price estimates of Mr. La Capra. Mr. Yoshimura also recommended that the interim stranded charges be modified every six months during the interim period.

In order to encourage mitigation of stranded costs, Mr. Yoshimura recommended establishing an inverse relationship between the return on equity earned on the stranded assets to the level of the stranded cost charges. Mr. Yoshimura proposed a maximum ROE of 11% for a utility with no stranded costs and a 1% reduction for each 1¢/kWh increase in the stranded cost charge. For the portion of the interim stranded cost charge used to offset the stranded costs associated with owned generation and regulatory assets, Mr. Yoshimura noted that his proposed sliding scale return on equity would only affect the allocation of interim stranded cost charge revenues between the return and depreciation components of the charge. During the period in which interim stranded cost charges are in effect, the sliding scale return on equity would not impact the level of interim stranded cost charges as these are computed so that the sum of interim stranded cost charges, T&D charges, and market prices equal a previously specified average rate target. Mr. Yoshimura did note that his sliding scale return on equity could be used to introduce incentives for electric companies to minimize final stranded cost charges, particularly by allowing electric companies to earn higher returns if such companies are able to increase the purchase value of divested generation resources; in this instance, the sliding scale return on equity could impact the level of final stranded cost charges.

In response, PSNH viewed Mr. Yoshimura's sliding scale incentive mechanism as just another way to lower its earnings and calculated an associated loss of nearly $60 million.

Mr. Yoshimura recommended interim stranded charges of 3.79¢/kWh in 1998 and 3.66¢/kWh in 1999 for PSNH. These compare with 5.20¢/kWh in 1998 and 5.99¢/kWh in 1999 submitted by PSNH. Mr. Yoshimura testified that most of the difference between his estimates and those of PSNH can be accounted for by differences in market prices and numerous other factors.[2(19)] Other differences between Mr. Yoshimura's interim stranded cost charge and that of

PSNH include: (1) PSNH's stranded cost charge includes C&LM and uncollectibles which should be included in T&D costs; (2) PSNH's stranded cost charge includes avoidable, going-forward costs associated with utility owned generation costs that should be excluded from stranded cost charges; (3) PSNH's stranded cost charge was based on total retail and wholesale revenues and sales rather than retail revenues and sales only; and (4) PSNH assumed a higher T&D rate than that assumed by Mr. Yoshimura in his interim stranded cost computation.

Base Case interim stranded cost charges computed by La Capra Associates produce annual revenues that are lower by about $173.5 and $212.6 million in 1998 and 1999, respectively, compared to PSNH's interim stranded cost charges after adjusting for differences in assumed market prices and wholesale revenues and sales. Similarly, High Case interim stranded cost charges computed by La Capra Associates produce annual revenues that are lower by about $151.5 and $190.1 million in 1998 and 1999, respectively, compared to PSNH's interim stranded cost charges; the revenue difference would fall to $110.7 and $148.5 million for 1998 and 1999, respectively, if the 1995-

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based average rate target of La Capra Associates' High Case was adjusted upward to reflect the 5.5 percent increase in average rates allowed by the Rate Agreement in 1996.

I. *Enron*

Although Enron did not offer a witness in this proceeding, it did conduct cross-examination and did submit a brief. Enron urges the Commission to determine the appropriate level of interim charge for PSNH based on a cost-of-service analysis and to compare that level with the interim stranded cost charge derived using the regional average rate approach. Enron stated that if the two are comparable, the Commission can assert that the approved charge satisfies both standard accounting requirements and the legislative mandates for near-term rate relief and regional competitiveness.

In its brief, Enron addressed each of the three broad cost categories separately and argued that the record supported a lower interim stranded cost charge than that proposed by PSNH. Using Mr. Sabatino's market prices, Enron estimated total stranded costs at about $274 million in 1998 and $304 million in 1999. Using Mr. La Capra's base case market prices, those annual costs fell to about $208 million in 1998 and $246 million in 1999.

III. COMMISSION ANALYSIS

A. *Overview*

[1-5] Stranded costs are defined in both the Preliminary and Final Plans as net sunk

generation costs (including regulatory assets) that cannot be recovered through market prices. Expressly excluded from this definition are all costs that can be avoided by prudent management actions (including all variable operating costs) and all fixed costs incurred after May 21, 1996, the effective date of RSA 374-F. For the reasons set forth below, we find that the proposed interim charges do not meet our definition of stranded costs. In addition, we find that PSNH did not meet its burden of proof and failed to satisfy the near term rate relief principle. In contrast, the interim charges recommended by La Capra Associates for PSNH have been calculated consistently with the above definition, produce an equitable, appropriate and balanced measure of stranded cost recovery, and provide customers the near term rate relief required by the legislation. However, in order to address the concerns expressed by several of PSNH's witnesses regarding the potential financial consequences of any stranded cost disallowance, we will utilize La Capra Associates' high case charges (i.e., 107.8% of regional average) for PSNH. These charges, which were computed using the base market price projection, produce higher stranded cost revenues and therefore less of a financial impact. We emphasize that we are accepting the high case only for purposes of setting interim charges. We will revisit this question when we develop final stranded cost charges.

B. *PSNH's Proposed Interim Charges*

As noted above, PSNH's proposed interim stranded cost charge recovers three broad categories of costs: public policy costs; regulatory assets; and above market generation costs. We address each category in turn.

1. *Public Policy Costs*

PSNH requested that we approve for recovery in 1998 about $60 million of "future" public policy costs, broken down into the following sub-categories.

a. Regulatory Compliance Costs

Mr. Noyes testified that this sub-category includes projected A&G costs associated with PSNH's generation, transmission and distribution activities. Future A&G costs do not meet the definition of a sunk cost and therefore do not qualify for recovery through stranded cost charges. PSNH can seek recovery of these costs, to the extent they relate to the regulated operations, in future rate cases.

b. C&LM Costs

With the exception of net lost revenues, New Hampshire utilities recover direct C&LM costs as they are incurred and therefore such programs do not create stranded costs. Further, we note that the settlement agreement in DR 94-256, which we approved by Order No. 21,623, provides for the recovery of net lost revenues by the end of the Fixed Rate Period. Consequently, we expect that all costs associated with existing C&LM programs will be fully recovered by January 1, 1998. Further, as discussed in the Public Policy section of the Final Plan, after a short transition period, distribution companies will no longer be required to offer ratepayer funded C&LM programs and therefore should have no expectation of stranding future C&LM program costs.

c. Environmental Costs

Mr. Noyes testified that this sub-category reflects the depreciation and return on past environmental investments at nuclear and fossil hydro sites. He also stated that these costs are included in the book costs of the relevant units. Given that all generators, not just PSNH's existing generators, must comply with applicable environmental standards established by environmental regulators from time to time, we find that these costs meet the definition of a stranded cost but that they should be recovered through a combination of revenues derived from market prices and above-market generation costs reflected in stranded cost charges.

d. Uncollectible, Credit and Collection Costs

Each of these costs is typically categorized as franchise or distribution-related and therefore appropriately recovered through unbundled distribution rates, not through stranded cost charges.

e. Nuclear Decommissioning

Mr. Noyes testified that this sub-category covers the decommissioning costs associated with all of PSNH's nuclear entitlements. For the reasons given in the Final Plan, we believe there are sound public policy reasons for recovering these unavoidable, future costs through stranded cost charges.

f. Fixed Nuclear O&M

Mr. Noyes testified that costs in this category are the estimated amounts incurred after retirement of Seabrook but before decommissioning. Unless and until the definition of nuclear decommissioning is revised to include post retirement O&M costs, we believe it is inappropriate to recover these costs through interim charges.

g. Transmission in Support of Generation

Certain sunk transmission costs that are associated with specific generators or power purchases may be stranded if such costs are not permitted to be reflected in transmission tariffs, and if the net benefits produced by the specific generator or power purchase that is supported by such transmission costs are not sufficient to offset such costs. For PSNH, the Hydro Quebec Phase 1 and 2 transmission support payments fall into the category of transmission costs supporting a power purchase that is potentially stranded. We will permit the above-market portion of this cost to be reflected in interim stranded cost charges in a manner similar to that allowed for above-market purchase power costs. In doing so, however, the net benefits of the Hydro Quebec Firm Energy Contract which are supported by such transmission payments must also be accounted for when determining the above-market portion of such transmission costs. The La Capra Associates report correctly accounts for both the Hydro Quebec Phase 1 and 2 transmission support payments and the net benefits of the Hydro Quebec purchase and we adopt it here.

h. Municipal & Payroll Taxes

Based on the description provided by Mr. Noyes, it is clear that only a small portion of these costs is generation-related. More importantly, the generation-related portion reflects expected future avoidable costs and therefore

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does not meet the definition of a sunk cost. Further, the collection of future avoidable costs through stranded cost charges is inherently anti-competitive.

i. Franchise Taxes

Mr. Noyes testified that the costs assigned to this sub-category represent PSNH's total expected franchise tax bill for the relevant year. We find that future franchise taxes (to the extent such taxes continue to apply in the future) do not meet the definition of a sunk cost and therefore do not qualify for recovery through stranded cost charges. These prospective costs may be recovered in unbundled distribution rates.

j. Income Taxes

Mr. Noyes testified that costs assigned to this sub-category reflect the income taxes on public policy investments. To the extent that these income taxes relate to the return on the environmental investments discussed above, we believe these costs should be recovered through a combination of market prices and above market generation stranded cost charges.

2. *Regulatory Assets*

We agree with Enron that because PSNH witnesses have repeatedly testified that the securitization of the Seabrook deferred return and the QF deferral is both feasible and appropriate, PSNH can no longer justify recovering the full, non-mitigated amount of these regulatory assets. Please refer to the Financial Impact section of this Order, below, for a more detailed discussion of this issue.

3. *Above-Market Generation Costs*

This category includes the estimated above market costs associated with owned generation and power purchases. As noted above, PSNH estimated the above market cost of its own units by subtracting the aggregate market value of the output from those from the aggregate embedded generation cost. Because the approach does not estimate costs on a unit-by-unit basis, we find that PSNH did not subtract from its embedded generation cost the expected net operating profits from the use of those assets during the two-year interim period. Second, we find that PSNH understated the market price of electricity, which we address in Section V.F.3. of the Final Plan, and thus overstated the above-market cost of owned generation. Third, had PSNH used a more realistic market price, its net profits (losses) would have been higher (lower) and its stranded costs correspondingly lower.[3(20)]

We are not persuaded that we ought to adopt either of the two alternative proposals for distributing among other ratepayers the recovery of above-market costs associated with purchases from QFs that have been offered: PSNH's proposal that customers of Unitil should bear the above-market costs of QF facilities located in Unitil's service area, or Manchester's proposal that all customers throughout the state should bear PSNH's above-market QF costs. The arrangements for the sale of the output from those facilities to PSNH were negotiated consistent with the requirements of PURPA and LEEPA and therefore should not now be disturbed.

4. *Treatment of Acquisition Premium*

Although the Commission's order in DR 89-244 characterized the Acquisition Premium as an intangible asset unassociated with any particular part of PSNH's business, we are not precluded from assigning the unamortized balance (for ratemaking purposes) to a specific function. This issue is addressed in our Legal Analysis Part I.A.

Mr. Noyes allocated the unamortized balance solely to distribution, whereas Mr. Yoshimura assigned the entire amount to generation. Ms. Brown on the other hand apportioned the balance among generation, transmission, and distribution. For the reasons given by Mr. Yoshimura on cross-examination, we believe the appropriate ratemaking treatment is to assign the full unamortized balance to the generation function.

C. *Market Price of Electricity*

Several approaches to estimate the market price of electricity during the two-year interim period were proposed. A summary of these approaches, along with our analysis and findings, is presented in Section V.F.3.a. of the Final Plan. Consistent with those findings, the interim stranded cost charges approved in this order are based upon the following loss adjusted market price estimates: 4.53¢/kWh in 1998 and 4.66¢/kWh in 1999. These market prices assume an average loss factor for PSNH of 8.69 percent.

D. *Stranded Cost Recovery*

1. *Rate Agreement*

[6-10] In the Legal Analysis accompanying the Final Plan, we reject PSNH's claim that the Rate Agreement obligates the Commission to exempt PSNH from the regional average rate approach to set interim stranded cost charges.

2. *Regional Average Rate Approach*

For the reasons given in our Legal Analysis at Part I.A. and B., we reject PSNH's insistence on cost-based ratemaking based on its costs alone. The use of regional average rates results in an "equitable, appropriate and balanced" measure of stranded cost recovery, is consistent with the interdependent principles in the legislation, fulfills the requirement for near term rate relief, is authorized by our longstanding statutes, and is consistent with the reasonable expectations of PSNH shareholders (albeit not necessarily their aspirations). The one exception is nonmitigable QF power costs, for which RSA 374-F requires recovery. Consequently, whereas the La Capra Associates interim stranded cost charge methodology allows for full recovery of the above-market portion of QF power purchase costs, the average rate target used in the La Capra Associates report must be adjusted to provide a fair comparison of PSNH's average retail rate with the region's average retail rate when determining the overall interim stranded cost charge. We will make this adjustment when we update the La Capra Associates charges to reflect actual 1996 average retail rates based on 1996 FERC Form 1 data.

When we compute the average retail rates for both PSNH and for the region, we will exclude the costs associated with 1996 QF power purchases. Thus, PSNH's average retail rate and the regional average retail rate will be computed by taking total 1996 revenues, less the expenses associated with 1996 QF power purchases, divided by 1996 retail sales. We will also require the computation of an adjusted regional average retail rate, against which to compare PSNH's average retail rate, based on the methodology in the La Capra Associates report, with the exception that 1996 QF expenses would be excluded from the computation of the adjusted

regional average retail rate. QF expenses are then added back in for the purpose of determining the interim charge.

In the following sections, we address the financial implications of our decision to approve La Capra Associates' interim charges. We then examine whether PSNH has undertaken reasonable mitigation measures to minimize not just its stranded costs but also the financial consequences of any Commission imposed cost disallowance. Finally, we discuss the need for a mechanism to true-up the interim charges based on actual market prices and sales.

3. *Financial Impact*

[11-13] In this part of our decision, we focus on PSNH's assertion that the interim stranded cost charges in the La Capra report would create negative financial consequences for the Company. In particular, we address the potential effect of approving interim stranded cost charges based on the La Capra methodology on the continued application of FAS 71 and FAS 121.

We find it reasonable to set PSNH's interim stranded cost charge at $0.0412/kWh for 1998 and $0.0399/kWh for 1999. These charges are based on the High Case recommendation in the La Capra Associates report, i.e., 107.8% of the regional average rate based on a 10 percent reduction to PSNH's 1995 average rate. In setting the interim charges at this level

we believe that we are acting in concert with the intent of the Legislature and in the best interests of customers and PSNH. Undoubtedly, a rate trajectory which incorporates the above-mentioned interim charges will result in lower overall revenues than a trajectory which reflects a business as usual scenario, i.e., a scenario in which customers are denied their statutory right to seek alternative sellers of electricity. In contrast, however, to the stark warnings of Mr. Forsgren, we do not see this lower revenue stream producing the dire financial consequences forecast by PSNH.

The record indicates that the average rate target for PSNH based on 107.8% of the 1995 adjusted regional average rate is $0.1107/kWh. Using PSNH's 1998 and 1999 projected retail sales, this translates into revenue expectations of $739.9 million and $754.3 million respectively. In contrast, PSNH's retail revenue projections for these years are $908.8 million and $962.7 million, respectively, excluding revenues from wholesale sales. While the revenue difference between rates based on a high average rate target and PSNH's projections are significant, we find that the potential remedies available to the Company can offset this difference without the dire consequences implied by the Company. While we do not suggest that earnings reductions and perhaps some level of asset write-down can be ultimately avoided, we find that the financial position created by an interim stranded cost charge based on La Capra Associates' High Case is manageable for PSNH.

Some of the ways in which PSNH can manage this situation have been proposed by the Company itself. For example, PSNH has proposed constructive options such as the securitization of the NAEC deferrals. The deferred return on the NAEC contract appears to meet the criteria laid out for securitization in Section V.C. of the Final Plan. Further, we note that PSNH has recovered all of the deferrals to date related to the NHEC buyback; in addition, there is a high likelihood that PSNH will recover much, if not all, additional NHEC deferrals in 1997 through higher than expected energy savings under the FPPAC. These options are possible first solutions to what we consider to be a manageable financial situation for PSNH.

We certainly expect nothing close to the $700 to $880 million write-off suggested by Mr. Forsgren. In fact, the record shows that the Company has not demonstrated the necessity to write-off any of its assets at this time. The FAS 71 trigger to which Mr. Forsgren alludes cannot be supported by the portion of the record developed by PSNH. As noted above, Mr. Noyes projects a total cost of service for the Company in 1998 of $978.4 million which includes wholesale revenues of $69.6 million. This yields a retail cost of service of $908.8 million. Mr. Noyes' testimony projects that PSNH's total utility net operating income will be $126.6 million, or $190.3 million in operating income before taxes. The effect of establishing the Company's interim stranded cost charge using La Capra Associates' High Case would be to reduce the 1998 revenue requirement to $739.9 million. Stated another way, the High Case would reduce the Company's projected 1998 retail revenues by $168.9 million ($908.8 minus $739.9). If the Company accounted for the elimination of the NHEC deferral (and associated 1% reduction in gross receipts taxes) in its projections, its revenue requirement would be reduced by $17.5 million based on Mr. Noyes projection. In addition, considering the Company's stated willingness to pursue securitization as a cost mitigation strategy, we can impute an additional revenue requirement reduction in 1998 of $74.2 million[4(21)] . These two items alone produce a $91.7 million reduction in PSNH's 1998 revenue requirement.

The effect on earnings can be estimated similarly. As determined above, 1998 revenue requirements can be reduced by at least $91.7 million. The overall revenue reduction which may result from the adoption of an interim stranded cost charge based on La Capra Associate's High Case is $168.9 million. Since the reduction of revenues produced by the High Case is greater than the reduction in revenue requirements, the Company's income projections must also incorporate a lower before tax operating income. After adjusting for the gross receipts tax, the Company's before tax income would be reduced by $76.4 million ($168.9 minus $91.7, less the 1 percent gross receipts

tax). Additionally, the elimination of the necessity to recover NHEC deferrals in 1998, which would have had a return component, further reduces before tax income by $3.4 million. Thus, we envision a total before tax income reduction of $79.8 million ($76.4 plus $3.4). To determine the likelihood that this would precipitate the financial crisis suggested by Mr. Forsgren, we must look to the effect of this income reduction on the Company's own projections. As we noted, Mr. Noyes projects a 1998 before tax income of $190.3 million; the adoption of the La Capra

Associates' High Case would still permit PSNH to earn positive net income of $110.5 million ($190.3 minus $79.8). This level of income does not suggest an inability of the Company to recover its existing regulatory assets, and consequently, would not necessarily precipitate the financial crisis Mr. Forsgren described.

Further, PSNH projects that interest charges in 1998 would be $36.5 million. Thus, the net income produced by La Capra Associates' High Case would allow PSNH to achieve a coverage ratio of 3.03 ($110.5 divided by $36.5) which is well within the bond covenant requirement of 2.0. Similarly, equity levels are maintained at an equity to debt ratio that is better than 0.3 to 1, as conditioned in the bond covenants supplied by PSNH. Lastly, the pre-tax return on common equity, after allowing for an $8.8 million dividend to preferred stockholders is 10.88%. ($110.5 minus $36.5 minus $8.8, divided by total equity of $598.7 million). While this level of pre-tax earnings may be less than that enjoyed by PSNH in the past, and less than that hoped for in 1998, this level of earnings would not constitute a condition that would force an asset write down pursuant to FAS 71, nor cause an impairment as defined in FAS 121.

Lastly, we agree with Manchester that FAS 121 requires management to consider "all available evidence" in estimating expected cash flows for the purpose of performing an asset impairment analysis. We also agree that a decision based on record evidence would meet the requirement of "available evidence." For this reason, we question the Company's assertion that the debate on market price, which has been analyzed and disposed, compels PSNH to report an asset impairment.

We similarly do not find merit in the argument that investors will cause a run on the Company at the first sign of financial stress. We would fully expect the Company's officers to be advocates for their ability to steer PSNH through this transition. Absent these efforts on the part of PSNH to manage the transition to a restructured industry, we fear the reaction of investors will be more uncertain and the opinions of independent auditors more qualified.

E. *Mitigation*

[14-19] We agree with NHMA and Cabletron that PSNH has made no meaningful effort to comply with the mitigation requirements of RSA 374-F. PSNH's failure to even set up a task force to assess mitigation opportunities is perhaps the most obvious indication that the company does not fully appreciate the enormity of its stranded cost request. Another is the statement by Mr. Forsgren that it would be premature for PSNH to explore the sale of assets, even though its resources substantially exceed its needs. Mr. Forsgren also testified that the company made no effort to estimate the value of its power plant sites or determine the additional value that could be created by undertaking repowering projects at those sites. This failure by PSNH to achieve the maximum level of mitigation of its stranded costs provide further support for our decision to require the divestiture of the company's generation assets.

Because of our concerns about the lack of mitigation on PSNH's part, we will adopt the sliding scale incentive mechanism and the associated ROEs proposed by LaCapra Associates and described in Steps (6) and (7) on pages 40-43 of its report.

F. *True Up of Interim Charges*

[20-23] Although RSA 374-F does not explicitly require that we reconcile interim stranded cost charges, we believe that to do so would be equitable, consistent with the goals of the Legislature and in the public interest. Following the advice of our consultant, we will limit the reconciliation to variations in non-

affiliated purchased power costs, nuclear decommissioning costs, retail sales, and market prices from those initially assumed in determining interim stranded cost charges. Other portions of the interim stranded cost charge (i.e., owned generation, affiliated power purchases and regulatory assets) will not be subject to adjustment during the interim period. With the exception of affiliate power purchases, we believe this is consistent with the current treatment of those costs. Reconciliation will be conducted annually. PSNH will have the burden of justifying any adjustment to the approved charge.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's proposed interim stranded cost charges are denied; and it is

FURTHER ORDERED, that PSNH recalculate its interim stranded cost charges using the method and the market prices proposed by La Capra Associates in this proceeding and referenced herein, appropriately adjusted to reflect actual 1996 cost and revenue data from the 1996 FERC Form 1's of the Company and of all other investor-owned utilities in the New England region to determine the average rate target, and based on projected power purchase costs and nuclear decommissioning costs for 1998 and 1999 filed by PSNH in this proceeding, subject to further true-up as described herein; and it is

FURTHER ORDERED, that the above-mentioned charges be determined using the market prices referenced herein; and it is

FURTHER ORDERED, that PSNH shall compute and file its average retail rate and an adjusted average retail rate pursuant to the methodology in the La Capra Report with the exception that 1996 QF expenses shall be excluded from the computation of average retail rates for the purposes of determining interim stranded cost charges as described herein; and it is

FURTHER ORDERED, that PSNH shall file interim stranded cost charges based on an average rate target using the High Case as defined in the La Capra Report; and it is

FURTHER ORDERED, that PSNH file the resulting interim stranded cost charges by April 30, 1997; and it is

FURTHER ORDERED, that PSNH's Motion for Additional Discovery and Hearing Time is denied; and it is

FURTHER ORDERED, that the OCA's Motion to Reopen Hearing and To Issue Subpoena is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

FOOTNOTES

[1]Having said that, Mr. Weissman disagrees with the "Regulatory Compact" and "takings" clause arguments presented by PSNH and other utilities in this proceeding.

[2]Mr. Yoshimura's interim stranded cost charge includes the acquisition premium as a strandable generation-related asset. Thus, under Mr. Yoshimura's formulation, a portion of stranded cost charge revenues would be used to pay the acquisition premium. PSNH treated the acquisition premium as a distribution-related asset and therefore excluded that cost from its stranded cost estimate. Had PSNH treated the acquisition premium as a generation-related asset, Mr. Yoshimura testified that PSNH's proposed interim stranded cost charges would increase to 7.07¢/kWh in 1998 and 7.30¢/kWh in 1999.

[3]Because we reject PSNH's market price analysis, we also find its estimate of above market power purchase costs to be unreasonable.

[4]While this should not be construed as a requirement of this Order, the savings of $74.2 million was determined by securitizing the NAEC deferrals as they come due using 30-year bonds at a 7.5 percent interest rate.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-256, Order No. 21,623, 80 NH PUC 218, Apr. 24, 1995. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,478, 82 NH PUC 17, Jan. 14, 1997.

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NH.PUC*02/28/97*[97238]*82 NH PUC 118*Statewide Electric Utility Restructuring Plan

[Go to End of 97238]

82 NH PUC 118

Re Statewide Electric Utility Restructuring Plan

Petitioner: New Hampshire Electric Cooperative, Inc.

DR 96-150
Order No. 22,513

New Hampshire Public Utilities Commission

February 28, 1997

ORDER addressing the issue of appropriate interim charges by which an electric cooperative may recoup stranded costs associated with a new electric industry restructuring plan.

Although accepting a regional average rate approach for the calculation of stranded cost charges for most utilities, the commission notes the inapplicability of such to this company, given its organization as a cooperative association, its lack of equity, and its lack of generating facilities. Accordingly, for stranded cost assessment purposes, the utility is permitted to rely on existing purchased power contract costs, subject to reconciliation and true-up.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Organization as a cooperative association as a factor. p. 121.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Computation and cost elements — Organization as a cooperative association as a factor. p. 121.

3. EXPENSES, § 120

[N.H.] Electric cooperative — Stranded costs — Associated with industry restructuring plan — Interim charges — Computation and cost elements — Organization as a cooperative association as a factor. p. 121.

4. RATES, § 321

[N.H.] Electric rate design — Impact of industry restructuring — Stranded costs — Recovery via interim charges — Computation and cost elements — Organization as a cooperative association as a factor. p. 121.

5. RATES, § 332

[N.H.] Electric rate design — Special charges — For the recovery of stranded costs — Associated with industry restructuring — Computation and cost elements — Organization as a cooperative association as a factor. p. 121.

6. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Inapplicability of regional average rate approach — Factors — Organization as a cooperative association — Reliance on purchased power. p. 121.

7. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Inapplicability of regional average rate approach — Factors — Organization as a cooperative association — Reliance on purchased power. p. 121.

8. EXPENSES, § 120

[N.H.] Electric cooperative — Stranded costs — Associated with industry restructuring plan — Interim charges — Inapplicability of regional average rate approach — Factors — Organization as a cooperative association —

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Reliance on purchased power. p. 121.

9. EXPENSES, § 120

[N.H.] Electric cooperative — Stranded costs — Associated with industry restructuring plan — Interim charges — Inclusion of nonmitigatable costs — Power purchase agreements — Assumption of maintenance of status quo — Exclusion of economically avoidable costs. p. 121.

10. RETURN, § 5

[N.H.] Sliding scale — As to stranded cost recovery associated with electric industry restructuring — Inapplicability to electric cooperative — Factors — Lack of equity — Reliance on purchased power. p. 121.

11. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Mitigation and reconciliation requirements —

Electric cooperative. p. 121.

12. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Cost components — Mitigation and reconciliation requirements — Electric cooperative. p. 121.

13. EXPENSES, § 120

[N.H.] Electric cooperative — Stranded costs — Associated with industry restructuring plan — Interim charges — Cost components — Mitigation and reconciliation requirements. p. 121.

BY THE COMMISSION:

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

The Legislature directed the New Hampshire Public Utilities Commission (Commission) to establish interim stranded cost charges for each utility, to remain in effect for no more than two years following the implementation of each utility's compliance filing. RSA 374-F:4,VI. As explained in the Final Plan, when setting these charges, the Commission must apply essentially the same principles that will guide the setting of final stranded cost charges, though the Legislature made it clear that the Commission was authorized to set these charges "without a formal rate case proceeding..." Final stranded cost charges are to be determined in the context of rate case proceedings and must be: (a) equitable, appropriate, and balanced, (b) in the public interest, and (c) substantially consistent with the interdependent principles in the legislation. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized the Commission to make "preliminary" findings in applying these guiding principles. This order addresses NHEC's request for such charges. On November 18, 1996, NHEC filed the testimony of Stephen E. Kaminski and Teresa L. Muzzey supporting proposed interim stranded cost charges. On January 3, 1997, La Capra Associates submitted a report entitled "Estimating Stranded Costs for New Hampshire Electric Utilities" (La Capra Report) which proposed interim stranded cost charges for each jurisdictional electric utility, including NHEC.

A hearing relative to NHEC's interim stranded charges was conducted on January 10, 1997 during which NHEC presented the oral testimony of Mr. Kaminski and Ms. Muzzey. There were no other witnesses, although the Office of Consumer Advocate (OCA) and Cabletron Systems, Inc. (Cabletron) cross-examined NHEC's witnesses.

On January 27 through 30, 1997, a hearing relative to interim stranded cost issues generic to all utilities, including NHEC, was conducted at which testimony was presented by witnesses

for the Unitil Companies, Granite State Electric Company, Connecticut Valley Electric Company, Public Service Company of New Hampshire (PSNH), Granite State Hydropower Association, New Hampshire Municipal Association, the City of Manchester, Cabletron, the OCA and La Capra Associates. The positions of the parties and the Commission's analysis of these generic issues are contained in Section V.F.3 of the Final Plan. The result of that analysis, however, is utilized below in determining appropriate interim stranded cost charges for NHEC.

II. POSITION OF THE PARTIES

A. *NHEC*

Mr. Kaminski testified that NHEC, as a member owned cooperative, has no equity shareholders to absorb any disallowance of stranded costs, and accordingly, any stranded costs associated with the introduction of retail competition will have to be paid for by NHEC's member-customers. According to Mr. Kaminski, the appropriate level of NHEC's interim stranded charges depends primarily upon the outcome of a dispute between NHEC and PSNH now pending before the Federal Energy Regulatory Commission (FERC). That dispute relates to the parties' differing interpretations of the Amended Partial Requirements Agreement (APRA), a disagreement that surfaced during the Pilot Program (DR 95-250).[1(22)] The outcome of that litigation will impact directly on the interim stranded cost charges of NHEC. According to Ms. Muzzey, if NHEC prevails at FERC, its interim stranded cost charge would range from 1.2¢ to 2.1¢/kWh in 1998 and approximately .1¢/kWh in 1999. Under this scenario, NHEC's members are likely to achieve savings in the 30% to 40% range. If PSNH prevails at the FERC, NHEC's interim stranded cost charges will 7.6¢/kWh for 1998 and 1999. Assuming this outcome, Mr. Kaminski advised that NHEC's members would see little or no savings in the near term and that prices could actually increase as a result of retail access.

B. *Cabletron*

Cabletron did not file testimony, but it did question NHEC's witnesses during the hearing. Cabletron's questions related primarily to the FERC proceeding relating to the APRA and the impact that decision will have on NHEC's rates.

C. *OCA*

OCA did not file testimony but it did question NHEC's witnesses during the hearing. OCA's questions related primarily to the possible mitigation strategies in the event that NHEC receives

an unfavorable decision from FERC relative to the APRA.

D. *La Capra Associates*

The La Capra Associates report to the Commission includes proposed interim stranded cost charges for NHEC, although as discussed below, such charges were ultimately calculated differently than those of the other jurisdictional utilities. The interim stranded cost methodology set forth in the La Capra report establishes a total average rate target for each New Hampshire electric utility designed to achieve an overall rate decrease for those utilities with total average rates greater than the regional average rate. Under this approach, the interim stranded cost charge is generally computed as the difference between (a) the average rate target and (b) the sum of the transmission and distribution costs and the market price of electricity. La Capra Associates computed interim charges for each utility using three different average rate targets, i.e., 100%, 104.5% and 107.8% of the 1995 average regional rate, and the base case market prices set forth in its report. They also recommend that the interim stranded charges be modified every six months during the interim period.

Although NHEC's rates are substantially higher than the adjusted regional average, the La Capra report recognizes the unique status of NHEC, noting that it has no "equity" which could be used to balance ratepayer and shareholder interests because the customers of NHEC are also its owners. It concludes that if NHEC's wholesale contract obligations remain fixed for the term of the APRA, reducing its

retail rates will likely bankrupt the Cooperative. The La Capra report proposed interim stranded cost charges for NHEC based on the assumption that NHEC's obligations to PSNH under the APRA remain unchanged during years 1998 and 1999.

Henry Yoshimura of La Capra testified that they proposed an interim stranded cost charge for NHEC in the amount of 7.4¢/kWh which was slightly below the one offered by NHEC (7.6¢/kWh). This difference, according to Mr. Yoshimura, is attributable to slightly different market price assumptions and projected retail sales during 1998 and 1999.

III. COMMISSION ANALYSIS

A. *APRA Dispute*

[1-13] Due to the unique status of NHEC as a member-owned cooperative, we are constrained from applying the statutory standards relative to setting stranded cost charges in the same manner as we have for investor owned utilities. We cannot balance the interests of ratepayers with those of investors because in the case of NHEC the ratepayers *are* the company's

shareholders. The appropriate level of NHEC's interim stranded cost charge should therefore be one that enables it to meet its financial obligations during 1998 and 1999, including those to wholesale suppliers. We cannot know for certain what those obligations will be until the FERC issues a decision on the APRA dispute. As of the date of this order, FERC has not issued such a decision. As noted during NHEC's interim stranded cost hearing, although the Commission has intervened in that proceeding, to date we have not actively advanced any position with regard to the merits of either parties' position. We are considering undertaking a more active role in this matter in order to encourage a resolution of the PSNH-NHEC dispute prior to implementation of our Final Restructuring Plan.

Based on the foregoing considerations, we have set NHEC's interim stranded cost charges at a level which will generate sufficient revenue for it to meet its wholesale contract obligations in 1998 and 1999. For now, we have assumed that NHEC will continue to pay PSNH for the full amount that it would have paid absent retail access. This decision in no way reflects a position regarding the pending dispute before the FERC relative to the APRA. Our intent is simply to preserve the status quo pending the FERC's decision in that case.

As noted above, NHEC's proposed interim stranded cost charge (under the "PSNH wins" scenario) is only slightly below the one proposed by Mr. Yoshimura. There are two factors that account for this difference: market price assumptions and sales forecasts for NHEC. We briefly address these and several other issues below.

B. *Market Price of Power*

In setting the interim stranded cost charges for other utilities, we have accepted the market price estimates of La Capra Associates. We do the same for NHEC as adjusted for its losses. Several approaches to estimate the market price of electricity during the two-year interim period were proposed. A summary of these approaches, along with our analysis and findings, is presented in Section V.F.3.a. of the Final Plan. Consistent with those findings, we used the following transmission-adjusted market prices to estimate NHEC's interim stranded cost charges: 4.56¢/kWh in 1998 and 4.69¢/kWh in 1999.

C. *Sales Forecast*

Similarly, we have accepted our consultant's sales forecasts for NHEC, which again differ only slightly from those offered by NHEC. We believe that in calculating stranded costs, NHEC should take into account all retail sales, including those of special contract customers. This is consistent with the policy we adopted in the Final Plan with regard to special contracts.

D. *True-Up*

Although RSA 374-F does not explicitly require that we adjust the interim stranded cost charge estimates to reflect actual cost and sales

data, we believe that to do so would be equitable, consistent with the goals of the Legislature and in the public interest. Following the advice of our consultant, we will limit the reconciliation to variations in non-affiliated purchased power costs, retail sales, and market prices from those initially assumed in the estimation of the interim charges. Reconciliation will be conducted annually.

E. *Conclusion*

We conclude by noting that NHEC's interim stranded cost charges could change dramatically in the event that the FERC decides the APRA dispute in favor of NHEC. We reiterate our intent to encourage FERC to address and resolve the parties' dispute over the APRA before the introduction of retail competition next year.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's proposed interim stranded cost charges are denied; and it is

FURTHER ORDERED, that NHEC shall recalculate its interim stranded cost charges using the market prices proposed by La Capra Associates in this proceeding and referenced herein, and based on projected power purchase costs for 1998 and 1999 filed by NHEC in this proceeding, subject to further true-up as described herein; and it is

FURTHER ORDERED, that NHEC file the resulting interim stranded cost charges by March 31, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

FOOTNOTES

[1]The APRA is a wholesale power contract which currently accounts for over ninety percent of NHEC's capacity and energy purchases. The issue before the FERC is whether NHEC remains obligated to pay PSNH for power that it will no longer require as a result of retail access. PSNH contends that the APRA requires NHEC to pay the full wholesale price for the duration of the contract — irrespective of whether members choose a different power supplier. NHEC contends that it should pay only for the power its members purchase from PSNH, and that it is not responsible to compensate PSNH for lost sales associated with retail access.

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82 NH PUC 122

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,514
175 PUR4th 193

New Hampshire Public Utilities Commission
February 28, 1997

ORDER adopting a final plan to restructure the electric utility industry and implement retail choice for all electric customers, as required by state statute RSA Chapter 374-F. The contents of the final plan and the legal analysis appended thereto, together with separately issued, interim stranded cost charge orders, comprise the terms of the final order required by the statute.

Each jurisdictional electric utility is directed to make compliance filings consistent with the requirements of both the final plan and interim stranded cost orders no later than June 30, 1997. The statute directs the commission to implement retail choice for all customers by January 1, 1998, unless circumstances require delay, but in no event later than June 30, 1998.

Market Structure and Corporate Unbundling. Commission finds that a "hybrid" market structure incorporating both bilateral contracts and a power exchange would capture the greatest benefits for retail customers. Under the hybrid model, an independent system operator would control the transmission grid, accepting and transporting energy supplied through bilateral contracts and one or more spot markets. Customers may choose to negotiate directly with power suppliers or employ marketers or brokers to do so. Small customers may aggregate loads to increase their buying power.

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Electric distribution companies will be responsible for providing nondiscriminatory unbundled distribution service to all customers in their franchised territory at commission-set rates. Generally, a jurisdictional utility that chooses to be a distribution company must divest its generation and aggregation/marketing functions, as well as its power purchase contract rights, by the end of the two-year period following the initiation of competition. If a utility decides to retain its generation assets, it may not sell power at retail in the service territory of its affiliated distribution company.

Commission rules that after the two-year transition period, the provision of competitive services (generation and marketing) and monopoly services (distribution) by entities in the same

corporate family is no longer in the public good. Moreover, the commission finds that (a) state law unambiguously authorizes it to require divestiture and unbundling; (b) an order limiting the permissible business activities of a New Hampshire utility does not interfere with vested rights in violation of the Takings Clause or the Contracts Clause of the United States Constitution; (c) the Public Utility Holding Company Act (PUHCA) does not preempt the commission from limiting the permissible activities of incumbent utilities; and (d) neither the federal bankruptcy proceeding of Public Service Company of New Hampshire (PSNH), approval by the commission of a rate plan for resolving the bankruptcy, or orders of the Securities and Exchange Commission approving the acquisition of PSNH by Northeast Utilities exempts PSNH from a divestiture or unbundling order.

Commission finds that the divestiture requirements will protect against the abuse of market power by distribution utilities and establish a marketplace valuation for the divested assets.

Each distribution utility may purchase bulk transmission service for resale to its distribution customers.

Jurisdiction. Despite legal uncertainty, the final plan makes two assumptions with regard to state and federal jurisdiction in a restructured industry: (1) the Federal Energy Regulatory Commission (FERC) has ultimate jurisdiction over the terms and conditions of service for transmitting retail power; and (2) the state commission may direct its jurisdictional utilities to file with FERC tariffs for such service, which contain specific terms and conditions determined by the state commission, for ultimate disposition by FERC.

Commission rejects claims that the Federal Power Act preempts it from directing transmission owners to file a retail transmission tariff at the FERC. It also finds that the Takings Clause of the United States Constitution does not preclude it from requiring such a filing.

The classification of utility assets as either FERC-jurisdictional transmission or state-jurisdictional local distribution is to be addressed as part of the review of the compliance plans of the utilities.

Service Unbundling. Commission directs electric utilities to unbundle their retail services and rates so that consumers can choose their electricity suppliers. Unbundled rates for regulated distribution services are to be set using traditional rate making or, where feasible and approved by the commission, performance- based rate making. Unbundled transmission service will be provided by utilities pursuant to retail transmission tariffs filed at, and approved by, the FERC.

Commission rules that inasmuch as the distribution function will remain insulated from competitive risk for the foreseeable future, the allowed return-on-equity (ROE) component should be significantly lower than the expected equity return for competitive generation companies. Accordingly, each jurisdictional electric utility must include in its compliance filing a proposed ROE reflective of a level of risk appropriate for distribution services.

Electric utilities must unbundle existing

special contracts, as well as any contracts approved prior to the implementation of retail choice. Price discounts may not be applied to the transmission or distribution components of unbundled rates but rather should be reflected in the stranded cost component of the equivalent unbundled rate. Finding that it would be inequitable to require noncontract customers to pay not only their allocated share of stranded costs but also the discount afforded special contract customers, the commission rules that any difference between the regular unbundled tariffed rate and the special contract rate may not be recovered from noncontract customers.

Stranded Costs. Commission recognizes that if retail consumers are allowed to purchase lower-priced electricity from sources other than franchised utilities, a portion of the sunk costs of the franchised utilities may become unrecoverable or "stranded." The final plan limits recovery of such stranded costs by applying a benchmark set at the regional average for New England utilities. Generally, New Hampshire utilities with costs exceeding the regional benchmark must absorb stranded costs to the extent of that excess. However, any affected utility will be given an opportunity to establish that it should be permitted appropriate relief from application of the regional average. The showing may relate to one of two propositions: (1) that there were facts or circumstances unique to the utility's resource planning and acquisition activities which caused it to deviate from the regional average for reasons beyond its influence or control; or (2) setting rates at the regional average will cause financial hardship.

Commission asserts affirmative authority under state law to limit stranded cost recovery based on the regional average benchmark. It rejects claims that the commission is precluded from disallowing stranded costs by the Takings Clause of the United States Constitution, the Contracts Clause of the United States Constitution, the New Hampshire Constitution, or the preemptive effects of the Federal Power Act, FERC Order No. 888, or PUHCA.

Commission also rejects claims that its 1990 order approving an electric rate agreement resolving the Chapter 11 bankruptcy proceeding of PSNH precludes the commission from any policy leaving PSNH with less than full recovery of its stranded costs. It adds that the decisions of the federal bankruptcy court with respect to the reorganization does not preempt the commission from applying its stranded cost policy to PSNH.

Commission finds that state law requires it to permit full recovery of nonmitigatable costs of purchasing from small power producers, unless the terms of the utility's purchase were discretionary with the utility or the utility has failed to minimize its costs.

The final plan defines stranded cost as "net" sunk generation cost (including generation-related regulatory assets) that ordinarily would not be recovered if retail customers were allowed access to alternative generation resources. Commission believes that the sale or spinoff of generation assets is the most accurate and straightforward way to determine their worth and, consequently, to measure stranded costs. Nevertheless, an administrative approach to the valuation of generation assets may be used in instances where a utility decides not to divest itself of its generation assets.

Utilities are expected to mitigate their stranded costs by maximizing the value of generation assets and contracts through sale or spinoff, financial management of net stranded costs, and application of other company value to reduce residual stranded costs. Commission also finds that securitization is a potential mitigation strategy but recognizes that accounting and tax treatment

problems may create barriers to its successful use.

Commission concludes that full recovery of stranded costs would have anticompetitive consequences, that less than full recovery of stranded costs is fair, and that less than full recovery is not economically inefficient.

Nevertheless, each utility will be given an opportunity to explain why its shareholders had a legitimate expectation of recovering all past costs.

Any mechanism for recovery of stranded costs must be nonbypassable and nondiscriminatory and must allocate costs fairly and consistently among the principal rate classes. However, stranded cost charges shall not apply to self-generation customers who abandon the grid.

Interim stranded cost charges will be in effect for each distribution utility for no longer than two years following the implementation of a utility's compliance filing. The interim charges will be calculated based upon the application of the regional average rate method which comprises an independent estimate of regional market prices.

Public Policy Issues. Commission finds that to achieve the goal of universal service in a restructured electric industry, distribution utilities must have an obligation to connect to any customer requesting service. Distribution utilities also must make default power service available to all customers for a six-month period at the outset of competition and thereafter to residential and small commercial customers.

To ensure that affordable electricity is available to low-income customers, a low-income assistance program will be funded through a system benefits charge.

The final plan calls for the development of consumer protection rules, including rules relative to unauthorized transfer of service, or "slamming." It also requires the development of a comprehensive public education program.

Commission notes that integrated resource planning may no longer be an effective process once generation, transmission, and distribution are separated. However, it finds that system planning remains appropriate for distribution companies. With respect to energy-efficiency programs, the final plan provides for the phaseout of ratepayer-funded programs and their replacement with the delivery of programs through a competitive market.

Commission agrees that environmental improvement is an indispensable public good but leaves the establishment of air emission standards for electric generators to the state Department of Environmental Standards and the United States Environmental Protection Agency.

As a means of encouraging the development of a competitive renewable energy resource market, the final plan requires suppliers of electricity to disclose the nature of their resource mix.

Commission finds that it is likely that restructuring will change the level of state and local taxes currently levied and recommends that any taxes levied on participants in the competitive electric market be competitively neutral.

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[N.H.] Commission jurisdiction — Electric restructuring — Transmission access — Power to direct filing of retail transmission tariff — Federal preemption claim — Legal analysis. p. 252.

139. CONSTITUTIONAL LAW, § 18

[N.H.] Due process issues — Takings Clause — Alleged violation — Electric industry restructuring — Transmission and distribution access requirements — Essential facilities doctrine — Consent to physical occupation — Legal analysis. p. 252.

BY THE COMMISSION:

ORDER

On this date, the Commission hereby issues its Final Electric Utility Restructuring Plan (Final Plan) pursuant to the requirements of RSA Chapter 374-F. The contents of the Final Plan and Legal Analysis appended thereto, and the interim stranded cost charge orders issued

separately on this date, comprise the terms of the final order required by RSA 374-F:4,II.

Based upon the foregoing, it is hereby

ORDERED, that the Commission adopts and issues the Final Plan and Legal Analysis by this order pursuant to RSA 374-F:4,II; and it is

FURTHER ORDERED, that pursuant to RSA 374-F:4,III, jurisdictional electric utilities are directed to make compliance filings consistent with the requirements of the Final Plan and interim stranded cost orders no later than June 30, 1997; and it is

FURTHER ORDERED, that jurisdictional electric utilities are directed to fulfill all obligations imposed on them by the Final Plan as specified therein.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1997.

EXECUTIVE SUMMARY

This executive summary addresses both the Final Plan and its accompanying Legal Analysis. The issues summarized below appear in the same order as they do in the Final Plan. This is intended only to highlight, in summary fashion, the key elements of the Plan and Legal Analysis and is not intended to replace or interpret the Final Plan, the Legal Analysis, or the

interim stranded cost orders.

FINAL PLAN

I. *INTRODUCTION*

In May 1996, the New Hampshire Legislature directed the Public Utilities Commission to develop a statewide electric utility restructuring plan that would implement retail choice for all customers by January 1, 1998. The Final Plan includes a description of the market and institutional structures necessary to provide customers with real energy service choices and ensure fair and efficient competition among retail market participants as well as a discussion of legal issues. Additionally, five supplemental orders establishing utility-specific interim stranded cost charges are issued concurrently with the plan. The Plan requires each utility to file comprehensive plans, no later than June 30, 1997, which comply with the Final Plan and the supplemental orders.

II. *THE EMERGENCE OF COMPETITION*

There was little motivation for changing the industry's structure or mode of regulation until the oil crises of the 1970s. When world oil prices began collapsing in the early 1980s, many utilities had to contend with nuclear plant cancellations, abandonments and cost overruns. Meanwhile, a wave of administrative reform was sweeping through other regulated industries providing a catalyst for deregulatory reforms. Changes in federal law such as PURPA and EPAct also stimulated and encouraged competition. More recently, FERC required utilities to implement non-discriminatory open access transmission tariffs. These events prompted many to speculate that the generation component of the electric industry no longer exhibited natural monopoly characteristics.

III. *LEGISLATIVE BACKGROUND AND PROCEDURAL HISTORY*

RSA 374-F, the statute which directs the Commission to develop a statewide restructuring plan, is the culmination of the work of several Legislative committees and the Commission. In January 1995, the Commission sponsored a "Roundtable on Competition" to seek input from a broad range of interests. In June 1995, the Legislature enacted House Bill 168 which directed the Commission to establish a pilot program, providing approximately 17,000 retail customers with the opportunity to purchase electricity from competitive non-utility power suppliers.

The Commission initiated this proceeding on May 30, 1996. Since then, more than fifty parties submitted written comments on policy-related issues and briefs addressing legal issues. In December, the Commission conducted fourteen legislative style hearings in December 1996 on policy issues. During January 1997, the Commission conducted fifteen days of adjudicative hearings to set interim stranded cost charges. Six public information forums were held at various locations throughout the state in January as well.

IV. *MARKET STRUCTURE*

In order for retail electric customers to benefit from competition, two things must occur. First, retail electric service must be unbundled into generation and transmission and distribution; and, second, the existing market structure must be restructured in a way that provides retail customers with the opportunity to choose their power suppliers.

Three market models are considered: the poolco model, the bilateral contracts model, and a hybrid model allowing for both bilateral contracts and pool or spot market transactions. The Commission found the hybrid model, which emphasizes bilateral contracts and allows for pool or spot market purchases, preferable since it brings greater benefits to New Hampshire customers in the long run.

A. *Distribution Company Responsibilities*

In a restructured industry, distribution companies will be responsible for providing

non-discriminatory unbundled distribution service to all customers in their franchise

territories. The rates for this service shall continue to be set by the Commission. However, the regulated status of distribution companies raises the possibility that such companies will utilize their privileged position to exercise market power. The best way to eliminate this possibility is to sever the distribution company's corporate ties to its competitive affiliates through divestiture. If a jurisdictional utility chooses to be a distribution company, it must sell its generation and aggregation/marketing services by the end of the two year period following the initiation of competition. It also must sell off any rights to obtain power under existing power purchase contracts. Additionally, the distribution company may not be an affiliate of any company which sells a competitive service in its service territory. Jurisdictional utilities are directed to submit plans to accomplish this requirement by December 31, 1997.

Distribution companies will continue the practice, established in the New Hampshire Pilot Program, of estimating hourly loads using load profiles for residential and small business customers rather than installing hourly meters and related communications equipment. Each utility will perform a detailed operational review of the Pilot load estimation procedure in order to identify ways to improve accuracy. Results of that review will be included in each utility's compliance filing. Each utility will also review the adequacy of existing load research programs.

In the Pilot Program, each utility employed a Value Added Network (VAN) system and common data format to transfer billing data. Plans for the full scale implementation of a VAN system shall be included in compliance plans. A proposal for Electric Data Interchange Standards will be developed by a working group.

B. *Transmission Issues*

State and federal jurisdiction remains the subject of significant national debate. The Commission remains concerned that certain transmission/local distribution matters are properly the subject of state control and intends to work cooperatively with the FERC and seek efficient regulatory mechanisms.

On December 30, 1996, the NEPOOL Executive Committee filed with the FERC an "integrated package of arrangements" to comply with FERC's Open Access requirements. NEPOOL cited four major elements of its proposed reform package: the provision of new regional transmission arrangements, the creation of an ISO, the revision of internal NEPOOL governance, and the institution of new market arrangements and products. While the proposal, with certain modifications, can provide an adequate framework, the Commission will continue to work, both with NECPUC and individually, to remove impediments to competition that may be posed by the NEPOOL plan.

V. *UNBUNDLING ELECTRIC SERVICES*

In order for consumers to choose their electricity suppliers, utilities must unbundle retail electric services and rates. This requires segregating the various service components and pricing each regulated component separately. While the Commission finds it appropriate to allow large industrial and commercial customers to obtain metering, billing, and customer services from competitive providers beginning in 1998, a more comprehensive separation of competitive services will be deferred until a later date.

Utilities shall submit cost-of-service studies which unbundle 1996 test year revenue requirements into the three functional categories of generation, transmission, and distribution. Utilities must further subdivide the distribution revenue requirement by determining the revenue requirement for each rate class. Each utility will also include in its compliance plan an embedded cost of service study based on 1996 calendar year data that identifies total cost by function. The formulation of distribution rates must avoid undue cost shifting among classes.

VI. *SPECIAL CONTRACTS*

Existing special contracts, as well as any contract approved between now and the

implementation of retail choice, will be unbundled. Price discounts will not be applied to the transmission or distribution components of the unbundled rates but rather will be reflected in the stranded cost component of the equivalent unbundled rate. The contractual obligation will remain with the distribution company after the implementation of competition along with the obligation to supply the energy requirements of customers served under these contracts. Companies will include plans for procuring the power needed to meet those energy requirements in their compliance filings.

It would be inequitable to require non-contract customers to pay not only their allocated share of stranded costs but also the discount afforded special contract customers. As a result, the difference between the regular unbundled tariffed rate and the special contract rate will not be recovered from non-contract customers.

VII. *STRANDED COSTS*

Responsibility for the resource decisions which led utilities to acquire assets which are now or are likely to become uneconomic must be determined on a utility specific basis. Where management is found to be primarily responsible for those decisions, recovery of the related stranded costs will be limited. Where it is found that management discretion over resource decisions was either reduced significantly or eliminated by government mandate, utilities will be provided an appropriate opportunity for full recovery of the related stranded costs. The

Commission found the most appropriate definition of stranded cost to be "net" sunk generation cost (including generation-related regulatory assets) that ordinarily would not be recovered if retail consumers were allowed access to alternative generation resources.

There are numerous methods to measure stranded costs. Administrative approaches use estimates of market prices to determine what portion of book value is stranded, whereas market approaches use the actual market prices of the assets in question. As an alternative to administrative approaches, the value of generation assets can be determined through either sale or spin-off. The Commission found the sale or spin off of generation assets to be the most accurate and straightforward way to determine their worth. Additionally, such sale or spin off achieves the important goal of eliminating vertical market power.

Despite a strong preference for the sale of generation and other competitive functions, the Commission recognizes that it cannot require non-jurisdictional utilities such as Central Vermont Public Service, New England Power, and Unitil Power Corporation to restructure their businesses. However, such companies cannot sell at retail in the service territories of their affiliated distribution companies if they choose to remain players in the competitive generation market. In the event that a company chooses to spin-off assets rather than make an outright sale, its plan must provide the mechanism whereby any stranded costs borne by the distribution company after the spin-off are minimized and capture the appropriate level of value from the generation company. By December 31, 1997, each company is required to submit a plan to accomplish divestiture by the end of the two year period following the implementation of competition.

A. *Mitigation of Stranded Costs*

With the adoption of a policy requiring the complete separation of competitive and non-competitive services by the end of the two year period following the implementation of competition, the emphasis in mitigation shifts to maximizing the value of generation assets and contracts through sale or spin-off, the financial management of net stranded costs, and the application of other company value to reduce residual stranded costs. Plans to auction, lease, or spin-off generation assets and contracts will be reviewed by the Commission to ensure the mechanics and timing most likely to secure the maximum value.

In the case of contracts, after all cost effective and legally permissible buydowns or buyouts have been completed, any residual costs must be reduced to minimum practical levels. To the extent that more lucrative options

have not been exercised, mitigation will be deemed to be incomplete.

Securitization is another potential mitigation strategy. Its objective is to reduce stranded cost charges by off balance sheet financing with higher debt security and consequently lower financing costs. There are, however, potential accounting and tax treatment problems that may

create barriers to the successful use of securitization along with other issues concerning the use of securitization. As a result, the Commission recommends that the Legislature carefully weigh both the benefits and drawbacks to securitization.

B. *Stranded Cost Recovery*

Before rates can be unbundled, the Commission must establish the value of stranded costs and determine an appropriate level of recovery. These stranded cost charges must be "equitable, appropriate, and balanced and in the public interest." The Legislature also stated that restructuring should produce rates that "to the greatest extent practicable \&... approach competitive regional electric rates."

Utilities with rates exceeding the regional average will not be authorized to recover all their costs. Recognizing that shareholder expectations may vary by utility, each utility will be allowed to explain why its shareholders had a legitimate expectation of recovering all past costs. However, the Commission has made the following conclusions: less than full stranded cost recovery is fair; less than full stranded cost recovery is not economically inefficient; and full recovery of stranded costs has anti-competitive consequences.

The cost of decommissioning nuclear power plants currently paid for by ratepayers should be included in stranded charges, though the Commission recognizes that this issue is pending before the Legislature and should be reviewed by it.

Any mechanism for recovery must allocate costs fairly and consistently among the principal rate classes. Utilities are directed to establish a stranded cost reconciliation account and identify revenues to amortize those costs. Stranded cost charges shall be non-bypassable and nondiscriminatory and not apply to self-generation customers who abandon the grid.

C. *Interim Stranded Cost Charges*

Interim stranded cost charges will be in effect for each distribution company for no longer than two years following the implementation of the company's compliance filing. Interim stranded cost charges will be calculated based on the application of the regional average rate method which comprises an independent estimation of regional market prices. The interim stranded cost orders issued concurrently with the Final Plan address the positions of the parties on utility-specific issues and the Commission's analysis and findings. Utilities are required to submit revised interim stranded cost charges consistent with the orders issued today. Utilities must submit such charges to the Commission by March 31, 1997 with the exception of PSNH which must submit its revised figures by April 30, 1997.

VIII. *PUBLIC POLICY ISSUES*

Currently, public policy programs are funded through the rates of all retail customers regardless of whether the customer receives direct benefits from the programs. Some public

benefits may be diminished unless policies are developed to retain them in a restructured industry. Accordingly, the Legislature authorized a competitively neutral systems benefit charge to fund public policy programs.

A. *Universal Service*

In a restructured industry, several key elements are necessary to achieve the goal of universal service. One is the local distribution company's continued obligation to connect any customer requesting service; the second is the existence of default power service; the third is ensuring manageable and affordable bills for low income customers; and the fourth is the existence of consumer protections that provide customers with access to the grid, establish uniform terms for disclosure of billing and price information, and provide protection from anti-

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competitive actions by suppliers.

1. *Default Power Service*

Default power service will be administered by the distribution company. The distribution company will also be allowed to satisfy their contractual obligations for QF power purchases by using the output generated by QFs to meet the load of default customers. Any additional load necessary to meet the needs of default customers will be obtained through a competitive bidding process. Default customers will not bear the above market costs associated with the QF contracts; default customer will only bear that portion of the QF contract price which would be equal to the then current market price for power. The remainder of the contract price shall be recovered as stranded costs. Distribution companies are encouraged to find other ways to either reduce or satisfy contractual obligations to QFs and will be allowed to recover between 10 and 20% of the savings realized from those other mitigation efforts to reduce the stranded costs associated with QF contracts.

Default power service will be available to all residential and small commercial customers. Default service will be available to large commercial and industrial customers at the outset of competition for a six month transition period. After the transition period is over, large commercial and industrial customers who find themselves temporarily between suppliers will be allowed to access default service for a period no longer than sixty days.

2. *Low Income Customers*

In telling the Commission to include programs that make electricity affordable to low income customers, the Legislature recognized that societal benefits accrue from the establishment of a

low income assistance program. As low income bills are made more affordable, utilities' uncollectible accounts will be reduced and there is likely to be a beneficial impact on property taxes.

A low income assistance program will be funded through a systems benefit charge designed to raise up to $13.2 million. A working group will be established to develop a low income program, subject to Commission review, as well as to recommend a fair selection process designed to select an administrator for the program. The low income program will be submitted to the Commission by August 30, 1997.

3. *Consumer Protection*

Regulated distribution companies will be subject to the provisions of NH Administrative Rules, Puc Chapter 1200. As some of those rules may no longer be relevant in a restructured market, the Commission Staff will review those rules and revise them as appropriate. Technical sessions will be scheduled during April with a rulemaking proposal submitted by the beginning of May.

Imposition of consumer protections on suppliers in the competitive market should be minimal. The Commission cannot ignore the potential for abuse, however. Rules relative to the unauthorized transfer of service from one customer to another, notice requirements prior to termination of an energy contract, and billing information will be developed. Additionally, the Commission will establish a working group to develop supplier registration requirements along with sanctions for supplier misconduct. The working group will also investigate ways in which customers could prevent their name and home telephone number from being used for telemarketing purposes by electricity suppliers. Staff will draft rules applicable to suppliers and hold technical sessions on those rules during April.

The Commission's Consumer Assistance Department shall maintain a listing of all suppliers providing service in New Hampshire. However, the Commission will not evaluate the merits of various offers or provide recommendations regarding the choice of suppliers. The Consumer Assistance Department shall continue to act as mediator in disputes between suppliers and the distribution companies. If the Commission becomes aware of widespread marketing abuse by a supplier, the complaint shall be brought to the attention of the Attorney General's Office.

B. *Public Education*

A comprehensive public education program is essential to the smooth transition to a competitive market on January 1, 1998. The establishment of a working group to develop a public education program will result in a more innovative and successful program. A consultant will also be hired to put together a comprehensive program under the direction of the Commission with the advice of the working group. The working group will develop an request

for proposal to solicit bids from consultants interested in working with the Commission to develop a public education program. The final public education plan will be submitted to the Commission for review no later than August 30, 1997.

C. *Integrated Resource Planning*

Integrated Resource Planning (IRP) requires utilities to evaluate all supply and demand side resource options to meet customer needs. While IRP may no longer be an effective process once the generation function is separated from transmission and distribution, it is still appropriate for distribution companies to continue to conduct overall system planning. Companies are directed to include proposals in their compliance filings on how they will address system planning in the restructured industry.

Inasmuch as the goals underlying IRP are likely to be better served through market forces, RSA 378:38 seems unnecessary. The Commission will work with the Legislature to repeal or modify these provisions to better reflect the restructured industry. Similarly, RSA 162-H, which requires the Site Evaluation Committee to determine the "need" for generation, may warrant modification as well.

D. *Energy Efficiency*

The distribution company will still perform system planning when considering distribution system or transmission system improvements. Well designed, cost effective energy efficiency can lead to reduced customer costs and provide environmental benefits. However, the use of continued ratepayer funded programs for delivering energy efficiency services is no longer appropriate. The competitive market will be more successful in serving the need for energy efficiency than the ratepayer funded programs of the past have been. Accordingly, spending levels will be capped at 1996/1997 approved levels, and existing energy efficiency programs will be phased out within two years from the implementation of retail choice.

E. *Environmental Improvement*

Environmental improvement is an indispensable public good for which the state must make adequate provision, but it is not appropriate for the Commission to independently establish environmental improvement policies related to electric generators selling power in New Hampshire. The establishment of air emission standards and their enforcement is properly with the DES and the U.S. Environmental Protection Agency. A working group will be established to consider, however, the feasibility of requiring suppliers to disclose the environmental emission impact of the power in their resource mix.

F. *Renewable Energy Resources*

Support for commercialization and research and development of renewables is more appropriately and economically addressed on a regional and national basis. Portfolio requirements for suppliers, moreover, are not an effective method of encouraging the development of a renewable energy resource market. In a competitive market, those suppliers who believe there is an untapped demand for energy generated by renewable resources will find out what customers want and meet that need.

Requiring suppliers to disclose the nature of their resource mix is the most effective method of providing support for the development of a competitive renewable resource market. A working group will be established to develop standards for the disclosure of resource mix information.

The Commission will recommend to the

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New Hampshire Legislature that the Limited Electric Energy Providers Act (LEEPA) be reviewed and either amended or repealed and will work through the National Association of Regulated Utility Commissioners to recommend review and amendment or repeal of the federal legislation, the Public Utilities Regulatory Policy Act (PURPA).

G. *Tax Effects*

The Legislature should consider the tax implications of the Final Plan and determine whether legislation to address changes in tax receipts is necessary or appropriate. The Commission recommends that any taxes levied on market participants be competitively neutral.

LEGAL ANALYSIS

The Final Plan prescribes various actions which, by stimulating competition in the electric utility industry in our state, will promote the public good. These actions are divided into three broad categories: (1) limiting recovery of stranded costs to the regional average; (2) requiring utilities to unbundle generation, transmission and distribution assets; and (3) directing utilities to provide retail transmission access. The Legal Analysis demonstrates that these actions are authorized by state law, are fully consistent with and further the goals of applicable federal statutes, and are not inconsistent with the United States and New Hampshire Constitutions.

IX. *LIMITATIONS ON STRANDED COST RECOVERY*

The Final Plan limits recovery of stranded costs by applying the regional average for New England utilities as a benchmark. The limits we impose on stranded cost recovery are consistent

with traditional ratemaking law, which obligate the Commission to set just and reasonable rates and eliminate costs from rates based upon a balancing of the interests of investors and consumers. The 1996 legislation, RSA 374-F, reinforces our already existing authority to cap stranded cost recovery.

This action is not precluded by either the Takings clause or the Contracts clause of the United States Constitution. Utilities have no constitutionally protected expectation to recover costs in excess of a regional average benchmark, where such costs result from discretionary business decisions. Because there is no contract between this Commission, or any other state agency, and the utilities, the Contracts Clause of the State and federal Constitution does not apply.

We also find that the New Hampshire Constitution's proscription on retroactive lawmaking is not an impediment to a regional average cap on cost recovery since it protects only vested rights. Public utility rights are defined by franchise granted by the state and do not give rise to a vested right of above-average cost recovery protected by the New Hampshire Constitution.

Nevertheless, we recognize that factual circumstances may justify deviation from the constitutionally permissible regional average approach. Accordingly, we will provide each utility an opportunity, through a hearing, to obtain relief from the regional average approach through (a) a showing of unique facts beyond the utility's planning control which resulted in deviation from the regional average or (b) financial hardship.

Although much of the costs involved are incurred by the utilities under wholesale contracts subject to the Federal Power Act, that Act does not preempt the Commission from limiting cost recovery to the regional average. Central to our preemption analysis is the question raised by the U.S. Supreme Court in the major preemption cases under the Federal Power Act: "Was the buying utility ordered by FERC to enter into the wholesale contract?" If not so ordered, the Commission retains authority to review a retail utility's decision to make a wholesale power purchase and disallow in retail rates the purchase costs associated with a FERC-approved wholesale rate.

Applying this analysis to the specific situation of each New Hampshire jurisdictional utility, we have determined that there is no evidence demonstrating that FERC ordered any of these utilities to buy from their affiliates or

precluded any of the retail affiliates from choosing a power source other than its affiliates. Accordingly, we find that our authority to limit recovery of these utilities' costs is not preempted by the Federal Power Act. We will, however, allow utilities an opportunity to demonstrate that its obligation to purchase from its affiliated entity is a product of a FERC mandate.

FERC Order No. 888, specifically its provision of an opportunity to wholesale sellers to seek extra-contractual recovery of "stranded costs" associated with wholesale contracts executed prior to July 11, 1994, does not alter our preemption analysis. We reject the utilities' analysis that FERC's invitation to sellers to amend their contracts to allow recovery of extra- contractual

"stranded costs" creates a "filed rate" which the Federal Power Act preempts from Commission review. The Commission believes that the Federal Power Act does not authorize the FERC to allow contract modification and therefore, we will not view ourselves preempted if FERC does so. Moreover, because the legality of Order No. 888's contract modification provisions and whether these provisions, if legal, give rise to a preemptive "filed rate" have not been resolved, we will not self-impose preemption based on speculation.

The Public Utility Holding Company Act does not preempt us from limiting full recovery of a portion of the costs, specifically, SEC jurisdictional charges, reflected in the rates of the retail affiliates of registered holding companies. PUHCA supplements state regulation and evidences no intent to weaken state regulation by denying this Commission the ability to evaluate our utilities' costs against an objective standard.

Our regional average limitation on stranded costs will apply to all jurisdictional utilities, including PSNH. PSNH is not shielded from our policy by the Rate Agreement, the 1989 statutes or the bankruptcy process. The words used in the Rate Agreement do not support PSNH's argument that it is entitled to recover all of its costs. Moreover, contrary to the efforts of PSNH to recharacterize the regulator-regulatee relationship as a debtor-creditor relationship, almost a century of case law says otherwise. When viewed in the context of the relationship between a utility and its regulators, we find it impossible to interpret the Rate Agreement in a manner that guarantees for PSNH, but no other utility, recovery of hundreds of millions of dollars reflecting costs above the regional average.

The Commission also concludes that the Rate Agreement does not create a contract between PSNH and the State protected by the Contracts Clause of the U.S. Constitution and analogous provisions of the New Hampshire Constitution. At the outset, the Rate Agreement lacks the necessary legal elements of offer, acceptance and consideration, necessary to the formation of a contract. We also find that the Takings Clause of the Constitution does not apply since PSNH has no investment-backed expectation to receive treatment different from that accorded the other New Hampshire utilities.

We have further found that PSNH's reorganization through the federal bankruptcy process, completed successfully years ago, does not preempt us from setting rates for PSNH as we do for any other jurisdictional utility. As a general rule, federal bankruptcy law does not preempt state ratemaking authority. Moreover, the specific reorganization proceedings for PSNH reserved our authority over rates by conditioning approval of PSNH's reorganization plan on the Commission's approval of rates in that plan. Nor is the reorganization plan, which incorporated the provisions of the Rate Agreement, binding on the Commission as a matter of contract, because the state was not a creditor in the reorganization proceeding.

While we limit stranded cost recovery to the regional average in most instances, RSA 374-F requires the Commission to permit full recovery of nonmitigatable costs of purchasing from small power producers (SPP), unless the terms of the utility's purchase were discretionary. Accordingly, we do so here, although we expect the utilities to make proposals for buying out or otherwise reducing the costs of SPP contracts.

X. *ASSET OWNERSHIP, CORPORATE STRUCTURE AND UNBUNDLING*

The Final Plan limits the activities which a utility may conduct in its service territory. Specifically, a utility may no longer provide competitive and non-competitive services. If a jurisdictional utility chooses to be a distribution company, it must submit a plan by December 31, 1997 to accomplish the divestiture of generation and aggregation/marketing functions by the end of the two year period following the initiation of competition. It also must sell off the right to obtain power under existing power purchase contracts.

The Final Plan further provides that, beginning in 1998, the distribution company may not be an affiliate of any company which sells a competitive service in the service territory served by the distribution company; except that, if during the compliance filing proceedings, a utility is able to demonstrate that they have implemented safeguards to minimize anti-competitive behavior, it will allow an affiliated supplier to sell at retail in the distribution company's service territory during the two year transition period.

Our source of authority for this action lies in our enabling statutes. These statutes direct us to exercise our franchise authority "for the public good" and prescribe terms and conditions for the exercise of the franchising privilege. Our authority under these statutes to impose limitations on utilities' franchises was affirmed by the New Hampshire Supreme Court in its "*Freedom Electric*" decision. RSA 374-F, moreover, contemplates this very type of action.

We reject PSNH's argument that our changes to corporate structure will interfere with its ability to meet the terms of its loan agreement. Our statutory authority over PSNH's franchise activities cannot be contracted away by private parties. Nevertheless, we are sensitive to the contractual relationships which have helped finance utility facilities and thus, will address those concerns when we explore, in case by case adjudications, the appropriate procedures for disposing of assets.

The Commission's unbundling decision does not constitute a taking of property rights in violation of the U.S. Constitution and the commensurate protections under the New Hampshire Constitution. Because utility franchises are not permanent, franchise holders have no legitimate and investment-backed expectation that the terms of the franchise would not change in the future.

The Commission's Final Plan will promote the underlying goals of PUHCA. Unbundling will reduce the influence of corporate structures and prevent concentration of public utilities — problems which Congress targeted in enacting PUHCA. Moreover, PUHCA does not bar states from prohibiting activities otherwise permitted by PUHCA to carry out the goals of the statute. Accordingly, we reject PSNH's claim that PUHCA preempts our action with regard to unbundling.

Similarly, our decision with respect to limitations on PSNH's corporate structure is not preempted by federal activity, such as the bankruptcy proceedings involving PSNH or the SEC's approval of PSNH's acquisition by Northeast Utilities. During the bankruptcy proceeding, the Bankruptcy Court approved a plan of reorganization which, among other things, contemplated

various transactions resulting in a complete restructuring of PSNH. These transactions ordinarily required state approval, which the Bankruptcy Court preempted for the limited purpose of facilitating restructuring. Now that the reorganization has long been completed and left the jurisdiction of the Bankruptcy Court, PSNH's corporate structure is no longer insulated from state regulation. Further, as discussed earlier in the context of rates, to the extent that the reorganization plan is a contract, this contract governs transactions between debtors and creditors in the reorganization and not non-creditor parties in interest such as the State. Thus, the plan does not bar us, as a matter of contract, from imposing limitations on PSNH's corporate structure. Finally, we find that nothing in the SEC's order approving the acquisition of PSNH by Northeast Utilities that preempts the Commission from taking the action it does in the Final Plan.

XI. *TRANSMISSION AND DISTRIBUTION ACCESS*

Under the Final Plan, the Commission will direct New Hampshire's utilities to submit

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tariffs for the transmission of retail power to us for review. Upon that review, this Commission will determine the appropriate rates, terms and conditions, and direct the utilities to file them with FERC.

The Commission's authority to prescribe the details in the filing at FERC stems from our authority over the activities of utilities to whom the state has granted franchises. This type of action is not in conflict with the primary purposes of the Federal Power Act, which are to curb abusive practices by public utility companies and to protect consumers from excessive rates and charges.

We also have concluded that a directive to provide retail transmission service and retail distribution service does not constitute a "physical taking." Transmission facilities are essential facilities and transmission owners have no right to, or legitimate expectation of, earning monopoly rent by denying use of those facilities to competitors who have no alternatives. In the absence of a legitimate expectation, no taking can occur. Further, in volunteering for a franchise, the utility consents to physical occupation, in the form of its historic customers using the distribution system every day. Since there is consent, no physical taking can occur.

INTRODUCTION

The New Hampshire Legislature directed the Public Utilities Commission (Commission) to develop a statewide electric utility restructuring plan to implement retail choice for all customers by January 1, 1998.[1(23)] *See*, RSA 374-F:4. The Legislature found that "[t]he most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets." RSA 374- F:1, I. In

response to this directive, the Commission issued for public comment a Preliminary Plan on September 10, 1996 which set forth preliminary positions on an array of issues raised by the legislation. The Preliminary Plan discussed and sought input on the following key goals: to establish a competitive generation market supplied through bilateral contracts and one or more voluntary power exchanges; to support creation of an independent system operator to maintain power system reliability; to separate generation and customer aggregation services from transmission and distribution services; to develop incentives to encourage the divestiture of generation from transmission and distribution; to formulate cost-based, non-discriminatory open access transmission and distribution services and rates; to establish non-bypassable interim charges which recover less than full stranded cost if bundled rates exceed the regional average; to require distribution companies to connect customers and provide default power service; to establish minimum customer safeguards and protections; and to allow energy efficiency programs to be delivered by competitive service providers.

After development of a comprehensive record and with much deliberation, we issue today a much fuller description of the market and institutional structures[2(24)] which we believe are necessary to provide customers real energy service choices and ensure fair and efficient competition among retail market participants. We also issue today an analysis of the legal issues raised in this proceeding, plus five supplemental orders which establish the utility- specific interim stranded cost charges that will be in effect for two years from the implementation of utility compliance filings. RSA 374-F: 4, VI(a).

In accordance with RSA 374-F:4, III, each utility shall make, no later than June 30, 1997, a compliance filing to implement the requirements of this Final Plan and the accompanying supplemental orders. The Commission will open utility-specific proceedings at that time to determine whether the filings comply with the Plan and to address preemption and financial integrity concerns.

In this Final Plan we advocate a market structure which provides customers with the opportunity to purchase their electricity requirements directly from competitive suppliers (including brokers and marketers), a power exchange or spot market or less directly through default power service administered by the local distribution company. Large customers will also be allowed to purchase metering and billing services from competitive providers. However, the

delivery of competitive power supplies to retail customers shall be provided, at Commission approved rates, by regulated transmission and distribution companies only.

In developing this Plan, we start from the premise that our most fundamental responsibility is to act as the arbiter between the interests of the customer and those of the utility and the passage of HB 1392 by the New Hampshire Legislature did not change that responsibility. *See* RSA 363:17-a. In fact, HB 1392 makes reference to this responsibility in a number of places, but particularly where it addresses stranded costs. In RSA 374-F:3, XII(a) the law says: "In making its determinations, the commission shall balance the interests of ratepayers and utilities during

and after the restructuring process." In other places the law makes reference to "appropriate, equitable, and balanced," "reasonable," and "fair," all of which we believe underscore this basic responsibility. Therefore, in every part of this Plan, we have done our best to balance those interests while making the choices that needed to be made as we transition from a regulated monopoly to retail competition in the electric industry in New Hampshire.

LEGISLATIVE BACKGROUND AND PROCEDURAL HISTORY

[1-3] RSA 374-F is the culmination of the work of the Commission and several Legislative committees. In January 1995, the Commission sponsored a "Roundtable on Competition" to seek input from a broad range of interests on the future direction of New Hampshire's electric utility industry. Participants in the Roundtable included representatives from the Legislature, jurisdictional electric utilities, the Attorney General's Office, the Governor's Energy Office, the Department of Resources and Economic Development, the Office of Consumer Advocate, other state utility Commissions, and representatives from a number of business and consumer groups.

In June 1995, the Legislature enacted House Bill 168 which directed the Commission to establish a Pilot Program to "examine the implications of retail competition in the electric industry." RSA 374:26-a. In response to this mandate, the Commission issued Order No. 22,033 on February 28, 1996 which established statewide guidelines for a retail competition Pilot Program. Under the Pilot Program, approximately 17,000 retail customers gained the opportunity to purchase electricity from competitive non-utility power suppliers for two years.[3](25) The Pilot, which began May 28, 1996, is the first of its kind in the nation and has placed New Hampshire at the forefront of the national debate over electric utility restructuring.

Also during the summer and fall of 1995, the New Hampshire Legislature's Retail Wheeling and Restructuring Committee developed a set of restructuring policy principles which led to the enactment of RSA 374-F. In enacting RSA 374-F, the Legislature found that New Hampshire's average electric rates are "extraordinarily high" and "disadvantage all classes of customers." Laws of 1996, Chapter 129, Sec. 1, II. The Legislature concluded that the state "must aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." *Id.* at III. The Legislature's framework consists of policy principles which the Commission must implement through a statewide plan. The principles address important issues such as system reliability, customer choice, unbundling of services and rates, the recovery of stranded costs, environmental improvement and near term rate relief.

An Order of Notice issued May 30, 1996 initiated this proceeding. On June 25, 1996, the Commission held a prehearing conference at which time parties presented positions relative to intervention requests and a variety of other procedural matters, including the request for adjudicative proceedings and designation of Commission staff as either advocates or advisors by Public Service Company of New Hampshire (PSNH).[4](26) The Commission issued Order No. 22,244 on July 22, 1996 which addressed these procedural matters and intervention requests and denied PSNH's motion.

On August 21, 1996, PSNH filed a motion for rehearing relative to Order No. 22,244, which the Commission denied in Order No. 22,315 (September 17, 1996). The Commission concluded that PSNH had no constitutional or

statutory right to formal adjudicative procedures in this proceeding except with respect to issues of adjudicative fact. The Commission invited parties to clearly identify each factual issue for which it sought formal adjudicative procedures and to file any such request by September 27, 1996. In response to the Commission's order, several parties submitted requests for formal adjudication. On October 16, 1996, the Commission issued Order No. 22,364 which addressed each of those requests for adjudication. With the exception of setting interim stranded cost charges, the potential financial impact of those charges, and certain other issues more appropriately addressed during hearings on each utility's compliance filing, the Commission concluded that the issues identified primarily raised legal or policy questions rather than adjudicative facts.[5(27)]

On October 18, 1996, over fifty parties submitted initial written comments on policy-related issues raised by the Preliminary Plan.[6(28)] Initial briefs addressing legal issues were filed December 18, 1996 and reply briefs were filed on January 18, 1997. Final written comments addressing policy matters were submitted January 27, 1997. Briefs on interim stranded cost charges were filed on February 14, 1997.

On November 4, 1996, the Commission issued Order No. 22,393 addressing requests for protective treatment of certain cost and load data filed by utilities pursuant to the Preliminary Plan. In that Order, the Commission adopted a protective order which made such data available to authorized representatives of parties that had executed non-disclosure agreements. PSNH and Connecticut Valley Electric Company (CVEC) petitioned the Merrimack County Superior Court to enjoin the Commission from implementing Order No. 22,393, which the Court denied on November 11, 1996.

The Commission conducted fourteen legislative style panel hearings over a seven day period in early December on the major policy issues raised in the Preliminary Plan or in written comments. Fourteen days of adjudicative hearings to set interim stranded cost charges for each utility were conducted throughout January 1997. Additionally, we conducted six public information forums at various locations throughout the state during January 1997 to provide interested New Hampshire citizens with the opportunity to comment on restructuring and our Preliminary Plan.

I. *THE EMERGENCE OF COMPETITION*

[4] The success of competition in the electric industry depends on whether electric service can be provided more efficiently when market entry and prices are not regulated in the

traditional fashion.[7](29) Prior to the late 1970s, most people considered the economic performance of electric utilities to be satisfactory, thus there was no motivation to change the industry's structure or mode of regulation. During the 1950s and 1960s, utilities managed the steady growth in the demand for electricity to capture significant scale economies in generation and transmission, which in turn led to declining industry costs and lower electric rates.

This era ended abruptly with the oil crises of the early and late 1970s and the resulting high energy prices. In anticipation of increasing demand for electric services, and based on the assumption that petroleum prices would continue to increase, some utilities embarked upon ambitious nuclear construction programs. When world oil prices began collapsing in the early 1980s, many of those utilities had to contend with nuclear plant cancellations, abandonments, and cost overruns. To make matters worse, the recurring periods of economic recession and rising electric rates combined to reduce the demand for electricity far below forecasted levels, resulting in under-utilized capacity and upward pressure on rates. While these developments were occurring in the electric industry, a wave of administrative and legislative reform swept through other important regulated industries providing a catalyst for deregulatory reforms.

Additionally, changes in federal law stimulated and encouraged competition in the generation sector of the electric industry. In 1978, Congress passed the Public Utility Regulatory Policy Act (PURPA) which required utilities to purchase energy, at the utility's avoided cost, from qualifying facilities (QFs).[8](30) The Energy Policy Act of 1992 (EPAct) clarified the

authority of the Federal Energy Regulatory Commission (FERC) to order transmission-owning utilities to provide market access for all sellers, establishing the legal basis for a competitive wholesale power market. More recently, FERC adopted an Open Access Rule[9](31) which requires all jurisdictional utilities in the nation to implement non-discriminatory open access transmission tariffs. These events prompted many to speculate that the generation component of the industry no longer exhibited natural monopoly characteristics.[10](32)

Technological advances in generation have added to the pressure for regulatory reform. Technological advances also have led some industrial customers to self-generate or threaten to self-generate, thereby raising the potential for increased rates and placing additional pressure on lawmakers to open markets.

In a competitive market, firms with uneconomic processes reduce their costs or go out of business. The parties to this proceeding generally agreed that competition would sharpen the supplier's focus on cost-effectiveness and market share. We believe competition will induce suppliers to operate more efficiently which should produce savings for customers in the long term. Additionally, innovation and the introduction of new products should be stimulated as competitors vie for market share.

MARKET STRUCTURE

Existing Market Structure

[5-22] The market structure for electric service in New Hampshire is fairly traditional—the majority of customers purchase bundled electric service from regulated, vertically integrated utilities.[11](33) With one exception, the rates which New Hampshire consumers pay for bundled electric service recover test year fixed and variable costs plus a return on capital employed. The exception is PSNH, whose rates are currently set according to an agreement that provides for seven annual base rate increases of 5.5%, the last of which became effective June 1, 1996.

Although each utility in the region must own or purchase sufficient generating capacity to meet the peak demands of its own customers, those generating resources are currently dispatched centrally by the New England Power Exchange (NEPEX), the operating arm of the New England Power Pool (NEPOOL).[12](34) NEPEX's primary responsibilities are to maintain the short term reliability of the power system and to minimize energy costs for the benefit of all customers in the region. Whenever these two objectives conflict, such as during a transmission constraint, NEPEX dispatches units out of economic order to avoid dropping load. The savings created by central economic dispatch are shared among NEPOOL members and typically passed to customers through fuel and purchased power adjustment mechanisms.

NEPEX also performs the function of a transmission grid operator. Although the grid itself consists of several separate systems owned by individual NEPOOL members, it is operated as an integrated system under the control of NEPEX. Despite the fact that operational control has been turned over to NEPEX, there is no region-wide rate for transmission service. Instead, each transmission-owning utility provides transmission services on its own system and, with the exception of pool-planned transmission facilities, recovers the associated capital and operating costs through utility-specific rates.

Competitive Market Structures

A competitive market structure is one in which customers, at their discretion, can choose to buy from many different suppliers and change suppliers with relative ease.[13](35) In order for retail electric customers to benefit from competition, the existing market structure must be materially restructured; this restructuring may be accomplished in different ways. Some suggested simply increasing the competitiveness of the existing wholesale power market and continuing monopoly utility franchises. Others argued that retail customers should have the freedom to choose their power suppliers and pay market-based rates. They believed customer choice would impose the discipline of the competitive market and provide greater incentives for both short and long-run efficiencies

than is provided by economic regulation. The Legislature resolved this debate by directing

the Commission to restructure the industry in a manner that will allow retail customers the opportunity to choose their power suppliers. RSA 374-F:3, II.

As recognized by 374-F:3, III, to provide customers with meaningful choices, vertically integrated utilities must unbundle their retail services into generation, transmission, and distribution sub-components. Distribution can be further sub-divided into basic distribution service, metering, billing, customer service, and aggregation/marketing. Some parties to this proceeding contend that unbundling retail services alone will not be sufficient to ensure effective competition. Utilities, these parties say, must restructure themselves into either affiliated or non-affiliated generation companies and transmission and distribution companies. Affiliated arrangements would tend to reduce the concern over the exercise of vertical market power whereas the non-affiliated arrangements would eliminate that concern. Underlying both approaches is the belief that competitive market forces will better control costs, lower prices and provide consumers greater choice.

In the following sections, we briefly review alternative generation market structures and describe the structure which we believe is most consistent with a competitive generation market and best serves the interests of New Hampshire and its residents. We then address the responsibilities of transmission and distribution companies in the restructured electric industry. Finally, we comment on NEPOOL's restructuring filing with the FERC which addresses the creation of an independent system operator (ISO) and a regional power exchange (PX) as well as the terms and conditions for transmission services.

Corporate Structure
Generation Market Structure Options
Market Power Considerations

Possible alternatives to traditional cost-of-service regulation being debated across the nation have different competitive implications and therefore different consequences for generation market participants. In this section, we address the horizontal market power implications of a restructured industry.

We define market power to mean the ability of a seller, or group of sellers, to influence price for a significant period of time. Sellers with market power may reduce competition along dimensions other than price, such as product and service quality and technological innovation. Ultimately, the result of a firm's exercise of market power is a transfer of wealth from buyers to sellers or a misallocation of resources. In competitive markets, the number of individuals buying or selling a homogeneous product is so large and each participant's relative share of the market so small, that each buyer and seller believes that variations in the quantity bought or sold will have an imperceptible effect on the market. Consequently, in competitive markets, no participant can exert market power.

Horizontal market power results when firms own or control a high concentration of the productive assets in the relevant market. Although two recent studies[14](36) on horizontal market power have concluded that, absent mergers or acquisitions, a deregulated New England generation market could be workably competitive, no analysis of horizontal market power was

submitted in conjunction with this proceeding. However, in order to comply with FERC's Open Access Rule, NEPOOL must file a market power study in support of its open access transmission tariff. Since NEPOOL has not yet filed the required market power study, we are unable to comment on this important issue. We intend to review and offer specific comments on the market power implications associated with NEPOOL's restructuring proposal during the FERC proceeding.

Preferred Market Structure

Across the country, three major industry models are being discussed as alternatives to command and control cost of service regulation. The three models are the poolco model, the bilateral contracts model, and a hybrid model which allows for both bilateral contracts and pool transactions. In the Preliminary Plan, we

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discussed in detail the features of each of these models. While each of these models is designed to promote competition in the bulk power market, they differ in their approach. Poolco and spot market transactions generate prices which are more transparent than prices resulting from bilateral contract transactions. In addition, a mandatory power pool increases the liquidity of electric power and provides an uncomplicated mechanism for consumers to buy and for small scale suppliers to sell electricity. Forcing all transactions through a pool, however, does not provide customers with full retail choice. We believe that the Legislature recognized this when it concluded that the restructured industry should not preclude bilateral contracts. *See*, RSA 374-F:3, XIII.

The bilateral contracts model provides broad choices and allows buyers and sellers to negotiate agreements which best meet their respective needs. Under this model, buyers assume responsibility for negotiating on their own behalf or through the services of power marketers or brokers. Allowing retail customers the freedom to choose among power suppliers will promote economic efficiency, including the reduction of economic rents which may be earned by suppliers in pure poolco approaches. However, the bilateral contracts model is characterized by prices which are not transparent. In the absence of load aggregators and power brokers, small volume consumers are unlikely to derive the same benefit from retail access under a pure bilateral contracts approach as are large volume consumers. While the bilateral contracts approach allows for multiple spot markets to arise, it establishes none at the outset. We believe that information transmitted to consumers through the operation of spot markets is essential to enable consumers to make informed decisions. Without an effective spot market, we believe small volume consumers would be disadvantaged relative to large volume consumers.

For these reasons, we believe a hybrid model permitting both bilateral contracts and power exchange transactions will capture the greatest benefits for all retail customers. Under this hybrid model, the independent system operator (ISO) acts as grid operator, accepting and transporting

energy supplied through bilateral contracts and one or more spot markets. Although the short run costs of implementing a poolco model may be less than those associated with a bilateral contracts model, we believe that, in the long run, an industry structure which emphasizes bilateral contracts and allows for spot market purchases will bring greater benefits to New Hampshire consumers. Sophisticated and large volume consumers may receive the economic gains of lower prices through shrewd negotiations, while smaller volume consumers may benefit by purchasing from a power exchange, thus minimizing the complexity and cost of their market transactions. Small volume customers also may choose to negotiate directly with power suppliers or employ a marketer or broker to do so. In addition, small customers may aggregate loads to increase their buying power as they search for lower prices or better terms. Aggregation may include the loads of multiple customers from different rate classes or a customer may aggregate loads at several sites. We believe that the ability to sell power directly to a spot market or pool distinctly benefits small producers who may find tepid demand in a purely bilateral contract market. In addition, this hybrid approach allows individual market participants to determine which of the two trading mechanisms provides greatest value to each.

Restructuring the electric industry must maintain the reliability of the power system. RSA 374-F:3, I. We recognize that competitive markets may offer, and customers may want, lower levels of service reliability in exchange for lower prices. This situation is distinct from the concept of power system reliability which we believe will be maintained by a suitably structured ISO. The ISO should be able to balance load with resources under its control, allocate curtailments related to transmission constraints based on market price, redispatch to relieve transmission constraints, and have under its control sufficient assets to provide backup service if an unscheduled outage occurs.

Distribution Company Responsibilities
Definition of Distribution

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We define distribution generally to mean the delivery of electricity from a transmission line (or a local generator) to a consumer located within a specific service area. In its Open Access Rule on transmission services, the FERC adopted a technical test comprised of seven indicators to aid in determining which facilities are state-jurisdictional distribution facilities and which are FERC-jurisdictional transmission facilities.[15(37)] Notwithstanding the pronouncement of this test, the FERC acknowledged that even where there are no identifiable distribution facilities, states have jurisdiction over the delivery of electricity to consumers. Open Access Rule, 61 Fed. Reg. 21,625. This interpretation of state/federal jurisdiction removes any incentive for retail customers to bypass distribution facilities in order to avoid being assessed charges for stranded costs. In addition, the FERC clearly stated that in determining where to draw the jurisdictional line for unbundled distribution facilities, it would defer to the recommendations of state regulators, provided that their recommendations do not "balkanize" the interstate transmission system. *Id.* at 21,627. We are encouraged by the FERC's call for "heightened cooperation"

between state and federal regulators to resolve jurisdictional issues which could delay or deny consumers the benefits of retail competition. *Id.* at 21,625. In light of the FERC's stated intent to defer to the states' expertise in this area, we indicated in the Preliminary Plan a willingness to adopt the FERC's seven indicators of local distribution and requested comments from the parties.

Although our proposed policy received broad support, CVEC maintained that FERC's action unlawfully would delegate to the states the responsibility to decide virtually all stranded cost claims that arise from retail access, while WEPCO urged us to use this "delegated" authority to collect stranded cost charges from all customers, including those who do not utilize facilities that would be categorized as "distribution" under the seven indicators test. Cabletron expressed concern that the seven indicators test might lead to a change from state to federal jurisdiction over distribution. Other parties warned of possible cross state or cross system subsidies if the same facilities were classified as transmission in one state (and paid for by all regional customers through regional transmission rates) but as distribution in another state (and paid for locally as part of distribution rates). To minimize subsidies, those parties advised us to work closely with other New England states to classify transmission and distribution assets consistently.

PSNH seeks to reclassify certain of its 34.5 kV lines and substations from transmission to distribution and asked that the Commission support its request. PSNH asserted that such reclassification was appropriate based on FERC's seven indicators as well as additional criteria, such as its current operations, industry restructuring, and the proposed New England Regional Transmission Group (RTG).

We deny without prejudice PSNH's request to utilize additional criteria to classify its transmission and distribution assets. Given the utility-specific nature of its request, we believe the classification of transmission and distribution assets and the associated cost allocations are more appropriately addressed at the compliance stage of this proceeding. Accordingly, PSNH is invited to re-submit its request in its June 1, 1997 compliance filing.

Distribution Company Regulation and Structure

The Legislature has required that, at a minimum, generation be functionally separated from transmission and distribution, with the exception that distribution companies may own distributed generation as an economic alternative to reinforcing the distribution system. RSA 374-F:3, III. We will also require distribution companies to assume the QF power purchase obligations of existing utilities. Distribution companies shall provide to all customers in their franchise territories non-discriminatory unbundled distribution service at rates set by this Commission.

The decision to maintain, at least for the foreseeable future, the regulated status of distribution companies raises the possibility that such companies will utilize their privileged position to favor or injure certain market participants. Potential anti-competitive abuses include

extending more favorable pricing or payment arrangements to affiliate suppliers, sharing customer information with affiliate suppliers, and cross-subsidies from regulated to competitive affiliates. In the Preliminary Plan, we identified two possible ways to address these vertical market power concerns. First, we expressed skepticism that these concerns could be addressed adequately through standard cost allocation and affiliate transaction rules. Consequently, we suggested that the potential for abuse could be limited if distribution companies divested themselves of all aggregation/marketing functions and implemented non-discriminatory, open access distribution tariffs.[16](38) Second, we suggested that distribution companies sever all corporate connections to generation and aggregation/marketing entities (through sale or spin-off[17](39)), thus establishing legally separate and independent companies. Absent such corporate responses, we feared that the economies of vertical integration, when made available only to one competitor, could give that competitor a cost advantage that could translate into market power.

In response to these suggestions, some parties maintained that the implementation of open access transmission and distribution and the utilization of appropriate affiliate transaction rules and sensible codes of conduct would be sufficient to protect against the improper exercise of vertical market power. CVEC argued further that such a policy would even help maintain the economies of scope created by vertical integration. PSNH contended that, absent hard evidence of a market power problem, the Commission could not justify a requirement to divest generation and retail marketing assets.

Cabletron argued that the implementation of open access and affiliate transaction rules would not, by themselves, eliminate or otherwise protect against the abuse of market power. First, locating employees from different business units in different parts of buildings or in different buildings would be insufficient to address potential conflicts of interest associated with the common ownership and management of generation and distribution assets. Common control (*i.e.*, corporate officers or board members) would give the management of one affiliated company the ability to directly influence the management of another. New Hampshire's experience supports Cabletron's assertion. *See*, Legal Analysis, Part I.A.5.e. Second, staff resources required to investigate allegations of market abuse will be scarce—both at the state level and before FERC. Third, under existing law, there does not appear to be any meaningful constraint on the right of a vertically integrated company to decide to "invest" funds derived from regulated activities in affiliated businesses. Others noted that the Commission probably does not have jurisdiction over the allocation of costs among functionally separate affiliates of interstate holding companies.

Despite PSNH's assertions to the contrary, we believe there is an abundance of evidence that vertically integrated utilities possess the ability to discriminate against unaffiliated suppliers.[18](40) The shared ownership and control of generation, transmission and distribution assets provides both the opportunity and the incentive for management of regulated companies to favor competitive affiliated suppliers. The implementation of affiliate transaction rules insufficiently restricts the incentive to exercise market power. We believe the corporate ties between regulated and competitive functions must be severed in order to eliminate this incentive. In our view, the only way to sever these corporate ties is through divestiture. We define

divestiture to mean that an existing utility may no longer provide competitive and non-competitive services. If a jurisdictional utility chooses to be a distribution company, we will require it to submit a plan by December 31, 1997 to divest its generation and aggregation/marketing functions by the end of the two year period following the initiation of competition. We also will require such utilities to sell off any right to obtain power under existing power purchase contracts. The two year transition period should provide utilities with sufficient time to design programs to divest generation assets which realize the maximum value for those assets and, in turn, minimize stranded costs.

Beginning in 1998, a distribution company

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shall not be affiliated with any company offering competitive services in the distribution company's service territory. If, during the compliance filing proceedings, utilities satisfactorily demonstrate that they have implemented safeguards that minimize anti-competitive behavior, we will allow an affiliated supplier to sell at retail in the distribution company's service territory during the two year transition period.

We note that divestiture may produce two additional benefits which promote the development of effective competition while advancing the public interest: the recognition of hidden value in generation assets which is unlikely to be reflected through the application of an administrative approach to asset valuation and the elimination of the anti-competitive effects of stranded cost charges.

Metering, Billing and Customer Information

Rather than require distribution companies to install hourly meters and related communications equipment for small customers, a process that some believe is not technically feasible nor economically justifiable at this time,[19(41)] we shall require utilities to continue the practice established in the Pilot Program of estimating hourly loads using load profiles for the relevant small customer classes. We define small customers to be customers whose maximum demand is less than or equal to 100 kW, which typically includes all residential and small business customers.[20(42)] Customers whose maximum demands exceed 100 kW shall have hourly meters capable of being read remotely each day. We base our decision partly on the legislative mandate that all customers be able to choose their power suppliers and partly on the response by GSEC to questions posed in Order No. 22,421. With respect to the accuracy of the load estimation procedure, GSEC reported that "the hourly estimation process has proven to be a viable approach to settlement in a competitive electricity market and, consequently, a cost-effective alternative to large scale metering." Specifically, GSEC's review of estimation results for the first three months of the Pilot showed energy and peak demand estimates within 1.5% and 4.1%, respectively, of actual energy and peak demands.[21(43)] GSEC affirmed that the load estimation procedure could meet the demands of full scale retail access, but noted that

improvements must be made to add exception reporting and to automate the processes and validation of data collection.[22](44)

We disagree with PSNH's assertion that load estimation is inherently inaccurate and something that must be accepted until developments in technology make hourly meters and telemetering equipment cost-effective for small customers. Unlike GSEC, PSNH appears to have arrived at its conclusion without the benefit of a detailed evaluation of the strengths and weaknesses of load estimation and its potential for improvement. In contrast, in its report, GSEC documents several actions to improve the accuracy of the process and enhance the likelihood that a full scale version would obtain broad regulatory and supplier acceptance. We direct each utility to perform a detailed operational review of the Pilot load estimation procedure and to identify ways to improve accuracy including, if necessary, more extensive telemetering of commercial and industrial customers. The results of that review and a plan to implement a load estimation procedure which meets the needs of small customers by 1998, shall be included in each utility's compliance filing. The implementation plan shall be detailed and include recommendations relating to data validation controls and necessary computer upgrades.

To avoid billing disputes, the statistical accuracy of hourly load profiles must be maintained at high levels. Additionally, load profiles must be available for each rate class to minimize gaming of the load estimation process. Consistent with these objectives, we direct each utility to review the adequacy of existing load research programs and to include in the above mentioned implementation plan recommendations to improve the accuracy of load profiles.

Distribution companies also shall be responsible for reading meters of small customers and transferring data expeditiously to competitive power suppliers. Competitive power suppliers could then prepare and issue their own bills[23](45) or purchase billing services from the

distribution company, in which case customers could receive a single bill incorporating charges for transmission, distribution, and power supply services.

Under either scenario, competitive suppliers and distribution companies must establish reliable and cost-effective means of exchanging data. In the Pilot Program, we directed each utility to employ a Value Added Network (VAN) system and common data format to transfer billing data. In Order No. 22,421 we directed each utility to report on the effectiveness of the VAN system and common data format, how the system could be improved, and whether VAN type systems can handle the data volumes expected when retail access becomes fully available in 1998. Based on those reports, we believe the VAN system is both reliable and efficient, and capable of handling the data exchange volumes of full scale open access. We therefore direct each utility to include plans for the full scale implementation of a VAN system in its compliance plan.

GSEC also reports that because of the different VAN systems that are likely to be employed by market participants, use of the common data format specified in the Pilot has shortcomings which may make it unsuitable in a full scale retail access environment. Successful large scale

implementation of retail access will require, according to GSEC, the use of Electronic Data Interchange (EDI) standards to support all necessary data transactions, although it concedes many of these standards are not yet available. We accept the advice of GSEC on this matter and direct it to submit a proposal, within the timeframe established in Appendix B, to establish a data transfer working group which would prepare recommendations on appropriate EDI standards. GSEC's submission should address, at a minimum, issues such as membership, timetable for implementation, and possible topics for discussion by the working group.

Additional Distribution Company Services

GSEC and Unitil recommended that regulated distribution companies be permitted, but not mandated, to purchase retail transmission service in bulk and resell that service at cost to retail customers in their franchise areas. CVEC argued further that the concept of default power service, which we address in Section VI.A.2. below, requires that the local distribution company arrange the necessary transmission service. PSNH, on the other hand, argued that the business of purchasing and reselling transmission services should be left to the market.

We will allow each distribution company to purchase bulk transmission for its distribution customers and to resell that transmission service to these customers. We are permitting this activity for several reasons. First, it may be simpler for retail customers to buy transmission service under a standard, simple tariff free of the complexity typically found in wholesale transmission tariffs as exemplified by the 150 page tariff appended to Order No. 888. Second, the ability of distribution companies to buy transmission in bulk enables retail customers to realize the benefits of load diversity (although this will depend on the design of the FERC approved tariffs).[24(46)]

Under this scenario, the distribution company may resell transmission service to retail customers. This is a distinct transaction, different from the status quo in which the local utility provides a bundled product consisting of distribution, transmission, marketing, aggregation and generation. FERC has found that the sale of unbundled retail transmission service is subject to its exclusive jurisdiction under the Federal Power Act. Therefore, FERC will establish the terms and conditions for this service. However, we have an interest in the terms and conditions under which New Hampshire customers buy at retail. Therefore, we direct distribution companies who decide to offer this service to submit to us a transmission tariff for each rate class and obtain our approval of such tariffs prior to filing with the FERC. Our legal authority to impose this requirement is discussed in the Legal Analysis at Part III.

Transmission Company Responsibilities

In Order No. 888, FERC found that "when a bundled retail sale is unbundled and becomes separate transmission and power sales

transactions, the resulting transmission transaction falls within the Federal sphere of regulation." 61 Fed. Reg. 21,505. Under these circumstances, the FERC "generally expect(s) retail wheeling customers to take service under the same FERC tariffs that apply to wholesale customers." 61 Fed. Reg. 21,515. At the same time, however, the FERC expressed an appreciation for the concerns of states relative to matters which should be the subject of local regulation and control. In particular, the FERC "strongly supports the efforts of states to pursue pro-competitive policies" and it "recognize(s) that jurisdictional issues raise overlapping federal and state policy concerns that call for heightened cooperation among federal and state regulators." 61 Fed. Reg. 21,502.

The FERC expressly recognized the need to accommodate unique local concerns which are associated with state retail wheeling initiatives: ... if retail wheeling occurs as part of a state access program, it may be appropriate to have a separate retail transmission tariff to accommodate the design and special needs of such programs. In such situations, the (FERC) will defer to state requests for variations from the FERC wholesale tariff to meet these local concerns, so long as the separate retail tariff is consistent with the Commission's open access policies and comparability principles reflected in the tariff prescribed by this Final Rule.

61 Fed. Reg. 21,515. The FERC reiterated this position when it temporarily approved retail transmission tariffs filed by various utilities to implement the New Hampshire Pilot Program.

Although the topic of state and federal jurisdiction remains the subject of significant national debate and legal uncertainty, our Final Plan makes two assumptions: (1) that FERC has ultimate jurisdiction over the terms and conditions of the service of transmitting retail power; and (2) this Commission may direct its jurisdictional utilities to file at FERC tariffs for such service, which contain specific terms and conditions determined by this Commission, for ultimate disposition by FERC. We explain the basis for this position in the Legal Analysis at Part III.

We believe it necessary for the Commission to shape the terms and conditions of retail transmission service in New Hampshire since, as FERC has recognized, the pro forma tariffs attached to Order No. 888 contain many terms and provisions that are appropriate for wholesale transactions but may be inappropriate in retail transactions. At the same time, we recognize that the risk of inconsistent state policies affecting the use by retail customers of a common interstate transmission network requires ultimate review by FERC of all retail transmission tariffs. Our approach is both authorized by the Federal Power Act and consistent with a rational allocation of regulatory authority between the federal and state jurisdictions. We expect to work closely with the other New England states in arriving at consistent policies with respect to retail transmission access.

To implement our approach, we direct our utilities to submit for our review illustrative tariffs for the provision of retail transmission service. These tariffs should be substantially consistent with the FERC's open access policies and comparability principles, but should be specifically tailored to meet the needs and concerns of retail customers.

NEPOOL Restructuring
NEPOOL Proposal

[23, 24] In compliance with FERC's Open Access Rule, the NEPOOL Executive Committee (NEC) filed with FERC an "integrated package of arrangements" on December 31, 1996. Although not required, NEPOOL, in addition to an Open Access tariff, filed agreements designed to transfer control of the region's transmission grid and generation operation to an ISO, qualify NEPOOL as a Regional Transmission Group (RTG), and facilitate wholesale competition through a combination of a bilateral market and a regional PX. NEPOOL's reform proposal features mechanisms to ensure system reliability, changes to NEPOOL governance, creation of an ISO to administer an open access tariff and the institution of new market arrangements and products.

In its proposed governance changes, NEPOOL extends voting rights to new types of market participants and clarifies that load aggregators who serve only at retail are eligible for NEPOOL membership. In addition, NEPOOL

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proposes to revise its committee structure to separate marketing from transmission functions. To do this, NEPOOL eliminated the Operations and Policy Planning Committees and replaced them with the Regional Market Operations Committee, the Regional Transmission Operations Committee, the Market Reliability Planning Committee and the Regional Transmission Planning Committee.

To ensure system reliability, NEPOOL charges its Management Committee (NMC) with the responsibility for establishing standards consistent with NERC and the National Power Coordinating Council (NPCC) guidelines and charges the NEPOOL Market Reliability and Planning Committee (MRPC) with the responsibility for planning, directing and coordinating generation studies. In addition, NEPOOL maintains central economic dispatch and imposes existing NEPOOL rules and procedures on the ISO.

NEPOOL ascribes great importance to the creation of the ISO and describes it as a principle element of its governance changes. Under NEPOOL's proposal, NEPOOL Participants (Participants) cede to the ISO control of the NEPOOL Control Area and control center and the administration of the NEPOOL tariff and the NEPOOL interchange and market settlement system. NEPOOL proposes to enter into an Interim ISO Agreement (ISO Agreement) following initial acceptance of its filing by the FERC. This ISO Agreement describes the respective rights and obligations of the ISO and NEPOOL Participants and discusses the ISO budget process, including funding and payment provisions. The ISO Agreement also contains provisions concerning indemnification, liability, and insurance; ISO termination; dispute resolution; and governing law.

NEPOOL's proposed open access tariff offers Regional Network Service (which includes Point-to-Point Service and Network Integration Service) to Participants and non-Participants at the same tariff rates. In addition, NEPOOL's filing obligates each transmission owning Participant to file a separate transmission tariff providing open access to its respective local

network. NEPOOL asserts that separate tariffs for Local Network Service and for Regional Network Service are appropriate because they are consistent with the division of operating responsibility between the NEPOOL System Operator and the individual Participant system operators. NEPOOL's proposal transitions to cost based regional transmission rates over a period of at least five years.

Commission Analysis

We recognize the exhaustive effort required to develop a proposal to restructure the bulk power market and to reach agreement among many parties with diverse interests. We are pleased that the parties sought input from NECPUC and revised their proposal to reflect many of NECPUC's concerns. We believe that the current proposal before the FERC, with certain modifications, can provide an adequate framework from which to proceed.

Our comments in this Final Plan focus on strengths of the proposal as well as on areas where we believe critical information is lacking or where refinement or revision is necessary. Pursuant to the directive contained in RSA 374-F:4,XIII, the Commission has participated in numerous conference calls with other New England states that are members of NECPUC to discuss the ISO Agreement. This collaborative effort has resulted in NECPUC's general support for the ISO Agreement. However, NECPUC and some of the New England states will offer specific comments on the ISO Agreement and other NEPOOL filings at FERC. We will continue to work, both with NECPUC and individually, to remove impediments to competition and, where necessary, to seek improvement to the proposed market model, its institutions and governance, currently under review by the FERC.

Based on a preliminary review, we believe the proposed changes to NEPOOL's committee structure are more cosmetic than substantive and that the voting provisions fail to separate adequately the transmission and market interests of Participants. In addition, we believe NEPOOL provided insufficient definition of the roles and responsibilities of its administrative committees, the ISO and the PX together with how these institutions will interact with each

other and other non-NEPOOL market institutions or participants. Thus, we will recommend the FERC require NEPOOL to further clarify the transmission and market functions so that overlapping and inconsistent requirements and procedures do not result and the independence of the ISO is assured.

As stated before, restructuring the electric industry must maintain the reliability of the system. RSA 374-F:3, I. We believe the cornerstone of a safe and reliable system derives from the application of appropriate standards by an unbiased and expert system operator. We agree with FERC that the ISO should have primary responsibility for ensuring short-term reliability and that the ISO's role in this responsibility should be well-defined and comply with applicable standards set by NERC and NPCC.

Although NEPOOL has successfully ensured the New England region of an abundant supply of electricity while dispatching facilities to maximize regional economies,[25](47) we do not accept NEPOOL's contention that central economic dispatch is critical to the maintenance of system reliability. We believe the ISO must have the authority to take any action necessary to safeguard the operation of the interconnected transmission facilities under its control, including identifying and relieving system constraints. As proposed, the ISO's authority extends only to NEPOOL Participants. We believe this authority should be broadened to include all market participants.

We believe the long run reliability of the system is of paramount importance as well. Long run reliability requires an effective RTG and an active futures market. We intend to monitor and comment on the development of the RTG and market performance through our participation in NECPUC and through intervention at the FERC when appropriate.

Although not required by the FERC, we are pleased that the New England transmission owning utilities have elected to establish an ISO. We do not believe that the proposed ISO complies fully with the ISO principles specified in FERC's Open Access Rule, nor would we support the current proposal as a final agreement. However, we believe the Interim ISO Agreement provides an adequate starting point for industry restructuring. We are confident also that FERC's review of the proposal and its continuing jurisdiction over the ISO and NEPOOL will work to benefit the public interest.

We believe the Interim ISO Agreement capitalizes on the expertise of the NEPEX staff as the necessary new market institutions are created and equipped to handle their new responsibilities. In addition, our support is based on provisions which state that any ambiguities in interpretation relating to the extent to which the ISO is intended to operate independently shall be interpreted in a manner consistent with the parties intent to ensure independence of the ISO. Also, the Interim ISO Agreement provides the ISO with sole authority to interpret and implement the System Rules and Procedures. We condition our support for this agreement on its interim nature. We will recommend the FERC approve the Interim ISO Agreement and guide NEPOOL and the ISO to renegotiate its contract such that the terms allow the ISO to assume full independence of market participants. Specifically, we believe the public interest would be better served if NEPOOL modified its Restated NEPOOL Agreement to better separate the transmission and market functions. In addition, we will urge FERC to guide the ISO to develop and adopt a transaction based funding mechanism by January 1, 1998. We disagree with NEPOOL's proposal that NEPOOL should have authority to discipline Participants for failing to uphold their obligations under the ISO Agreement. We believe the authority to determine whether an ISO has failed to perform satisfactorily and to terminate an ISO rests solely with the FERC. Failure to uphold such obligations should be subject to FERC review and disciplinary procedure.

In their comments, some parties argued that spot markets would arise naturally and that a regulatory mandate to establish a PX was inconsistent with a move toward competition. We disagree. We reiterate our belief that establishing a PX at the outset offers gains to restructuring while introducing minimal, if any, economic inefficiencies. Such a hybrid model recognizes that different classes of market

participants may derive different benefits from different trading mechanisms and allows individual market participants to choose the mechanism which maximizes their individual gain from exchange.

The PX we envision, however, differs markedly from that apparently proposed by NEPOOL. A PX should function as a clearinghouse for power, providing a transparent auction with visible prices for generation and related competitive services. We envision a PX subject to FERC jurisdiction which has no financial interest in transmission or any source of generation.

This Commission has a vital interest in ensuring that the prices determined through the PX are not subject to manipulation. Consequently, we will recommend the FERC require the ISO to make a filing which clearly defines the role and responsibility of the PX, and differentiates its function from that of the ISO or the NEPOOL organization. We are not convinced by NEPOOL's argument that significant operational economies will result from a PX operated by the ISO. However, we do not oppose a PX operated by the ISO but believe such an institutional arrangement heightens the importance of ISO independence. In addition, we recommend that the FERC require the rulemaking procedures to balance the interests of both buyers and sellers. We believe the ISO, subject to regulation by FERC, should be responsible for establishing which products can be used safely and reliably on the NEPOOL transmission system.

In its comments, Enron criticizes the NEPOOL reform proposal for allowing current NEPOOL members to determine the products that will be offered in the new competitive market. Enron's comments further state that the requirement in NEPOOL's plan that markets for new product offerings be approved by FERC introduces inflexibility to the market which serves only to prevent prospective competitors from adapting products to consumer preferences. We agree with Enron that a structure in which certain participants, such as current NEPOOL members, receive authority to determine the products which may or may not be offered in a competitive market is unfair. We would urge the FERC to require NEPOOL to revise any filings which grant NEPOOL such authority. We believe that competition will bring forth markets we cannot envision today and that new services should be examined by FERC and introduced only after approval.

We believe that the benefits of competition will not be realized unless the restructuring process leads to a single, poolwide transmission rate. We also recognize that such broad scale restructuring may lead to large shifts in the cost responsibility assigned to each of the New England transmission owning utilities. Consequently, we believe it is appropriate to transition to a single, poolwide transmission rate and will support this aspect of NEPOOL's filing at FERC. We believe that NEPOOL's transmission tariff fails to adequately address or provide necessary support for many issues, including congestion rights and pricing and apparently discriminatory requirements regarding scheduling pool transactions and internal self-scheduled transactions.

UNBUNDLING ELECTRIC SERVICES

Competitive and Regulated Services

[25-36] Before consumers can choose their electricity suppliers, utilities must unbundle retail electric services and rates. The process of unbundling involves segregating the various bundled service components and pricing the regulated components separately. Enumerating these components and understanding who provides what service at what price is the first step in determining how markets will be structured.

Enron argued that all identifiable service components that have the potential to be provided competitively should be unbundled immediately from those services which continue to exhibit natural monopoly characteristics. Enron included billing, metering, customer service, and energy information in the potentially competitive category. Others suggested that all metering functions, including installation, maintenance and meter reading, be performed by one or more competitive entities. While not disputing Enron's view, Unitil and GSEC questioned the feasibility of competitively provided metering services by 1998.

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Rather than risk customer and supplier confusion, they recommended that the unbundling of metering services be postponed until customers have had time to become accustomed to purchasing their energy requirements in the competitive market. Such a delay, they argued, would also allow the Commission sufficient time to establish the necessary infrastructure for the testing and reading of meters.

With respect to energy service billing, Unitil argued that competitive suppliers should either develop their own billing infrastructure or buy those services competitively. In either event, Unitil maintained that distribution companies should not be required to offer default billing services. Rather, the provision of energy service billing should be at the distribution company's option. If distribution companies are required to offer default billing service, GSEC stated it believed that the costs avoided as a result of customers taking billing services from competitive suppliers will be minimal. Others disagreed, arguing that customers who are billed by competitive suppliers should be credited the allocated embedded cost of billing.

After reviewing the record on this issue, and recognizing the Legislature's aggressive timetable for introducing competition, we believe our focus in this area should be on attaining an achievable level of unbundling by 1998 and that a more comprehensive separation of competitive services should be deferred to a later date. Accordingly, we will defer the unbundling of metering and customer services for small customers and require only that energy billing services be provided competitively. Stated differently, for customers with maximum demands less than or equal to 100 kW, distribution companies will continue to provide metering and customer services. For customers with maximum demands above 100 kW, we believe an achievable level of unbundling consists of opening metering, energy billing, and customer services to competition.[26](48) As a consequence of allowing competitive suppliers to provide meter reading services to customers with maximum demands in excess of 100 kW, we note

suppliers now become responsible for transferring hourly data to the distribution company and the ISO.

Utilities shall submit, as part of their compliance filing, cost-of-service studies which unbundle 1996 test year revenue requirements into the three functional categories of generation, transmission, and distribution.[27](49) The distribution revenue requirement within the cost-of-service study shall be further subdivided, to reflect at a minimum metering, billing, and customer services as discussed above. Any costs related to past or future conservation and load management (C&LM) programs shall be allocated to the C&LM function. Transmission revenue requirements shall be determined in accordance with the FERC's seven indicators test, as discussed above in Section IV.2.a.

After separating total revenue requirements by function, utilities must determine distribution revenue requirements for each rate class using appropriate cost allocation methodologies. In order to achieve a smooth transition to a restructured industry, we will not entertain, at this time, cost allocation methodologies that differ from those which underlie existing class revenue requirements. We are, however, open to considering alternative revenue requirement allocations after the restructuring process is completed.

Unbundled Rates for Regulated Services
Traditional Ratemaking

We will continue to regulate the terms and conditions for regulated distribution services. Further, we direct that rate levels for those services be set to recover, at least initially, embedded cost revenue requirements based on 1996 test year data provided as a part of the previously mentioned cost-of-service study. Utilities are free, however, to propose marginal cost based rate designs in their compliance filings. The formulation of distribution rates must be accomplished in a way that avoids undue cost shifting among classes. To avoid this outcome, each distribution company shall allocate its appropriately determined revenue requirement among rate classes using the cost-allocation methodologies underlying rates in effect on the date of this order.

The revenue allocation process establishes

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an average rate for each customer class but does not provide specific information to individual customers about the costs they impose on the utility. This information is provided to customers through rate design. Since unbundling creates a number of new rate components, we will allow utilities to propose alternative rate designs in their June compliance filings. Recognizing that this increased flexibility could result in cost shifting among customers within a class, we direct each jurisdictional utility to include in its filing an analysis of the impact on customers of any proposed rate design changes.

Because distribution costs generally do not vary on a real-time basis, we see little benefit in

requiring distribution companies to offer real time rate options. This, of course, should not prevent competitive suppliers from offering real-time power pricing options to customers who have the appropriate metering equipment. Allowing customers to respond intelligently to variations in market power prices will produce savings for any customer who is able to shift demand from peak to off-peak hours. In addition, customers with real-time metering capability can use Contracts-for-Differences to lock in fixed power prices.

Finally, because the distribution function will remain largely insulated from competitive risk for the foreseeable future, the ROE component should be significantly lower than the expected equity returns for competitive generation companies. Failure to recognize this differential would result in the overpricing of distribution service. Accordingly, each jurisdictional utility shall develop and include in its compliance plan a proposed ROE reflective of a level of risk appropriate for distribution service.

Performance Based Ratemaking

Where feasible, competitive markets should be used instead of regulation to control costs and set prices. RSA 374-F:3, III. Performance Based Ratemaking (PBR) is one tool which could be used to introduce competitive forces in areas that do not easily lend themselves to competition. Certain functions will likely remain regulated because of economic or technical considerations or because of the inability of competitive markets to satisfy public policy concerns. As noted above, unbundled distribution can be sub-divided into specific categories, such as customer service, operations and maintenance, capital replacements and additions, and metering and billing. Though PBR may be appropriate for regulated services generally, a review of these sub-divided costs, as judged by comparisons between utilities, is necessary and may delay the implementation of PBR for particular utilities. To the extent that these costs are widely divergent, and not explainable by significant service territory differences, a further examination of these costs may be warranted.

The unbundled distribution rates developed for the Pilot Program revealed significant variations among utilities and among customer classes. These variations appear to be too great to be explained by differences in service area density, distribution system vintage, and class load factors. Therefore, the 1996 embedded cost of service study required above shall also identify total distribution cost by sub-function. We will postpone further consideration of PBR until we have analyzed these cost studies.

Special Contracts and Discounted Tariffs

The Commission has the authority under RSA 378:18 to approve special contracts if "special circumstances exist" and the off-tariff rates and conditions are "just and consistent with the public interest." Pursuant to this authority, we have reviewed over 70 electric service special contract filings during the past four years, most of which were filed for business and/or load retention purposes. A small number were characterized solely as economic development special contracts. Presently, over 50 special contracts remain in effect and one is pending. All but a few

of the currently effective and pending special contracts were proposed by PSNH and relate to PSNH retail customers.[28](50) We have also approved special contracts of NHEC based on PSNH's sales of electricity for resale.

The potentially adverse effects of long-term special contracts on retail competition

must be a factor in our determination of whether new special contracts are in the public interest. Similar concerns exist with regard to some of the terms and conditions contained in proposed tariffs for economic development and business retention filed pursuant to Senate Bill 533, now codified at RSA 378:11-a. We will continue to evaluate on a case-by-case basis contracts and tariffs filed pursuant to RSA 378:18 and RSA 378:18-a, taking into consideration the special circumstances of the directly affected customers, the effects on utilities, the implications for other customers, and the Legislature's directive that we "aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates." RSA 374-F:3, XV. GSEC customers who have signed up for the service extension discount must buy out of the program to avail themselves of retail choice.

Freedom and Cabletron recommended that special contracts be unbundled and the stranded cost component determined by subtracting from the special contract price the sum of the projected market price and the embedded transmission and distribution costs. Under their scenario, a special contract customer would be obligated to pay the unbundled transmission and distribution rates and, for the term of the contract, the associated stranded cost charge, but be free to choose its power supplier. PSNH disagreed, arguing that special contracts are utility assets that should remain with the distribution company. That is, competitive suppliers would be precluded from competing for that business until the contracts expire.

There is also a difference of opinion with regard to who should bear the difference between the revenues received from non-contract customers and the revenues received from contract customers. PSNH and CVEC maintained that, because special contracts produce contributions to fixed costs that would otherwise be lost, all customers benefit and therefore all customers should share in the lost revenue. Absent special contracts, PSNH contended that it is highly likely that the load served under those contracts would no longer exist because the customer would have installed generation, gone out of business, relocated outside of New Hampshire, or not located in New Hampshire in the first place. The OCA, CRR, and Manchester maintain that shareholders should suffer the financial consequences of special contracts because they are the primary beneficiaries of the pricing strategy. Further, the OCA notes that special contracts were entered into with no assurance that non-contract customers would fund the revenue losses.

In order to allocate cost and revenue responsibility among the divested companies which result from this Final Plan, we believe it is necessary to unbundle existing contracts as well as any contracts which may be approved between the date of this plan and the implementation of retail choice.[29](51)

Given the amount of the load served under special contracts, and given the regulated nature

of transmission and distribution companies, it is essential that the price of each unbundled service component be known and approved in advance. It is also important that we identify the contribution to stranded costs paid by special contract customers and, to the extent this contribution is less than that paid by non-contract customers, determine who shoulders the difference. Absent this determination, we could not verify the exact amount of stranded costs to be recovered from non-contract customers.

We believe price discounts should not be applied to the transmission or distribution components of the unbundled rates. The need for such discounts arises largely because of high generation costs (especially for PSNH), not because of high transmission or distribution costs. Accordingly, the price discount in any special contract shall be reflected in the stranded cost component of the equivalent unbundled rate.

With respect to the issue of who shoulders the difference between the revenues received through contracts and the revenues that would have been received had the contracts not been approved, we note at the outset that we are precluded by RSA 378:18-a, I from assigning that difference to non-contract customers unless we determine that such an assignment is equitable and in the public interest.[30(52)] It is also worth noting in Order No. 19,889 in DR 89-244 we

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observed that:

> "NU and its investors, not New Hampshire ratepayers, bear the risk of optimistic sales projections over the Fixed Rate Period\&... . unless the floor of the ROE Collar is triggered."

In Order No. 22,234 in DR 96-077 we stated that the above observation applied only to base rates during the Fixed Rate Period and not to the FPPAC component of retail rates. That is, the risk of under recovery of FPPAC costs resulting from the loss of sales is on customers and not PSNH. For this reason, in the past we have found special contracts to be in the public interest in part because they benefit shareholders and contract and non-contract customers during and after the Fixed Rate Period. At no point, however, did we state or suggest that it would be in the public good to assign the revenue shortfall to non-contract customers. If the parties had requested that in addition to approving the contracts we also considered allocating the revenue shortfall to non-contract customers, we believe many of the contracts would not have met the public good standard; and, therefore, we would have been compelled to deny the parties' requests. In fact, we believe it is inequitable to require captive customers to pay not only their allocated share of stranded costs but also the share allotted to customers who are fortunate enough to have realistic energy supply alternatives. Accordingly, to the extent unbundled special contracts contain lower stranded cost charges than the charge in the regular unbundled tariffed rate, we direct utilities to credit the total annual revenue shortfall to the revenue side of the stranded cost recovery account described in Section V.E. below.

With respect to the issue of who supplies the energy for these special contracts, we agree with PSNH that these contracts are obligations of the franchised utility and should remain so after restructuring. We also believe it is appropriate that the distribution company assume the obligation to supply the energy requirements of customers served under these contracts and direct the distribution company to include in its compliance filing a plan for procuring the power needed to meet those energy requirements.

STRANDED COSTS

Origin of Stranded Costs

[37-39] A critical issue in restructuring the electric industry concerns the sunk costs not recovered through market-based prices. The existence of these above-market costs is attributable to a combination of factors, including technological developments in generation which reduced capital and operating costs, lower fuel market prices, utility load forecasts that led to excess generating capacity, public policy initiatives that have increased utility costs, and bad or unfortunate management resource decisions. Consequently, if retail consumers are allowed to purchase electricity at market prices, a portion of the sunk costs may become unrecoverable or "stranded."[31](53)

Clearly, there is significant disagreement over the relative responsibility for the conditions contributing to above-market generation costs. This disagreement over responsibility leads to differing opinions as to who should bear the financial burden if retail competition results in significant unrecoverable costs. Although we recognize that traditional regulation of prices, and the necessary adjuncts to price regulation, limit the independence of utility management compared to management in unregulated businesses, it is our view that New Hampshire electric utilities' historical prerogative to make resource decisions have not been significantly compromised by legislators or regulators.[32](54)

Responsibility for the resource decisions which led utilities to acquire assets which are now or are likely to become uneconomic must be determined on a utility specific basis. These determinations will likely require investigations in order to evaluate the respective roles of utility managers and regulators. Where management is found to be primarily responsible for those decisions, recovery of the related stranded costs will be subject to the standards which we establish below. In contrast, where we find that

management discretion over resource decisions was either reduced significantly or eliminated by government mandate, utilities will be provided an appropriate opportunity for full recovery of the related stranded costs.

Thus, a utility's cost relationship to the regional average is not determinative of our treatment

of its stranded costs. Rather, the regional average benchmark is one element in the total effort to balance the interests of ratepayers and shareholders. Its influence on the assignment of stranded cost is appropriate because it is one measure of the relative success of discretionary decisions by management.

Definition and Measurement
Defining Stranded Costs

Some definitions of stranded costs focus on costs embedded in current rates while others include approved costs that have been deferred for future recovery (*i.e.*, regulatory assets). Other definitions include any prudent and verifiable utility investment, commitment or expense not yet recovered and unlikely to be recovered in a competitive generation market. Still others limit stranded costs to those costs that were incurred as a direct result of the regulatory regime at the time they were incurred and not as a result of any discretionary action by utility management.

We find that the most appropriate definition of stranded cost is "net" sunk generation cost (including generation-related regulatory assets) that ordinarily would not be recovered if retail consumers were allowed access to alternative generation resources.[33(55)] This definition does not encompass the potential above-market value that may exist in distribution assets, which we discuss at greater length when we address the issue of mitigation. Expressly excluded from this definition are the variable costs of generation and all fixed costs which can be avoided through prudent utility actions. The excluded elements include employee early retirement and retraining costs, since the incurrence of those costs is discretionary. Also excluded from the definition of "net" sunk costs are generation-related deferred tax liabilities, which are taxes that have already been paid by customers. Deferred tax receivables, on the other hand, are taxes yet to be paid by customers and therefore shall be included in the definition. Consistent with RSA 374-F:, IV, eligibility for stranded cost recovery will be further restricted to: (a) obligations and commitments made prior to May 21, 1996, the effective date of the restructuring legislation, (b) Commission approved renegotiated commitments; and (c) Commission approved new mandates.

Alternative Measurement Approaches

There are numerous methods to measure stranded costs, but most can be organized along three conceptual dimensions: bottom-up or top-down, *ex ante* or *ex post*, and administrative or market valuation. Bottom-up approaches require stranded costs to be calculated for each generation-related asset, whereas top-down approaches typically involve calculating the difference between the aggregate value of all utility assets under regulated prices and the value under market prices. The most common top-down approach is to calculate the net lost revenue from retail access based upon the difference between a utility's projected embedded generation costs and market prices. *Ex ante* approaches estimate stranded costs prior to the introduction of competition while *ex post* approaches rely on market valuation of assets subsequent to the introduction of competition. Administrative approaches use estimates of market prices to determine what portion of book value is stranded, whereas market approaches use actual market prices of the assets in question.

Proponents of top-down approaches argue that they allow for the collection of all prudently incurred, verifiable, non-mitigatable stranded costs, and that bottom-up methods significantly increase the complexity of the stranded cost calculations. Critics point out that because specific stranded assets are not identified, regulators may find it impossible to verify that: (a) a particular claim is legitimate, (b) the underlying costs were incurred prudently, or (c) mitigation efforts were adequate.

Opponents of administrative approaches note that they require the use of large quantities

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of data, raising the prospect of endless disputes over whose expert has the best prediction of the future price of electricity. A major determinant of the value of a generating asset is the future price of electricity. However, critics argue that uncertainty over fuel prices, available generating capacity, sales growth and a multitude of other factors make future electricity prices highly unpredictable. An unrealistically low estimate of the future price of electricity can significantly increase stranded cost estimates by understating the value of a utility's assets, while an unrealistically high estimate can place shareholders at risk. Proponents of administrative approaches respond that the uncertainties inherent in the estimation of future electricity prices can be alleviated by periodically reconciling estimated and actual prices.

As an alternative to administrative approaches, the value of generation assets can be determined through sale or spin-off. Potential investors in a competitive market will assess the future cost and price of energy, future site value, and potential improvements in unit performance, and make their decisions based on those assessments.

Opponents of sale or spin-off point to several disadvantages. One is that the value of the generation assets could be adversely affected by the immaturity of the competitive generation market. Another is that sale or spin-off, unlike administrative approaches, do not provide for reconciliation and therefore expose ratepayers to paying too much for assets that subsequently fall in value.

Another potential disadvantage is that the sale price could be affected by the amount of the utility's assets that are to be sold over a given period. For example, if all of a utility's assets were sold at once, the market for generation assets could be flooded, thus lowering the sale price and increasing stranded cost estimates. To avoid "fire-sale" prices, a phased approach is recommended. Others argue that the "flooding" analogy is defective because a disposition of utility assets merely changes the ownership of the assets in the market; it does not change the amount of assets. Under this thinking, "flooding" is the proper term only when new supply is injected into the market without a corresponding increase in demand. That is, it is one thing for prospective buyers to view a sale as a "distress" sale and bid low for that reason; it is another to label the market "flooded" when in fact no new assets have entered the market.

Proponents of market value approaches, such as Cabletron, argue that such approached capture "hidden value" that cannot be recognized in an administrative determination, and

therefore tend to minimize stranded costs. These "hidden" values may include:[34](56)

the value of the site (including environmental permits, connection to transmission grid, deep water access, expansion potential including non-generation uses);

the potential for unit repowering or refurbishment;

exploiting value added or cost reduction potential through the buyer's particular strengths (e.g., fuel supply expertise, operations expertise, power marketing expertise);

opportunities to build market share within a region or in a new market;

opportunities to acquire capacity in regions where the buyer believes capacity will ultimately become short;

balancing an existing portfolio (fuel diversity, regional diversity, technology mix, etc.);

access to low-cost capital (e.g., equity markets, offshore resources, etc.);

favorable tax positions;

a bullish perspective on the future value of power; and

the value of brand names, marketing programs, creative and experienced management teams, etc.

Cabletron believes that any market valuation technique that falls short of a full sale (such as a partial spin off or sale of some, but not all, assets) could result in depressed market values and may not be an accurate measure of stranded costs. Finally, several parties noted that the sale of assets removes the need to determine the residual value of those assets after stranded costs have been recovered.

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After considering these arguments, we continue to believe that the sale or spin off of generation assets, to an independent company or to shareholders of the present utility who become the owners of a new and independent company, is the most accurate and straightforward way to determine their worth. We are also persuaded that such sale or spin off captures value not recognized by administrative approaches, including the residual value of generation assets. In addition, as discussed above, such sale or spin off achieves the important goal of eliminating vertical market power.

In contrast, administrative measures which rely on long term forecasts have been very inaccurate in the past. Conditioning stranded cost measurement on such forecasts for any appreciable length of time exposes all parties to inequitable treatment. Longer term reconciliations do little to remedy this problem since they will rely on arduous technical evaluations which attempt to specify a unique market price. As in other markets, price is a

function of many factors, *i.e.*, contract duration, supply guarantees, security of revenues, promotional activity, risk mitigation strategies of both buyer and seller, etc. Consequently, we can realistically envision a continuing dispute on measuring a single and unique market price, even retrospectively.

Despite our strong preference for the divestiture of generation and other competitive functions, as discussed in Section IV.C.2.b. above on vertical market power, we have not required companies such as CVPS, NEP, and UPC to sell the competitive portions of their utility businesses. We have simply made it a condition that such companies cannot sell at retail in the service territories of their affiliated distribution companies if they choose to remain players in the competitive generation market. In such instances, we recognize that administrative approaches to valuation of assets may be used.

Divestiture Filing Requirements

A plan to sell or spin-off assets and contracts, however, does not in and of itself provide the best value without regard to timing and method of sale. The asset sales, as well as the contract sales, shall be subject to an auction. The timing and form of the auction must be submitted with the plan for sale or spin off. To the extent possible, we will consider the effect of these auction(s) along with the expected activities of the other New England states. In the event that a company chooses a spin-off of assets rather than an outright sale, its plan must provide the mechanism whereby any stranded costs borne by the regulated company after the spin-off are minimized and capture the appropriate level of value from the generation company.

To ensure the maximum possible value, each utility is directed to consider the appropriate mix of asset sale, business unit sale, or business unit spin-off. We do not presume to know the best structure for each utility nor the best timing of such sales. We intend to evaluate each sale proposal to insure that the auction process is non-discriminatory as well as designed to produce the maximum possible value. These criteria will shape the timing and specifics of the bid process. If, for example, a utility chooses not to auction on an asset by asset basis, it shall be required to demonstrate that greater value is much more likely to be realized by a business unit sale or spin-off. A company may propose a full or partial spin-off of assets. In this case, the financial arrangement between the existing and the newly formed, unaffiliated company must be fully identified. Specifically, all contractual, accounting, and service obligations of each company must be specified. In the case of a full or partial spin-off proposal, the company must identify exactly how the value of a newly formed generation company will be able to reduce or eliminate stranded cost liabilities. Any remaining non-mitigatable stranded costs should be a candidate for securitization. In all cases, we will consider the level of mitigation as a material input to the return on capital associated with stranded costs. If there is no appreciable mitigation either attempted or gained, we will consider market values realized elsewhere as a proxy.

We take a serious interest in and will review management plans for divestiture. Any approval of such plans will be conditioned on the express understanding that utilities are not insulated from the associated risks.

Compliance Filing Requirements

In order to bridge the gap between the commencement of competition and the end of the two year period allowed for divestiture, each utility shall include in its compliance filing a plan to separate generation and aggregation/marketing from transmission and distribution. The transmission and distribution company shall not perform aggregation/marketing services for its affiliated generation company. In addition, the generation (and aggregation/marketing, if any) affiliate shall at a minimum be located in a different part of the building than the transmission and distribution company. The name of the generation/marketing affiliate shall have no relationship or similarity to the name of the transmission and distribution company or the holding company. Further, each affiliate shall keep separate finances and books of account subject to FERC requirements and shall conform to the Uniform System of Accounts and Generally Accepted Accounting Principles. With respect to accounting, each utility shall allocate its existing electric plant accounts, operation and maintenance (O&M) expenses, depreciation, working capital, taxes and tax reserves, cost of capital, and revenue and revenue credits to the books of the newly formed generation, transmission and distribution companies.

Mitigation of Stranded Costs

[40-42] RSA 374-F requires utilities to pursue the maximum mitigation of stranded costs. In the Preliminary Plan, we set forth a number of suggested mechanisms through which mitigation could be pursued. With our adoption today of a policy requiring the complete separation of competitive and non-competitive services by the year 2000, the emphasis in mitigation shifts to the following: (1) maximizing the value of generation assets and contracts through sale or spin-off; (2) the financial management of net stranded costs; and (3) the application of other company value to reduce residual stranded costs.

Divestiture of Assets and Contracts

As noted in Section V. B., we intend to review and approve plans to auction, lease or spin-off generation assets and contracts. The review is intended to establish the sale mechanics and timing which have the highest likelihood of securing the maximum value. Since it is likely that many older units, because of their largely depreciated asset base, as well as their strategic site value, will produce positive value, the proceeds either in a single payment or over a series of payments will be used to offset stranded costs. In situations where units have going forward costs in excess of projected or actual revenues, prudent management would suggest that the unit be retired and any residual value from equipment or site be obtained.

In the case of contracts, after all cost effective and legally permissible buydowns or buyouts

have been completed, any residual costs must be reduced to minimum practical levels. In cases where a company has contracted to receive the output of a unit, that output should be sold or brokered on a performance basis to a non-distribution company. To the extent that more lucrative options have not been exercised, mitigation will be deemed to be incomplete. Examples of mitigation in the separation of generation and regulated functions include such items as initially brokering a unit's output and deferring a sale of a contract or non-utility generator output which is above market today will continue to be so in the near term. Since the discount or payback period of investors is likely to be shorter than the stranded cost recovery periods, the timing of the output sale vis a vis the related asset (contract) could have material effect on the stranded cost level and consequently be correctly viewed as a mitigation strategy.

The sale of owned generation presents another set of reviewable mitigation strategies. The value of owned generation should be considered in the context of unit, station or business unit sales. Consideration will also be given to minimizing stranded costs by bidding through unaffiliated third parties the output of owned generation to companies providing standard offer services to retail customers. In the case of nuclear units or nuclear entitlements, the companies are obligated to seek mitigation using all

reasonable means. In all instances, companies will not be allowed to add the going forward costs of nuclear operation to stranded costs, with the exception of decommissioning costs. We believe the public good is served by allowing distribution companies to recover decommissioning costs through stranded cost charges. We reach this decision in large part because we believe it is consistent with the approach outlined in the current law on decommissioning. In RSA 162-F:1 the Legislature recognized that it must "ensure the safety and well-being of the public and future generations" and that it is "in the public interest to require that adequate fiscal responsibility be established to ensure proper and safe decommissioning\&... ." Moreover, although the current law makes the owners of the facility responsible for making the regular monthly payments into the decommissioning fund, it requires the Commission to permit the utility to charge customers on a per kWh basis the amount that is paid into the fund. RSA 162-F:19, II and III.

We also note, however, that under RSA 162-F:22 if the facility closes voluntarily, is ordered to be decommissioned, or is no longer generating electrical energy and decommissioning should be commenced, the customer charges are to be discontinued. The Nuclear Decommissioning Finance Committee then has several options available to it on how to cover the expenditures of decommissioning, including, but not limited to, a resumption of customer charges, payments by the owners, and federal and state revenue sources. We note these options because it appears that the Legislature did not necessarily believe that the entire cost of decommissioning ought to be paid by customers if the facility shuts down prematurely. This has some bearing on the issue of whether it is appropriate to include decommissioning expenses in stranded cost charges.

While we believe that the approach that is the most consistent with the current law is to include the recovery of payments made into the decommissioning fund in stranded cost charges,

the Legislature has pending legislation that would do otherwise. We have therefore listed the decommissioning law in Appendix C as one of the statutes which we believe the Legislative Oversight Committee on Electric Utility Restructuring ought to review.

Securitization

Where stranded costs arise from assets which have no intrinsic market value, such as regulatory assets, mitigation involves primarily financial strategies. These strategies include write downs, reamortization, and securitization. While write downs and reamortization (*i.e.*, changing the timing and return on collections) have been traditional approaches and need little discussion here, securitization is a relatively new business technique and even newer to the electric industry. The objective of securitization is to reduce stranded cost charges by off balance sheet financing with higher debt security and consequently lower financing costs. Additionally, to the extent that an equity component is leveraged through securitization, a significant reduction in financing cost and income tax liability is realized. Often securitization will reamortize the indebtedness as well.

Several important conditions to this form of mitigation must be kept in mind. The types of costs considered for securitization should be limited to: costs associated with assets having no market value; costs obligated to be borne by customers through prior agreement; costs that have been guaranteed in some form; costs which are being or otherwise will be financed with lower securities rating than that available with securitization; and costs which cannot otherwise be reduced or be subject to any future disallowance. The monies utilities receive from sale of securities (presumably from a trust holding the rights to collect the income stream associated with the regulatory asset) will improve its balance sheet and most likely its credit rating. This should be viewed as a benefit to be shared with consumers now obligated to provide sufficient revenues for the securitized regulatory assets without any ability to further mitigate or reduce this cost over its life.

For securitization to succeed as a mitigation strategy, several additional areas must be considered: the authority and mechanisms for securitization are best derived pursuant to

specific enabling legislation; there should be explicit authority to use the securitization funds for mitigation purposes and preclude any other use; and if securitization funds are being used to repurchase equity, these funds should be limited to the book value of the equity. To the extent that market value is higher than book value, the difference should be made up by utility funds. We also note potential problems with accounting and tax treatment raised during the PSNH interim stranded costs hearings as being possible barriers to the successful use of securitization. Transcript, Day IV, PSNH at pp. 154-155. Finally, we note that recent merger and acquisition activity has promised significant savings for the electric industry. While there is no specific expectation of this activity in New Hampshire, securitization does institutionalize a cost which

could otherwise be mitigated or absorbed in a reconsolidation of electric companies. Therefore, we recommend that the Legislature proceed cautiously in its investigation of securitization.

Stranded Cost Recovery

Introduction

[43-53] Once stranded costs are determined, we must establish appropriate levels of recovery in order to set unbundled charges. In setting these charges, we must be guided by RSA 374-F which requires us to determine rates which are "equitable, appropriate, and balanced and in the public interest." *See* RSA 374-F:3, XII(a).[35](57) We must also be guided by the United States and New Hampshire Constitutions. In interpreting the phrase "equitable, appropriate and balanced," we note that the principal goal of the restructuring legislation is to allow customers to benefit from the forces of competition. The Legislature also stated that restructuring should produce rates that "to the greatest extent practicable \&... approach competitive regional electric rates." RSA 374-F:3, XI. This suggests that rate differences between New Hampshire utilities and investor-owned utilities in other New England states, which puts New Hampshire at a competitive disadvantage relative to its neighbors, should be a key consideration in the setting of stranded cost charges.

The notion that utilities with rates close to the New England regional average should recover a higher percentage of stranded costs than utilities with rates which exceed the average is consistent with the "equitable, appropriate and balanced" standard. As explained in the Legal Analysis, shareholders of utilities with above-average costs have no reasonable expectation of being able to recover costs, year after year. Accordingly, while ratemaking provides for rates to vary among utilities for a variety of reasons, including differences in load density, availability of low cost fuels, and mix of customers, it should not automatically provide for the recovery of costs which vary from the average for reasons within management's control.

The use of regional rates as one of the elements in setting stranded cost charges also is supported by the fact that each utility in the region historically operated under many comparable economic, climatic and regulatory conditions. For instance, each electric utility operated within the same regional power pool, had access to the same fuel markets, had the same investment opportunities, and was subject to the same federal laws and regulations.

After identifying those utilities with rates above the regional average, any final determination of stranded cost recovery must consider the events which produced those differentials in order to allocate cost responsibility fairly.[36](58) Additionally, the setting of such charges must consider the potential financial impact on utilities and the potential anti-competitive consequences.[37](59)

While we have determined as a matter of policy that utilities with rates exceeding the regional average will not be authorized to recover all their costs, this approach, like any rate decision, must comply with the United States and New Hampshire Constitutions. In the Preliminary Plan, we suggested, as a general matter, that shareholders did not have a reasonable expectation of being able to recover costs associated with rates above the regional average, regardless of the magnitude of the deviation. Nonetheless, recognizing that shareholder

expectations may vary by utility, we provided

an opportunity for each utility to explain why its shareholders did have a legitimate expectation of being able to recover all past costs. Based on our analysis of the record on this issue, we continue to believe that shareholders of New Hampshire utilities did not have a reasonable expectation of full recovery. We detail our reasons in the Legal Analysis, Part I.A.

The remainder of this section responds to the major public policy arguments advanced by utilities in support of full stranded cost recovery. These arguments fall into two broad categories, namely equity and economic efficiency.

Equity

Less Than Full Stranded Cost Recovery Is Fair

Several utilities argue that the issue of stranded cost recovery raises inescapable questions of fairness. They contend that utilities have undertaken large investments and made contractual commitments in fulfillment of their service obligations and have accepted limitations on allowable returns in exchange for the promise of a reasonable opportunity to recover their prudently incurred costs. These utilities also note that state and federal laws have imposed on them additional burdens to accomplish public policy objectives. For example, PURPA imposed obligations to purchase power from QFs at rates which turned out to be well above market. The Commission added C&LM and low income customer obligations that further increased the above market costs. They further assert that traditional ratemaking is symmetrical in the sense that investors are sheltered from the risk of large losses and correspondingly denied the opportunity for big gains. Customers, on the other hand, have for the most part enjoyed the fruits of economically successful utility ventures and underwritten the costs of the economically unsuccessful ones. A failure by regulators to ensure recovery of stranded costs would, they believe, represent an inequitable abandonment of that symmetry.

We believe fairness is an important consideration when determining the level of stranded cost recovery, but not just from the standpoint of utility shareholders. There are equally strong fairness arguments that support the case against full recovery. For one, utility franchises were granted in order to accomplish economic results. Government policymakers believed that by restricting entry to specific markets they could create the conditions for the use of larger and more efficient equipment and, in turn, lower average costs. In return for monopoly franchises, utilities accepted the obligation to serve and the right of states to regulate prices. While some utilities have managed to perform at or below average cost despite the alleged additional burdens, others have not. Given the state's high electric rates, the proliferation of special contracts, the accumulation of regulatory deferrals, excessive capacity surpluses, and utility bankruptcies, we find the use of a regional average to be appropriate. In short, above average

cost utilities have failed to deliver on the promise of efficient electric service.

The Obligation To Serve Does Not Cause Costs To Be Above Average

The Commission recognizes that utilities incur obligations that non-regulated companies do not. Unregulated suppliers may enter or exit markets as they please and may even refuse to deal with specific customers. In competitive markets, customers may purchase only what suppliers are willing to sell voluntarily. Utilities on the other hand are obligated to make investments in plant and equipment in order to serve all customers who request service. Given the high variability of demand and the fact that electricity cannot be stored economically, the obligation to serve on demand forces utilities to construct facilities which often are long-lived and capital intensive. For this reason, we do not share the view that utilities should be treated like unregulated companies and denied recovery of all costs which cannot be recovered through market prices.

On the other hand, a regulatory obligation to serve, in and of itself, does not cause a utility's costs to be above average; otherwise, all utilities, like all the children in Lake Woebegone, would be "above average." In granting a franchise, and in permitting the franchise to

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remain, the Commission is obligated to ensure that customers are not burdened by excess costs. We believe the regional average rate approach fairly balances the expectations of shareholders and customers in that it provides for the recovery of costs substantially in excess of market prices.

The Existence of Above Market QF Contracts Requires An Adjustment To The Regional Average Rate Approach

CVEC and PSNH contend that it is unfair to apply the regional average rate approach to utilities whose resource portfolios contain substantial amounts of above market QF power. Absent those mandated purchases, CVEC and PSNH assert that they would not now be faced with the prospect of cost disallowances because their rates would be lower than or substantially closer to the regional average. From an equity standpoint, we disagree. CVEC and PSNH incorrectly assume that, but for the mandate, their retail rates would be lower than they are today. PURPA requires a utility to purchase energy from QFs at the utility's avoided cost, *i.e.*, the cost it would have incurred but for the purchase. Consequently, provided the utility accurately estimated the cost of its least cost resource and reflected this cost in the price paid to QFs, retail rates would be the same with or without the mandate.[38](60)

However, from a legal standpoint, we are required by RSA 374-F to authorize recovery of these costs, and therefore must adjust our implementation of the regional average rate approach

to provide for full recovery.

Economic Efficiency

Less Than Full Stranded Cost Recovery Is Not Economically Inefficient

Traditional ratemaking can be considered to be inefficient for two main reasons. First, the "cost-plus" nature of rate-of-return regulation tends to provide inadequate incentives to minimize costs resulting in inefficient production processes. Second, traditional ratemaking is known to promote allocative inefficiency because utilities can charge prices which differ substantially—in level and structure—from efficient marginal cost based prices.

While many parties to this proceeding believe that competition will improve on traditional ratemaking in both respects, GSEC and CVEC see the potential for short term losses in productive efficiency if customers are allowed to avoid payment of sunk costs. Their concern stems from the belief that customers are demanding access to competitive suppliers not because those suppliers have more efficient generating facilities but because of the gap between the embedded cost of generation and the generation costs of competitors. If customers are given access to competitive suppliers and are allowed to avoid payment of utility sunk costs, these utilities assert that the departing customers will choose suppliers that offer the largest rate reductions instead of those that have the most efficient generating units. To avoid this outcome, GSEC and CVEC recommend that utilities be allowed to recover 100% of their stranded costs. This, they say, will promote efficient use of existing generation resources, and will discourage over-investment in new generating facilities.

Although we agree with the implication that customers choose suppliers based on self-interest rather than the interests of society, we reject the argument that less than full recovery of stranded costs necessarily creates production inefficiencies.[39(61)] GSEC and CVEC failed consider the fact that the dispatch of generating units under NEPOOL control is currently based on the marginal costs of each unit and therefore is unaffected by costs incurred or prices charged at the distribution level. Stated differently, the wheeling of power from a NEPOOL resource to a retail customer is a paper transaction involving the flow of dollars, not electrons, and has no negative implications for productive efficiency.

More generally, the idea that economically efficient generating assets will not be utilized if less than full recovery is allowed is contrary to the conventional wisdom on competitive markets. That is, potential competitors will actively and consistently seek out opportunities to improve their generating capacity and to utilize

fully any low cost generating assets that might be available. Having said that, it is conceivable that increases in costs associated with the inefficient design of market institutions,

such the ISO and regional power exchange, could offset the gains from introducing competition.

Finally, proponents of full recovery argue that an efficiency loss will occur if full recovery is denied because investors will view the incumbent utility as more risky and demand a higher return on their investments. We reject this argument for the following reasons. First, functionally separate transmission and distribution companies under this Final Plan will be afforded the opportunity to recoup all of their embedded costs. Consequently, the ROE demanded by investors in such companies should be lower, not higher, than the ROE demanded by investors in more risky combined generation and T&D companies. Secondly, while it is likely that the ROEs for divested generation companies will be higher than for combined companies, we expect these to be outweighed by the benefits of dynamic efficiency.

In summary, less than full recovery of stranded costs does not create production or investment inefficiencies. On the contrary, a prohibition on the recovery of above average costs would tend to promote effective competition and therefore economic efficiency.

Full Recovery Of Stranded Costs Can Have Anti-Competitive Consequences

Although the primary purpose of RSA 374-F is to inject competition into the industry, several parties have warned that a policy of full recovery could have significant anti-competitive effects and therefore may violate the antitrust laws. In a competitive market, any obsolete or uncompetitive plant and equipment is disposed of at market value, with the difference between market and book values absorbed by the firm's shareholders. This difference cannot be passed through to customers since, in the competitive market, firms can only charge the market price. As a result, firms either earn lower profits or go out of business and their assets are sold. A policy of full recovery would, they say, tend to frustrate this important function of a market economy, particularly if the charges are large relative to other unbundled components.

We believe that the recovery of substantial costs is likely to postpone or completely prevent effective competition by limiting the ability of potential entrants to charge prices which contribute to the recovery of invested capital. Some might argue that the postponement of effective competition results not from any anti-competitive behavior by the incumbent but rather from the incumbent's sunk costs and surplus capacity, a situation which does not differ from any other competitive market, where the first entrant to have sunk costs has an advantage. In a competitive market, the incumbent who drops his price to discourage entrants forgoes revenues and profits. This adverse result puts some bounds on the incumbent's behavior, because it must earn enough to pay down the debt associated with the sunk costs. The incumbent utility with guaranteed stranded cost recovery is in a very different position. When an affiliated supplier of a regulated distribution company drops the price of electricity, the supplier does not risk sunk cost recovery because the combined companies are assured of recovering those costs. In other words, the affiliated supplier can discourage entry at no cost. That is why government-mandated stranded cost recovery is inconsistent with effective competition.[40(62)]

Recovery Mechanisms

Any recovery mechanism must allocate recoverable costs fairly and consistently among rate classes. Consistent with RSA 374-F:3, XII(d), utilities shall allocate recoverable stranded costs to all customer classes using existing cost allocation methodologies for generation assets. The resulting class costs shall be recovered from all customers (including new businesses) who receive delivery services from local distribution companies through usage based surcharges. We note that the legislation discourages the use of exit fees to recover stranded costs. RSA 374-F:3, XII(d).

Utilities are directed to establish a stranded cost reconciliation account for each customer class. Interest on any under or over recovery of

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this account will be calculated consistent with existing Commission policy.

While we continue to believe that stranded cost charges should be non-bypassable and nondiscriminatory, we believe the arguments for the application of such charges to self-generation customers who either abandon the grid totally or receive back-up/maintenance power services from competitive suppliers are less compelling. The opportunity to engage in self-generation and not purchase from franchised utilities has always been a fundamental right of New Hampshire's electric customers. Accordingly, the risks to utility shareholders from such actions have always been known, understood by the market and incorporated into the ROE allowed through the regulatory process. The imposition of stranded cost charges on self-generation customers would amount to double compensation to shareholders and discourage the development of alternate generation resources, an outcome that we believe is contrary to the promotion of the competitive market. Furthermore, it has not been our practice to impose exit fees or other forms of compensation on customers who choose to abandon the local utility through self-generation. The power supply component of back-up/maintenance service has traditionally been priced to recover only the marginal costs of generation. Nonetheless, in the interest of equity, we will allow distribution companies to levy per kWh stranded cost charges on such customers. However, distribution companies shall be prohibited from using demand or exit charges to recover stranded costs from self- generation customers who receive back-up/maintenance services.

With respect to the mechanics of levying stranded cost charges on retail customers who do not utilize distribution facilities, several parties encouraged us to aggressively assert that the sale of electricity at retail is subject to state jurisdiction. GSEC suggested including the customer's meter in the definition of distribution. Since every customer must have a meter, GSEC believes this definition would give us the authority to levy stranded cost or other surcharges on every retail customer.

The suggestion that we tie the obligation to pay stranded cost charges to a definition of distribution which includes the customer's meter, regardless of its location, raises several concerns. First, it could restrict our ability to unbundle metering from other distribution- related services and prevent those services from being provided competitively. Second, by focusing on

specific facilities, we believe customers will have more rather than fewer opportunities to bypass stranded costs charges. For instance, customers served at high voltages might argue that their obligation to pay stranded cost charges can be avoided by acquiring unregulated metering services. Lastly, we think such a definition is unnecessary. As the FERC correctly observed in Order 888, "states have jurisdiction in all circumstances over the service of delivering energy to end users." For these reasons, we shall condition the right to buy at retail on the payment of designated stranded cost charges.

Interim Stranded Cost Charges
Introduction

[54-58] The Legislature directed the Commission to establish interim stranded cost charges for each utility which shall be effective for no longer than two years following the implementation of the compliance filings. RSA 374-F:4,VI. In setting these charges, we are required to apply essentially the same principles that will guide our final determination of stranded cost charges. Final stranded cost charges are to be determined in the context of rate case proceedings and must be: (a) "equitable, appropriate, and balanced," (b) "in the public interest," and (c) "substantially consistent" with the interdependent principles. RSA 374-F:3, XII(a) and (d). For purposes of setting interim stranded cost charges, however, the Legislature authorized us to make "preliminary" determinations on these issues. In addition, the Legislature expressly directed us to "[take] into account the near term rate relief principle." RSA 374-F:4, VI(a).

On October 16, 1996, we determined in Order No. 22,364 that the setting of interim stranded cost charges involved issues of fact and as a result would be the subject of adjudicative style hearings. Each utility was directed to

submit testimony on the level of its stranded cost charges for the two year interim period. The parties were allotted eleven days to address the utility-specific issues and two days for generic issues. An additional two days was set aside for our consultant, La Capra Associates, to be examined on utility-specific and generic issues raised in its report "Estimating Stranded Costs for New Hampshire Electric Utilities."

The purpose of this section of the Final Plan is to address the two generic issues that were raised during the interim proceedings: the regional average rate approach to quantifying stranded costs and the market price of electricity. A hearing on these issues was conducted January 27-30, 1997 at which testimony was presented by witnesses for Unitil, GSEC, CVEC, PSNH, GSHA, Cabletron, Manchester, NHMA, Freedom, OCA and La Capra. Our findings, which are presented below, have been inserted into the five interim stranded cost orders (one for each utility) issued contemporaneously with this Plan. The interim orders also contain the positions of the parties on utility-specific issues and our analysis and findings.

Positions of the Parties
Market Price

As noted above, a number of the parties presented testimony and made recommendations on the appropriate market price to use to calculate interim stranded cost charges. The table below summarizes those recommendations:

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

Market Price Forecasts (/kWh)

	1998	1999
GSEC	2.63	2.75
PSNH	3.07	3.26
Manch	4.58	4.76
La Capra	4.14	4.26
Unitil	2.80	n.a.
CVEC	2.50	2.50
OCA	3.39	3.74

Mr. La Capra estimated the future price of electricity in a deregulated competitive generation market modeled on NEPOOL's vision of a restructured industry. The market price projection incorporates both the price of energy and of capacity. The price of energy was estimated to be equal to the weighted average system marginal energy cost derived from hourly energy bids submitted to the Independent System Operator. All units dispatched by the ISO in any given hour were paid the hourly market clearing price times each unit's hourly generation.

Mr. La Capra testified that producers will submit energy bids at their variable cost and modeled this dynamic for the NEPOOL region using unit-specific cost and operating data for each major generating unit. Smaller units were aggregated and modeled as 100 and 200 MW blocks.

According to Mr. La Capra, market energy prices will depend significantly on fossil fuel prices. His base case scenario utilized the fuel price projection from the U.S. Energy Information Administration's (EIA) 1997 Annual Energy Outlook. The high and low case scenarios were based on a 3% per year escalation of NYMEX 1998 futures and the 1996 summer forecast of the Massachusetts Electric Company respectively. The base case fuel scenario resulted in energy prices starting at $33.76/MWh in 1998 rising to $39.38/MWh in 2002 and $47.78/ MWh in 2007.

In response to criticism of the Annual Energy Outlook, he stated that the current fuel price forecast for the interim years has been reduced significantly from previously high levels as the EIA's staff has become more proficient in predicting energy markets.

Mr. La Capra stated that the projection of capacity prices is more difficult because discussions on how the capacity market will be administered are just beginning to solidify at the regional level. He believes that the capacity market will consist of two broad capacity products:

installed capacity and operable capacity. In a deregulated, competitive capacity market in which short- and long-run system reliability is to be maintained, he testified that the price of

capacity will be based on the going-forward cost of generation that suppliers are unable to recover through the energy market, *i.e.*, the residual cost. After ranking residual costs from lowest to highest, Mr. La Capra determined the annual system cost of capacity as the residual cost of the last kilowatt needed to satisfy system capability requirements, capped at the long- run marginal capacity cost.

Mr. La Capra assumed that simple combustion turbines for peaking duty and combined cycle units for baseload and intermediate duty would be constructed to meet reliability requirements. He also testified that the capital cost of new generation units reflected the full cost including planning, siting, labor and various compliance costs. The real-levelized cost of power from a new combined cycle unit in 1999 is estimated at about 4.1¢/kWh at 90 percent capacity factor. The real-levelized carrying cost of a new combustion turbine in 1999 is estimated at $2/kW-year. Mr. La Capra's supply/demand analysis indicates a modest summer cumulative capacity need of about 200 MW by 1998, increasing to about 1,200 MW in the year 2000, and to more than 2,000 MW by 2004.

The average market capacity price for the base case scenario in 1998 was projected at about $36/kW-year, which translates to $7.60/MWh for load following power, including reserves. Mr. La Capra' s average all-in market price for electricity for the base case scenario in 1998 was $41.37/MWh.

Ms. Brown for Manchester testified that the use of short-run market prices to establish stranded cost charges is inconsistent with the legislative goal of full and fair competition. According to Ms. Brown, such an approach produces a "circular logic" or "chicken and egg" situation whereby a utility's stranded cost charge is based on a market price which is, in turn, affected by the level of stranded cost recovery. One effect of this linkage is to encourage utilities to implement loss-leader pricing strategies to gain market share, sure in the knowledge that customers rather than shareholders will fund the resulting loss. She explained that this outcome is guaranteed if the Commission adjusts the interim stranded cost charge for variations in market prices relative to the prices used to calculate the charges.

To avoid this outcome, Ms. Brown suggested that interim stranded cost charges be determined based on a market price that is capable of sustaining the market. She recommended that the market price of electricity be based on a 10 year levelization of the all-in cost of a new combined cycle unit. Ms. Brown used the 1995 Summary of the Generation Task Force Long-Range Study Assumptions by the NEPOOL Generation Task Force, which provided the costs for combined cycle units. She estimated this cost to be 4.58¢/kWh in 1998 and 4.78¢/kWh in 1999 respectively, based on combined cycle units placed in service each year of the interim period. She subsequently revised those numbers downward in response to testimony from Mr. Sabatino.

Mr. Chernick for the OCA estimated the market price of electricity in 1998 and 1999 by interpolating known 1995 wholesale prices and the estimated all-in cost of a new combined cycle unit installed in 2003. His market price differed from that of La Capra Associates primarily because of differences in the price of capacity. In essence, Mr. Chernick disputed the conclusion in the La Capra report that the producer surplus would be shared equally among producers and customers. He believes that producers are more likely to receive all of the producer surplus and hence higher capacity prices.

Mr. Sabatino's market price estimate of 3.07¢/kWh in 1998 was based on eight wholesale power contracts entered into between 1995 and 1996. The prices in those contracts were adjusted to better reflect a product sold at retail in the years 1998 through 2001. These projections, according to Mr. Sabatino, are higher than the composite prices developed by the owners of Connecticut Yankee for the purpose of evaluating whether that plant should be retired.

Mr. Sabatino disagreed with the methodologies sponsored by witnesses Brown, Chernick and La Capra, which he believes produce prices that are too high by as much as 20% and 50%. He opposed conceptually the levelized market price approach used by Mr. Chernick and Ms. Brown, and was critical of Ms. Brown's assumption that the market in 1998

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would support the full cost of a new combined cycle at a time when most analysts believe the region will remain in surplus at least through the end of the century. Mr. Sabatino testified that the levelized approach would guarantee an under-recovery of costs in the interim years. He also testified that Ms. Brown mistakenly overstated the cost of the combined cycle unit by using out-of-date cost data from NEPOOL. Mr. Sabatino testified that because Mr. Chernick overstated the 1995 and 2003 prices, the extrapolated prices for 1998 and 1999 are high by about 30%. Mr. Sabatino attributed the error in Mr. Chernick's analysis to a high installed cost for the combined cycle unit, a high heat rate, a high fuel cost, and a low availability factor. Turning to the La Capra Associates study, Mr. Sabatino testified that the average heat rate used in the calculation of marginal energy costs is about 30% too high. A more appropriate number in his opinion would be about 10,000 BTUs per kWh. He also testified that Mr. La Capra double-counted the cost of producing spinning reserve and station service, and failed to take into account the fact that certain generating units are in the process of being converted to low cost natural gas.

Mr. La Capra responded that the wholesale market prices submitted by Mr. Sabatino are an inappropriate indicator of electricity prices in a fully deregulated market. According to Mr. La Capra, suppliers in the existing surplus NEPOOL market can afford not to recover through wholesale prices all of their non-fuel variable costs and all of the fixed capital costs because those costs are currently recovered through regulated rates. In a fully deregulated power market, however, suppliers will not have the luxury of recovering a portion of their going forward costs from captive customers. All going forward costs, including fuel costs, would have to be recovered through market prices.

Mr. Daly proposed to establish the market price of electricity by conducting a bi-annual auction of a load-following slice of Unitel Power Corp.'s power system. The slice of system would include energy, capacity and ancillary services. Mr. Daly estimated that his approach would produce a price in 1998 of 2.8¢/kWh. Cabletron strongly opposed Mr. Daly's proposal and argued that selling the contracts outright is the only way to maximize value and minimize stranded costs.

Mr. Lowell for GSEC sponsored a market price projection, which was prepared prior to the announced retirement of Connecticut Yankee, that is lower than the projections submitted by PSNH and La Capra Associates. The projection resulted from a simulation of the restructured NEPOOL system using the POLARIS model, with no-load and start-up costs added. Mr. Lowell disagreed with La Capra Associates regarding the inclusion in energy prices of certain operating costs and suggested that those costs would not be recovered in a competitive market. He also testified that technological developments in generation would reduce capacity costs and produce a lower cap on market prices than the one used by La Capra Associates.

Mr. Lowell testified that the difference between his price projection, *i.e.*, 2.63¢/kWh in 1998, and those submitted by others can be explained by differences in fuel forecasts, the expected availability of low cost power from outside the region, and the use of new low cost technologies to meet future capacity needs. He also noted that his price forecast is consistent with recent actual prices in the wholesale power market and in the New Hampshire and Massachusetts pilot programs.

Regional Average Rate Approach

Cabletron disagreed with La Capra Associates and most of the utilities regarding the meaning of RSA 374-F:3, XI. According to Mr. Weissman, the term "competitive regional electric rate" means future competitive prices once retail access has been implemented and not a retrospective look at regulated rates. This interpretation would require the Commission, in setting interim stranded cost charges, to take into account expected rate reductions in neighboring states related to industry restructuring.

Unitil disputed Mr. Weissman's interpretation and claimed that the Legislature intended the Commission to refrain from making decisions with respect to stranded cost recovery on the basis of speculation about what future rates

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might look like. GSEC also argued that his interpretation is contrary to the language and intent of the statute. Unitil also believes that the adjustment to average rates made by La Capra Associates to reflect differences in class mix among utilities is appropriate and should be approved.

Cabletron also argued that the approaches used by CVEC and La Capra Associates to

quantify stranded costs are fundamentally flawed. The correct method, according to Mr. Weissman, is to calculate the net loss over the life of the assets and to recover that cost through levelized charges.

CVEC asserted that the regional rate standard is arbitrary, inequitable and potentially counter to the rules of cost recovery. In developing the standard, CVEC claims that La Capra failed to adjust for many differences in the characteristics of utilities in the region. Without appropriate adjustments for these differing characteristics, CVEC believes the regional average rate approach will unfairly favor some utilities and unfairly disfavor others. CVEC also noted that La Capra Associates recommended rates are based on stale 1995 data.

PSNH objected to the regional average approach because it would allegedly violate the State's contractual commitments under the Rate Agreement and cause an unconstitutional regulatory taking of PSNH's property without compensation. In its initial written comments, PSNH contests the proposition that investors should not have had an expectation that they would be able to recover a return on their investment if doing so required above-average rates. According to PSNH, this contention lacks economic and factual support. The result of such an approach would, according to PSNH, initiate a downward spiral that would not end until all rates are set at the rate of the utility with the lowest rate.

Commission Analysis
Market Price

The La Capra Associates' study is the only study which attempts to project the competitive market price of electricity using NEPOOL's vision of a deregulated generation sector, its products and its pricing rules. This study combines specific operating data for existing units, NEPOOL's latest load and supply forecast, and recent unit retirements to produce what we believe to be a highly plausible set of market prices. We find Mr. La Capra's base fuel price forecast, on which his recommended energy price projection is based, to be reasonable and well within the range of fuel prices projected by GSEC and the futures market. In addition, his year of need for new capacity and associated capacity costs seem reasonable and, with the exception of GSEC, were not substantially challenged.

Our only significant criticism of the study is the implicit assumption that by 1998 all market participants must look to the market to recover their going forward costs. That is, suppliers will not have the option, as utilities do today, to recover some of their non-fuel variable costs through regulated rates. Existing sunk costs are assumed to be recovered elsewhere. Given the likelihood that some New England states will continue to regulate generation in 1998, we think there is a strong possibility that cost shifting will continue to occur and that price increases will be moderated somewhat. We also see a potential for certain large suppliers with good cash flows to lower market prices in an effort to buy market share. On the other hand, if the Millstone nuclear units do not return to service in 1998 there is likely to be a corresponding increase in prices. On balance, we find Mr. La Capra's analysis to be superior to the models offered by PSNH and GSEC, which contain approaches that we consider to be reflective of regulated market prices.

The price projection offered by PSNH is, in our opinion, less plausible for several reasons.

First, it was derived from a market in which discounting has been extreme partly because some of the market costs have been recovered elsewhere. To paraphrase Mr. La Capra, the likelihood of discounting the full market is a lot less than having a large portion of that market fully paid for through regulated rates and discounting the remainder. Second, Mr. Sabatino's model takes no explicit account of the opportunity to sell capacity and other ancillary products in the restructured NEPOOL

market, even though Mr. Noyes' exhibit SJWN-1 projects a $50 million annual cost associated with the provision of such ancillary services. Third, we agree with Enron that even if the projected 1999 deficiency can be met by imports from New York and elsewhere, it is unlikely that those supplies will be available at discounted prices.

We also reject the price projection submitted by GSEC, which is even lower than that proposed by PSNH. According to La Capra Associates, such prices are unsustainable because suppliers would be forced to incur losses in excess of $1 billion over the two year interim period. We also find no sound basis for Mr. Lowell's assertion that the market price cap used by La Capra Associates is too high because it was derived from the costs of existing rather than new power plant technologies. Mr. La Capra rebutted that claim stating that his capacity cost estimates were based on the next generation of units to be installed in about the year 2000. We also attach little credibility to the idea that the market would not allow for the recovery of certain operating costs. While it may be reasonable to assume that some suppliers will be unable to recover all of their operating costs through energy clearing prices, we think it is highly unlikely that a substantial portion of the unrecovered amount will remain unrecovered. Finally, we also reject the Manchester proposal, which we view primarily as a technique to achieve the equitable sharing goal of RSA 374-F rather than as a serious alternative to estimating market prices.

Regional Average Rate Approach

We agree with Unitil and GSEC that Mr. Weissman's interpretation of the meaning of the phrase "competitive regional electric rates" is contrary to the language and intent of the statute. We also agree with CVEC that the approach needs to be adjusted to recognize PURPA preemption of QF costs and that the use of more recent data would produce a more equitable outcome. We disagree, however, with the assertion by CVEC that the regional rate approach is arbitrary and inequitable. For the reasons explained in Part I of our Legal Analysis, we believe the average rate standard is lawful and in fact exceeds constitutional standards. Second, this approach implements the manifest policy objective of the Legislature as articulated in the near-term rate relief principle. Finally, we believe this approach is fair.

PSNH's legal arguments regarding the Rate Agreement and Takings Clause of the United States and New Hampshire Constitutions are addressed in the Legal Analysis at Parts I A. and B. Here, we note our determination that the Rate Agreement affords PSNH no contractual

protection from the regional average approach, nor will it result in an unconstitutional regulatory taking of PSNH's property. Although the Legal Analysis discusses those issues in detail, we briefly address several arguments advanced by PSNH in its initial comments.

We also disagree with PSNH's contention that all utility investors should have reasonably expected to recover a return on their investment, irrespective of the retail rates their company charges its customers in relation to others in the region. All investment involves some degree of risk. The level of risk is a function of many factors, including the performance of a company's management and its ability to operate as efficiently as possible. In New Hampshire, utilities have always faced the risk that retail competition would be substituted for cost of service rate regulation. It should be no surprise that investors of a utility which has maintained its rates, hence costs, at or below the regional average views the risk of competition much differently than a high cost utility. Although resource decisions for some utilities may have turned out to be more opportune than others, this does not necessarily mean that management has failed nor that investors of such utilities should be penalized. It simply means that some resource decisions turned out to be more opportune than other similar ones. The same is true at the investor level. Some utility investors may view retail competition as an opportunity for gains, not losses. This is simply the result of opportune decisions not unlike investments in unregulated companies. But unlike the world of unregulated companies, we believe that utility investors should have had a

reasonable expectation that their investment would receive some degree of protection from market forces, although certainly not a guarantee of full protection. In our view, the regional average approach represents a fair standard to gauge such reasonable investor expectations. In light of the fact that electric utilities in this State have always faced the prospect of retail competition, it should come as no surprise that those companies with rates significantly in excess of regional rates would be the most vulnerable to competition. In other words, this Commission has always possessed the legal authority and duty to allow electric service to be provided through a competitive market rather than monopoly providers. *See*, Appeal of Public Service Co., 141 N.H. 13 (1996). Those companies with the highest rates should have reasonably anticipated their relative vulnerability as compared to companies with rates at or below the regional average. The regional average approach simply reflects the level of risk which investors in New Hampshire's electric utilities should reasonably have anticipated.

We also disagree that the inevitable result of the regional average approach will be to initiate a downward spiral that will not end until all rates are set at the rate of the utility with the lowest rate. PSNH incorrectly assumed that all regulatory agencies in New England would utilize the regional average approach to set retail rates.

PUBLIC POLICY ISSUES

[59-65] Under the existing regulated industry structure, all retail customers fund certain

public policy programs regardless of whether the customer directly benefits from the programs. For example, today all customers subsidize C&LM programs regardless of whether they receive C&LM services from their local utility. As competition tends to reduce, if not completely eliminate, explicit and implicit subsidies, subsidized public benefits will be diminished unless policies are developed to retain them in a restructured industry. To help address concerns that these public benefits could be reduced, the Legislature authorized the Commission to establish a competitively neutral systems benefit charge to fund programs such as low income assistance, energy efficiency, support for research and development, and investments in commercialization strategies for new and beneficial technologies. RSA 374-F:3, VI. As we considered the various public policy issues before us, we carefully reviewed the restructuring policy principles set forth in RSA 374-F:3 as well as the purpose contained in RSA 374-F:1, I:

> The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services.

All of the programs which we consider in this section provide benefits to the State and its residents. We were sensitive, however, to the implicit costs of each. As we considered the options before us, we searched for market based approaches that would accomplish as much as, if not more than, regulatory intervention and selected those wherever it was appropriate to do so. In those areas where we found regulatory intervention was necessary, it was also clear to us that we did not always have the resources available to accomplish those outcomes on our own. We have found it appropriate to establish working groups to assist us in implementing some portions of the public policy objectives. We invite any interested party to attend the organizational meeting that has been established for each working group and ask the

parties to recognize that, by necessity, participation will be limited and any parties sharing similar positions may be asked to designate one representative to participate in the group. We also extend an invitation to the Legislative Oversight Committee on Electric Utility Restructuring to participate in any of the working groups.

Universal Service

In a restructured industry, there are several key elements necessary to achieve the goal of universal service. The first is the local distribution company's continued obligation to connect any customer requesting service; the second is the existence of default power service; the third is ensuring manageable and affordable bills for low income customers; and the fourth is the existence of consumer protections that provide customers with access to the grid, establish uniform terms for disclosure of billing and price information, and provide protection from anti-competitive or unfair actions by suppliers.

Obligation to Connect

Given the essential nature of electric service, the Legislature imposed a duty on distribution companies to physically connect all customers requesting service.[41(63)] RSA 374-F:3, V. In order to fulfill this obligation, distribution companies shall continue to provide services to all customers, modified as necessary to accommodate the competitive generation market. Those services shall include the delivery of energy and capacity, restoration of service following outages, and service extensions.[42(64)] Power supply service will be provided by the market. As discussed in Section IV.E.1., large commercial and industrial customers will be able to obtain metering, billing and customer services from the market as well.

The utility's current obligation to provide electricity will be replaced with an obligation of the regulated distribution company to connect and deliver electricity for all customers requesting such service. While large commercial and industrial customers will be able to obtain metering, billing and customer services from the competitive market, the distribution company must continue to provide those basic customer services to all other customers until we see evidence that those services would be better provided through a competitive market. The distribution company's obligation to connect and deliver presumes the responsibility for customer service, outage restoration, service upgrades, customer information, and system safety.

Default Power Service

Despite efforts to educate consumers about restructuring and suppliers efforts to inform consumers of available products and services, we anticipate that some customers will choose not to participate directly in the market while others will simply be unable to do so. At least during a transition phase, and perhaps in the long term, these customers will have a need for generation service that does not require individual negotiations with competitive suppliers or the power exchange. The parties proposed two ways to fulfill this need. The first would be to allow the regulated distribution company to provide customers with standard offer service. Under the standard offer proposal, the price of power would be set in advance, perhaps for several years, under the scrutiny of regulators. As the provider of standard offer service, the distribution company would be responsible for determining the total demand of standard offer customers and making supply arrangements with its affiliate generation company to serve that demand. The second way to satisfy this need would be to require the distribution company to be the administrator of default service.[43(65)] Default service differs from standard offer service in two

very important ways. First, power is procured competitively under the default service proposal thereby allowing customers to realize the benefits of competition although they are not yet participating directly in the market themselves. Second, the price of default service is not regulated; rather it is established by the competitive market. The power supply for default service would be obtained from the competitive generation market directly, through either competitive bids or through spot market

purchases at prevailing prices. Default service customers would simply pay the average price/cost of the supply portfolio.

As we have already found divestiture to be the most effective method of dealing with vertical market power concerns, standard offer service, as it was proposed by the parties, is clearly no longer a viable option. Even if we were to explore alternative methods of power procurement for the standard offer approach, we do not believe that approach is in the best interests of customers or would promote a competitive generation services market. As proposed, default service brings customers the benefits of competition through competitive procurement of power. Continuing to offer service to customers at rates fully regulated by this Commission does not benefit customers and is inconsistent with RSA 374-F:3, III. It is clear to us that the load of those customers who either choose not to participate or who are unable to participate in the market must be opened up to competition. If it is not, independent competitive suppliers, marketers, brokers and aggregators will be disadvantaged and, consequently, competition will be inhibited. Our vision of default service is consistent with the development of a competitive marketplace. The continued provision of a fully regulated service option, as proposed by the various proponents of standard offer service, fails to accomplish that result.

We recognize, however, that the prolonged use of default power service may have the unintended result of promoting wholesale rather than retail competition. To avoid that result, we will monitor the provision of the default service for a two year period following the implementation of retail choice. At the end of the two years, we will ask suppliers and distribution utilities to provide us with data relative to default service. If we determine that the competitive retail market has not developed satisfactorily or that a company's default service is not benefitting customers, we will modify default service to address observed deficiencies.

We find it appropriate for the distribution companies to act as the administrator for default power service. We also recognize that many customers may resist the shift to competition because of the additional effort involved in arranging their own power supplies. We, therefore, believe that allowing the distribution company to administer default service should ease the customer's transition into the competitive market.

We also find that allowing the distribution company to administer default service provides the distribution company with an opportunity to satisfy its contractual obligations relative to QFs. As outlined in Section IV.C.2.b, the contractual obligation for QF power purchases will remain with the distribution company. We believe it is appropriate to allow the distribution

company to satisfy its contractual obligation by using the output generated by QFs to meet the load of its default power customers. While it is uncertain at this point how large the demand for default service will be, we expect it will be fairly large, at least initially; and it is unlikely that the output provided by QFs will be sufficient to meet the total load of default power service. We do not find it appropriate, however, for the default service customers to bear the above market costs associated with the QF contracts. Accordingly, we direct the distribution company to recover from default service customers only that portion of the QF contract price which is equal to the then current market price for power as described below. The remainder of the contract price shall be recovered as stranded costs as described in Section V.D. We are not prohibiting the distribution company from finding other ways to either reduce or satisfy its contractual obligations to QFs and encourage the distribution company to continue to search for creative and meaningful ways to mitigate the stranded costs associated with its QF contracts. As an incentive to encourage such mitigation efforts, we propose to allow distribution companies to retain between 10-20% of the realized savings. We welcome comments on this proposal in the proceedings to review compliance filings.

To ensure the development of a thriving competitive marketplace, we direct the distribution company to procure the remaining power necessary to serve the default load through competitive bids, spot market purchases, or a combination of the two. One method for doing this could be through an RFP (for that portion of

the default power requirement procured from competitive suppliers), in which case, we believe it is appropriate to choose a minimum of five suppliers to serve the default load as recommended by Cabletron. Those who bid the lowest price would be dispatched first to supply the available default load while those who bid the highest prices will be taken off line first as demand declines or not be dispatched at all. Customers would pay the average of the bids; this average would also be used to determine the market price for the portion of the load served through QF contracts. This approach provides assurance that customers being supplied through the distribution company receive competitively priced power and, thus, essentially the same benefits as if they had gone directly to the market. This approach would also alleviate market power concerns as it effectively limits the amount of load each competitive supplier can provide. We are willing to consider other alternatives, however, and will require the distribution utility to include in its compliance filing its plan for the procurement of power from competitive suppliers.

We caution the distribution utilities about the potential for creating stranded costs which may result from negotiation of long-term power contracts. The portfolio for default service, in our view, should be made up of supplies of a short contractual duration which will not create stranded costs regardless of the number of customers that may abruptly choose to acquire their own supplies.

We also caution the distribution companies on "marketing" default power service to their customers. While we believe it is both appropriate and important for customers to be educated about the various options that will be available to them, there is a fine line between education

and marketing. Because we are in a transition to a competitive market, we direct the distribution companies to include in their compliance filings their proposals for notifying their customers about the availability of default service.

Default service shall be available to all residential and small commercial customers with demands less than or equal to 100 kW. However, we recognize that large commercial and industrial customers may have a need for default service at the outset of competition. Accordingly, we will permit large industrial and commercial customers to take default service for a limited six month transition period. Customers with demands in excess of this quantity, large commercial and industrial customers, who find themselves temporarily between suppliers shall be allowed access to default service for a period no longer than 60 days. In order to minimize administrative costs and limit gaming of the service, we will allow distribution companies to propose reasonable entry and exit restrictions in their compliance filings.

We will permit the distribution companies to pass those reasonable costs associated with the administration of default power service through to default power customers. We also anticipate the need for a reconciliation mechanism to balance the actual cost of default power with the forecasted average cost used in determining the price charged to customers and ask distribution companies to submit proposals for a reconciliation mechanism in their compliance filings.

Finally, with respect to registration requirements for competitive default power providers, we intend to establish reasonable credit worthiness standards to ensure that companies that provide this service have the capability to meet their obligations. We address supplier registration requirements more fully in Section VI.A.4.b.(1)

Low Income Assistance

In the Preliminary Plan, the Commission asked for comment on what programs and mechanisms should be developed to enable low income customers to manage and afford essential electric requirements, what level of discount should be available, what eligibility criteria should be established, how such programs could be funded, how low income assistance should be provided, and who should administer such programs. We conducted an informal panel hearing on December 6, 1996 which focused on low income issues. It is significant to note that all of the parties offering comments and testimony on the issue of programs and

mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements supported such mechanisms and programs. The parties differed, however, in the ways to implement these programs and mechanisms.

There was broad support among the parties for a low income assistance program to provide low income customers with some sort of discounted bill. Save Our Homes Organization (SOHO), a low income advocacy office, presented the Commission with four approaches to low income assistance: rate discount programs, percentage of income payment plans, payment

restructuring programs, and energy conservation programs. Of these, SOHO testified that percentage of income payment plans specifically address the actual burden of energy costs on low income households and, as a result, are more effective at targeting those households with the greatest need. Percentage of income payment plans first determine what an affordable percentage of income for electric energy is and then bring low income customers' bills down to that level. In the example provided by SOHO, if the affordable percentage of income for electric energy is determined to be 5%, low income customers would pay 5% of their income each month towards their electric bill and the rest would be funded by the percentage of income payment plan. Community Action Programs (CAP) supported SOHO's position, arguing percentage of income payment plans are the most effective at bringing the rate, for all households, to a manageable point.

Both CAP and SOHO offered testimony on the unaffordability of electricity to current low income customers. CAP testified that there are 50,000 households in New Hampshire at or below 150% of the federal poverty level, a widely recognized standard for determining low income eligibility. CAP quantified the magnitude of the problem in New Hampshire, testifying that the average non-heating PSNH customer pays approximately 2.5% of income towards the electric bill and the average heating customer on the PSNH system pays approximately 5% of income towards the electric bill. For low income customers the percentages are drastically different, however. CAP broke down the percentage of income going towards electricity into three categories: customers whose incomes were between 0% and 49% of the federal poverty level, customers whose incomes were between 50% and 100% of the federal poverty level, and customers whose incomes were between 100% and 150% of the federal poverty level. Non-heating low income PSNH customers paid 23.4%, 7.8%, and 4.7% of their incomes for electricity, respectively, while heating low income customers paid 47.4%, 15.8%, and 9.5% of their incomes for electricity, respectively. CAP argued that, through the use of a fixed credit model percentage of income payment plan, payment levels for low income customers should be brought down to a level in the range of 2.5% to 5% of income. CAP also testified that it would be willing to undertake the administration of this program and anticipated very low administrative costs as the infrastructure necessary to administer the program is already in place.

We are sensitive to the electric energy needs of low income customers in the State as we transition to a restructured electric industry. We see two categories of potential problems facing low income customers as we move to deregulation: unfair and discriminatory business practices and affordability and manageability of electric bills. We address the first category of problems in detail in Section VI.A.4.b. below. We turn our attention in this section to the second category of problems facing low income customers, affordability and manageability of electric bills.

As we reviewed the various positions put before us, we were cognizant of the purpose of RSA 374-F:1,I which states, "the most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets" and of the principle of universal service addressed in RSA 374-F:3, V. We are convinced that, in addition to the direct benefits provided to low income customers, there are many societal benefits which accrue from the establishment of a low income assistance program. As GSEC and the OCA pointed out, a low income assistance program would have the effect of reducing the

utilities' uncollectible accounts, which is a cost of service item recovered from all customers. Additionally, as the OCA and SOHO pointed out, it is possible there will be a beneficial impact on property taxes as low income bills are made affordable and fewer municipal funds are needed for crisis assistance. We believe that these are all valid benefits which accrue to society as the result of a low income assistance program. We have reviewed the estimates provided to us by CAP, SOHO, and the Collaborative and find that the $13.2 million proposed is a level of funding which is consistent with both RSA 374-F:1, I and 374-F:3, V.

Accordingly, we will authorize the establishment of a low income assistance program to be funded through a systems benefit charge. Such a program should accomplish three goals: first, to bring electric bills into the range of affordability; second, to encourage conservation and the use of energy efficiency mechanisms to make electric bills manageable; and third, to make the most effective use of limited funding.

We have reviewed the various low income assistance models presented and find that the general principles outlined in the proposal presented by SOHO, CAP, and the Collaborative seem to represent the most balanced approach. Because we are not experts on the provision of low income assistance, we believe it is appropriate to establish a working group to advise us on the development and implementation of a low income assistance program. The working group would also monitor the success of the program once it was implemented and recommend to the Commission any necessary program changes. An organizational meeting for the low income working group will be held as specified in Appendix B.

We also believe that it would be appropriate to have an organization experienced in the provision of low income energy assistance in New Hampshire administer the program. We ask the working group, as one of its first tasks, to recommend a process designed to select such an organization and to then work with that organization to develop a low income assistance program which meets the goals we identified above. We would expect the program to address issues related to administration of the program, disbursement of funds, and any necessary regulatory oversight of the program. We would expect any program proposal submitted to us would be no more than the $13.2 million projected by CAP, SOHO, and the Collaborative in their proposal. The working group's recommendation should be submitted to us for review no later than April 1, 1997. The low income energy assistance program should be submitted for review no later than August 1, 1997.

As we indicated above, funding for the low income assistance program will be collected through a systems benefit charge. Although there are benefits that accrue to the distribution company in the form of reduced collection costs, reductions in their uncollectible expenses, and perhaps a lower working capital requirement, all of which could have the effect of lowering the distribution company's revenue requirement, thereby lowering distribution rates, there are also societal benefits that accrue in the form of less demand for local property tax revenues to provide crisis or temporary assistance for low income residents. As a result, we do not find it appropriate

to establish a distribution-specific systems benefit charge as some parties have suggested, nor will we limit the charge to residential customers. We do not find it appropriate to fund a low income assistance program through the application of a systems benefit charge to residential customers only. As commercial and industrial customers receive as much benefit from the positive tax impacts of a low income assistance program as other rate classes, we find it in the public good to require funding of the program across all franchises and all rate classes. All customers shall contribute at the same rate, irrespective of their distribution company or rate class. The systems benefit charge shall be established, after notice and hearing, as a flat amount per kilowatt hour used and applied equally to all customers.

Consumer Protection

[66-69] Consumer protection, and the role the Commission will play in providing that protection in a restructured market, is a critical issue. Without appropriate protections,

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customers may be wary of participating in the competitive market. Too much regulatory intervention, though, could stifle market innovations and limit customer choice. While customers are undoubtedly concerned about price, knowing how and when their electric service can be shut off is equally important to them. Both the Legislature in RSA 374-F and many of the parties to this proceeding have raised the importance of consumer protections. Our hearings on this subject revealed almost universal support among the parties for the continued application of consumer protection regulations to the regulated distribution company. There are divergent views, however, on the extent to which consumer protections should apply to suppliers and on the Commission's role in dispute resolution.

One view is that the Commission should not apply consumer protection rules to competitive suppliers but rather should rely on existing consumer protection laws. In contrast, others believe that the Commission should apply consumer protection rules to competitive suppliers. Supporters of the first school of thought, such as PSNH and Cabletron, stated that it makes no sense to establish rules for a market that is being deregulated and that the concept of regulated competition is paradoxical at best. Those parties who believe consumer protection rules should be applied to competitive suppliers argued that neither the existing consumer protection laws nor the resources of the Attorney General's Consumer Protection Division are sufficient to provide the level of consumer protection needed for such a fundamental aspect of safe and adequate housing and basic human needs.

Within the confines of the latter position, there is some disagreement about the extent to which the Commission should impose consumer protection rules on suppliers. The OCA recommended heavier regulation of suppliers initially, gradually decreasing as customers become more educated about the operations of the new market structure. The OCA reminds us that the legislation states "customers should expect to be responsible for the consequences of

their choices." RSA 374-F:3, II. SOHO argued that RSA 374-F:3 guarantees that no degradation of consumer protection will occur as a result of the transition to a restructured market and asserted that the question is not whether to have consumer protections but rather which protections are relevant in the new market structure. SOHO further stated that not only are there existing rules in Chapter Puc 1200 which should apply to suppliers, the move to a competitive market necessitates the creation of new rules. CAP supported SOHO's position regarding the application of consumer protection rules and also recommended that the Commission establish registration requirements for suppliers, modeled after RSA 356-A and 356-B, the Land Sales Full Disclosure Act and the Condominium Act. Representative Below offered support for CAP's position, pointing to RSA 374-F:3, III, "Retail electricity suppliers who do not own transmission and distribution should, at a minimum, be registered with the Commission." Representative Below suggested this provision of the statute provides the Commission with the discretion and authority to impose more than minimal registration requirements.

Several parties also raised the issue of requiring the use of uniform terms and uniform disclosure of information so customers could easily compare one supplier to another. NHEC supported requiring suppliers to disclose the average per kilowatt hour charge prior to the execution of any contract, though not as a part of the marketing offer.

The parties also spoke to the need for public education and focused on the Commission's role as an information source. The parties recommended that the Commission maintain a listing of all suppliers providing service within the state, available to customers upon request. The parties would not have the Commission responsible, however, for making evaluations of the various offers or recommending a particular supplier. Another area for debate centered on the applicability of consumer protection regulations to the default power supplier. Several principles established by RSA 374-F guide us as we consider the extent to which consumer protections should be applied to suppliers, the need for registration requirements for suppliers, the need for disclosure of certain information to

customers, and the Commission's role in dispute resolution in a restructured market. Those pertinent principles are embodied in 374-F:3, II, III, V, VI, and VII. We address the positions of the parties in the context of those principles.

Distribution Companies/Default Power Administrators

We agree with the parties that the distribution company should continue to be subject to the provisions of NH Administrative Rules, Puc Chapter 1200. We also find it appropriate that the provisions of Puc Chapter 1200 apply to the administration of default power service. We expect some of those rules may no longer be relevant in a restructured market, however, and direct our staff to review them. Based upon staff's review, a rulemaking docket will be opened and a draft containing the appropriate revisions to the rules circulated to the parties to that proceeding for

comment. Technical sessions will be scheduled during April and a proposal submitted to the Legislative Budget Assistant by the beginning of May, 1997.

Competitive Suppliers

It is in the context of RSA 374-F:3, V that we examine the applicability of consumer protection rules to competitive suppliers. It is clear that Legislature intended consumer protection regulations to apply, to some degree, to competitive suppliers, but we must weigh the need for consumer protections in the competitive market against the potential negative impacts that regulation, no matter how well intentioned or socially desirable, may have on the development of a competitive market. The imposition of consumer protections on suppliers should, in our view, be the minimal necessary to protect against abuse in the competitive market.

The unauthorized transfer of service from one supplier to another, known as "slamming", is a frequently offered example of abusive market behavior. "Slamming" is a problem that some New Hampshire consumers have experienced with their long-distance telephone carriers. Having seen this problem emerge in the deregulated telecommunications industry, we cannot, in good conscience, stand aside and rely solely on the competitive market to protect consumers. Consequently, we will implement consumer protection rules which address the practice of "slamming."

Other possible market abuses, such as redlining,[44(66)] have not emerged in other deregulated utility sectors. Accordingly, we do not find it appropriate to impose consumer protection rules relative to redlining at this time. However, we will monitor the market; should redlining or other potential market abuses occur, we will adopt rules to address those practices.

A supplier's ability to cease providing service to a customer could also impact the principle of universal service set forth in RSA 374-F:3, V. As we have stated previously, with the exception of large commercial and industrial customer accounts, the distribution company would continue to own and maintain the meter and would have responsibility for meter reading. Allowing the distribution company to shut off the customer's service for non-payment of an energy bill owed to a competitive supplier unfairly places the distribution company in the middle of disputes between customers and suppliers. Accordingly, we will not allow the distribution company to discontinue service as the result of non-payment of the energy component of the customer's bill. The distribution company shall have the ability, however, to disconnect, or shut off, a customer's electric service for non-payment of the T&D charges. Such actions shall be taken in accordance with the Commission's rules. Suppliers shall be able to terminate an energy contract, with sufficient notice to both the customer and the distribution company, for non-payment of energy bills. We will allow the default power administrator to disconnect, or shut off, a customer's service for non-payment of any portion of the default power service bill, however, and to require customers to pay the bill in full, or pay a portion of the bill and make arrangements for payment of the remainder, as a condition of having service restored. In no circumstance, however, shall competitive suppliers or the default service administrator attempt to collect a balance due to another supplier as a condition of providing

service to a customer. We will monitor collection problems as the market develops; if we find a significant rise in uncollectibles, we will revisit this issue.

Disclosure of information on customer bills is also an important consumer protection function, especially during the initial transition period from regulation to competition. Regardless of who renders the bill, all prices and price components shall be clearly identified, such that customers can readily calculate the charges using the information provided on their bill. Customers shall also be provided with average kilowatt hour information on their bills so they can easily compare the price they are paying to what is available in the market.

We will open a rulemaking docket to develop rules that apply to suppliers, reflecting the foregoing requirements. We direct our staff to prepare a draft of those rules for distribution to the parties to that docket. The draft shall be circulated and technical sessions held during April with a proposal to the Legislative Budget Assistant by early May.

Supplier Registration Requirements

[70, 71] We agree with CAP and Rep. Below that one of the most effective and reasonable methods available for ensuring disclosure of information is the imposition of registration requirements. Registration requirements should also provide suppliers with an incentive to behave responsibly. For those who do not, we will establish sanctions for supplier misconduct. Those sanctions shall vary with the severity and the willfulness of the misconduct, ranging from fines, to probation, to revocation, depending on the level of misconduct. We direct our staff to establish a working group to develop appropriate registration requirements. The organizational meeting for the supplier registration requirements working group shall be held as specified in Appendix B. While we do not support all of its provisions, the proposal submitted by CAP in its January comments provides a good starting point; we recommend the working group. use that proposal as an outline for its discussions. We are also sensitive to the telemarketing concerns expressed by the public during the public information forums and by other commenters. We believe it is appropriate to investigate ways in which customers could prevent their name and home telephone number from being used for telemarketing by electricity suppliers, such as the Direct Marketing Association Telephone Preferred Service and ask the working group to consider that in its development of supplier registration requirements.

Disclosure of supplier information

RSA 374-F:3, III requires that the Commission ensure "customer confusion will be minimized and customers will be well informed about the changes resulting from restructuring and increased customer choice." Towards that end, the facts necessary to make an informed decision must be readily available to customers in an easily understandable format. While the

imposition of supplier registration requirements will play an important role in the disclosure of information to customers, we believe there may be additional information that would be beneficial to customers.

The disclosure of a supplier's resource mix is also important as it will enable customers to make more fully informed choices. As described more completely in Section VI.F., we have chosen not to mandate a portfolio requirement for renewables or to provide funding for renewable resources. We believe that position is consistent with the purpose of RSA 374-F and furthers the principle of customer choice. As part of our consumer protection rules, we will require all suppliers to disclose their resource mix to prospective customers. Additionally, we believe customers benefit from the requirement that suppliers disclose information regarding the environmental characteristics in their resource mix. We address this more fully in Section VI.E.

The Commission's Role as Information Provider

We find the argument that customers are comfortable with the Commission as their source of information a compelling one. Over the years, the Commission's Consumer

Assistance Department has served an important public protection function by answering customer questions. We believe that function should continue. Therefore, the Commission's Consumer Assistance Department shall maintain a listing of all suppliers registered to provide service in New Hampshire and shall make that listing available upon request. That listing shall also be maintained on the Commission's web page. We caution customers that the Commission will not evaluate the merits of various marketing offers or provide recommendations regarding choice of suppliers. The listing will simply identify those suppliers who have complied with the Commission's registration requirements, regardless of whether they are actually providing service in the State.

Commission's Role in Dispute Resolution

[72] While the Commission's dispute resolution role was not directly addressed by many of the parties, it is, nevertheless, an important issue as we move to a competitive power market. Once markets begin to operate, the potential exists for two problematic categories of activities. First, there may be customer specific complaints in which the services provided do not match the customer's understanding or expectation of what was offered. Second, there may be more systematic marketing abuses in which whole classes of customers are excluded from the market or unfair or discriminatory practices are employed.

The Commission's role concerning customer specific complaints is similar to the role it plays today in mediating disputes between customers and utilities. As our tightly regulated utility

industry moves towards an increasingly competitive industry, customer dissatisfaction over transaction issues is likely. Lack of understanding is certain to result in poor decisions by customers. Where a legitimate complaint exists, customers should have some mechanism for redress at the Commission. Our Consumer Assistance Department shall continue to provide that mechanism. The Commission shall also be available to act as mediator in disputes between suppliers and the distribution companies. Where the Commission becomes aware of widespread marketing abuse by a supplier, the complaint shall be brought to the attention of the Attorney General's Office for investigation and prosecution where appropriate.

Public Education

[73] A comprehensive public education program is essential to the smooth transition to a competitive market. As the OCA pointed out in its comments, "the best type of consumer protection is achieved through education." Rather than dictating the details of a comprehensive public education program as part of this plan, we have identified several core messages which we believe should be a part of the public education program.

1. An explanation in understandable, non-technical terms of the basic concepts of restructuring;

2. An explanation of where and how customers will purchase power in a restructured industry. This would include default power service, bilateral contracts, the power exchange, and the role of aggregators;

3. An explanation of how to compare supplier offers and what customers might want to consider as they evaluate the merits of various offers;

4. An explanation of how unbundling services and rates will change bills and how to read and understand the new bills;

5. An explanation of stranded costs, again in understandable, non-technical terms, addressing what they are, how they are measured, possible mitigation efforts, authorized recovery, and the expected duration of recovery;

6. Information about consumer rights and responsibilities in a restructured industry. This would include changes to consumer protections, additional responsibilities customers now have, and the Commission's role in a restructured industry;

7. Information about the availability of a low-income assistance program;

8. Information on energy efficiency and competitive energy service companies.

While RSA 374-F:3, II places the responsibility for initiating such a program on the Commission, we recognize we may not have the resources available or the expertise to develop

and implement such a program. Many consumer and business advocacy groups have expressed concerns about public education and a willingness to assist us in this endeavor. We are sensitive to those concerns and believe that these groups are well suited to help us identify those issues which are of most interest to their constituencies. We, therefore, believe that a working group to develop a public education program will result in an innovative and successful program, and we accept the recommendation made by various parties that a working group be formed to develop an education program for our review. We invite interested parties to attend an organizational meeting as specified in Appendix B.

We have already established that the average price per kilowatt hour shall be provided to customers on each bill, and we ask the working group to investigate whether or not there is a way for suppliers to disclose to customers an average price per kilowatt hour prior to the execution of a contract and commencement of service. We recognize that there are many variables, such as load factors and time of use, which may make it very difficult for suppliers to provide any meaningful price comparison information to customers. We caution the working group that the result of their investigation should not inhibit the development of innovative product pricing by the market.

We believe it is also appropriate to hire a consultant to put together a comprehensive media program under the direction of this Commission with the advice of the working group. The consultant should be well versed in the effective implementation and delivery of the public service programs.

We direct the working group to develop an RFP to solicit bids from consultants interested in assisting us in this endeavor. The final public education plan should be submitted to us no later than August 29, 1997.

Integrated Resource Planning

[74-77] Integrated Resource Planning (IRP) requires utilities to evaluate all supply and demand side resource options to meet customer needs. The majority of the parties in this proceeding stated that IRP is unnecessary in a restructured industry. Some proponents of competition asserted that the market will respond efficiently to any need for generation. Some parties indicated a continuing need for the transmission and distribution companies to perform least cost planning.

While IRP may no longer be an effective process once the generation function is separated from transmission and distribution, we find it appropriate that distribution companies continue to conduct overall system planning. We direct the distribution companies to include proposals in their compliance filings describing how they will address system planning in the restructured industry.

As the goals underlying IRP are likely to be better served through market forces, RSA 378:38 which requires least cost plans, seems unnecessary. Therefore, we intend to work with the Legislature to repeal or modify these provisions to better reflect a restructured industry. Similarly, RSA 162-H, which requires the Site Evaluation Committee to determine the "need" for generation may warrant repeal or modification as well. We recommend that the Legislative

Oversight Committee review the provisions of RSA 162-H. In Appendix C, we have listed all of the areas which we believe the Oversight Committee should review. We would, of course, be happy to work with them during this review process.

Energy Efficiency

While all parties seem to agree that the distribution company should still perform system planning when considering distribution system or transmission system improvements, there is less agreement about the role the distribution company should play in providing energy efficiency for its customers. As with many other public policy programs affected by the move to a restructured electric industry, there are two basic positions espoused by the various parties to this proceeding: one supporting continued

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distribution company funded energy efficiency programs and one opposing the continuation of those programs. NEEC, CLF, OCA, and the Collaborative are among the supporters of continued distribution company funded energy efficiency programs. CVEC, Unitil, and Cabletron are among those parties opposed to continued distribution utility funding.

CLF argued that societal energy efficiency programs funded through distribution company rates are entirely consistent with the purposes of restructuring. CLF stated that energy efficiency reduces customer costs, increases competitiveness, and provides enormous environmental benefits. CLF supported continued ratepayer funding of energy efficiency programs as it saw no evidence to support the belief that the marketplace will provide the levels of efficiency that can be provided by subsidized energy efficiency programs. NEEC testified that a competitive market for energy efficiency services exists today with companies selling primarily in the market created by utility funded programs and to a lesser extent in the direct customer market. While NEEC believed there were certain energy efficiency measures the competitive market would deliver to the direct customer market, it also believed there were many other energy efficiency measures which the market would not deliver. NEEC argued that funded energy efficiency programs ought to be targeted towards those services the market will not deliver and that well designed programs would actually bring the market along and promote the move towards competitively offered energy efficiency services.

During its testimony, CVEC argued that in a restructured industry societal energy efficiency programs would be neither economical nor cost effective. CVEC suggested that continued funding for distribution company energy efficiency programs would essentially create a tax collected by the distribution company to fund a social benefit program. CVEC further stated that regulatory intervention in the market may actually hamper the development of competitively supplied energy efficiency programs. CVEC testified that the market would not move to provide such measures as aggressively if it believes those services will be provided through subsidized programs. While CVEC believed that there are currently market barriers, it stated many of those

barriers would be removed with the creation of a restructured marketplace. CVEC pointed to those suppliers, in the New Hampshire Pilot Program, who marketed "green" power and energy efficiency services as part of the product they were selling, as an early indication of those changes.

We have no doubt about the value of energy efficiency programs. Well designed, cost effective energy efficiency measures can lead to reduced customer costs and provide environmental benefits. We agree with CLF that energy efficiency is entirely consistent with the goals of restructuring. However, we question the continued use of ratepayer funded programs as the appropriate channel for delivering energy efficiency services in a restructured market. In the past, New Hampshire has measured the cost effectiveness of energy efficiency programs based on the total resource cost test. With the move to a competitive generation market, the savings realized through avoided generation will no longer be a component of the distribution company's cost effectiveness test. As most of today's programs are only marginally cost-effective, we find it unlikely that there will be many, if any, cost effective programs for the distribution company to deliver now that the savings attributable to avoided generation are no longer part of the equation. Although some parties have suggested that we utilize the market price of power as a proxy for the traditional utility avoided generation cost, we do not find that appropriate.

As we consider the various options before us, we reflect upon our experience, and the State's experience, with energy efficiency over the past few years. Over the years, we have received comments from some energy efficiency providers that regulation of energy efficiency is the largest market barrier facing energy services companies and that regulation has effectively shut them out of the market by requiring the utilities to serve that market. That market barrier will now be removed and a market opportunity created. Experience has also demonstrated that utility funded energy efficiency programs, with the exception perhaps

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of Granite State Electric's energy efficiency programs, have not led to market penetration levels that would lead us to believe that utility funded programs are the most effective methods of delivering energy efficiency. We expect the competitive market will be much more successful in serving the need for energy efficiency than the utility funded programs of the past have been. Energy efficiency could be an effective marketing tool available to suppliers to differentiate themselves from other suppliers and add value to the product they are selling. In addition, we believe that energy efficiency education, a component of the public education program adopted by this Commission as described more fully in Section VI.B., will further enhance the development of this market.

Although we are inclined not to interfere with the market, we find it appropriate to phase out the existing energy efficiency programs offered and funded by utilities rather than abruptly ending them when retail choice is implemented. We will cap the levels of DSM spending for each utility at their latest approved levels and direct the utilities, as they prepare upcoming energy efficiency filings, to keep in mind we expect ratepayer funded energy efficiency programs to be phased out within two years from the implementation of retail choice. We believe

this is the most appropriate method of ensuring cost effective customer conservation is not reduced during the transition from a regulated energy efficiency market to a competitive market. RSA 374-F:3, X. Because we are concerned about the potential for anti-competitive behavior, we remind distribution companies that any customer information made available to an affiliate, prior to divestiture, must be made available, subject to the same terms and conditions, to all competitors in New Hampshire's energy efficiency market.

We do find it appropriate for transmission and distribution companies to integrate specific targeted energy efficiency programs, along with distributed generation, into their transmission and distribution planning. We believe there are instances when targeted demand side management can reduce capital expenditures by deferring or avoiding costly transmission or distribution investments. We expect the regulated transmission and distribution companies to conduct that type of analysis and planning as they consider system improvements.

Environmental Improvement

[78-81] RSA 374-F:3, VIII requires that "[i]ncreased competition in the electric industry should be implemented in a manner that supports and furthers the goals of environmental improvement." Focusing primarily on the air pollution impacts of electric generation, the environmental improvement principle requires that, over time, existing and new generation should be treated more equitably with regard to air pollution control criteria. Such criteria, according to RSA 374-F:3, VIII, should be applied in an equitable and appropriate manner to all generators, both in and out of the state, in order to reduce air pollution transported across state lines and to promote full, free, and fair competition among generators. In addition, the environmental improvement principle indicates support for "market-driven approaches," including the valuation of air pollution costs and pollution offset credits, to reduce adverse environmental impacts. The parties to this proceeding espoused diverse views on the role this Commission should play in environmental improvement.

CEED contended that the retroactive application of new source performance standards in New Hampshire to reduce nitrogen oxide (NOx) emissions would not permit the New England region to demonstrate attainment with respect to existing or proposed ozone standards. CEED asserted that it was not appropriate for the Commission to impose air emission standards retroactively to utility generators given that such standards are appropriately set by an act of the United States Congress. CEED concluded that if the Commission were to apply new source performance standards on existing generators, the costs of electric generation in New Hampshire would increase and the competitiveness of current in-state generation assets would be impaired, however, there would be no demonstrable environmental benefit. Comments filed by DES support CEED's conclusion that costs will rise if more air pollution control is

required, however, DES offers no position on any environmental benefits that may accrue

from the imposition of those pollution controls. DES supports industry average performance standards (IAPS) and notes that IAPS legislation has been introduced for the 1997 legislative session.

PSNH asserted that in advancing environmental improvement, it is important to keep the goal of industry restructuring in mind. PSNH contended that the goal of industry restructuring is cost reduction and that the most significant issue that ought to be addressed is the hundreds of millions of dollars of above-market costs that customers of PSNH have already been ordered to pay annually to support renewable-fueled generation. CLF proposed that New Hampshire encourage the same kind of approach, regarding the clean up of air emissions at existing fossil units, that has been embodied in the Massachusetts Electric Company Settlement which is presently before the Massachusetts Department of Public Utilities. CLF asserted that it is critically important for fossil generation to compete on a level environmental playing field in a competitive market.

Both the Collaborative and the OCA stressed the importance of a level playing field in a competitive market. The Collaborative, however, strongly supported old source review standards while the OCA did not advocate the application of new source emission standards to older in-state generators. Instead, the OCA proposed that all suppliers, in-state and out-of-state, be required to demonstrate that their power supplies are no more polluting, in terms of regulated air emissions, than the average air emissions of in-state generation. In addition, the OCA asserted that New Hampshire's environmental regulatory agency, the Department of Environmental Services ("DES"), is the agency that ought to control such air emission standards rather than the Commission.

We see four options available to us: support the development and application of new source performance standards with respect to the air emissions of older in-state generators; defer the establishment of stricter air emission standards to the DES, but require in-state and out-of-state suppliers to comply with these standards as a condition of supplier registration; defer the establishment of air emission standards and their enforcement to the DES and the U.S. Environmental Protection Agency (EPA); or support amendments to the Clean Air Act Amendments of 1990 that would require power plants whose emissions affect the air quality of New Hampshire (including power plants outside the state or region) to reduce air emissions.

These policy options raise numerous issues and questions. First, does RSA 374-F:3, VIII authorize the Commission to establish environmental policies with respect to electric generation serving the state? Second, does the Commission have the necessary expertise and resources to establish and apply air emission standards to existing or new generation facilities, or to establish and apply air emission portfolio standards to all suppliers serving New Hampshire electricity consumers?45(67) Third, since the Commission, given a broad interpretation of RSA 374-F:3, would have very limited environmental regulatory authority at most, would it be in a position to determine the economically optimal manner in which to pursue environmental improvement?

46(68) Fourth, assuming that the Commission has the authority to establish environmental policies with respect to electric generation serving the state, is there sufficient evidence in the record of this proceeding to justify the establishment of new environmental policies by the Commission? Fifth, can the Commission legally restrict sales of generation from out-of-state

sources that do not meet the state's emission standards? We believe the answer to all of these questions is no.

Although we agree that environmental improvement is an indispensable public good for which the state and the nation must make adequate provision, we do not find it appropriate to independently establish environmental improvement policies related to electric generators selling power in New Hampshire. We do not believe the Legislature intended RSA 374-F:3, VIII to empower the Commission to establish environmental policies with respect to electric generation located within the state. We do not have the expertise or resources to establish and enforce environmental policies, and we do

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not have broad environmental regulatory authority to optimize environmental regulation. We do not find the evidence presented to us in this proceeding sufficiently strong to justify the establishment by this Commission of stricter environmental policies than those established by the DES and the EPA. We also believe that the Commerce Clause of the U.S. Constitution would impair our ability to restrict sales of generation from out-of-state sources that do not meet the state's emission standards.

Accordingly, we find deferring the establishment of air emission standards and their enforcement to the DES and the U.S. Environmental Protection Agency ("EPA") to be the course of action most consistent with RSA 374-F and, therefore, the most appropriate one for us to take. We believe that the DES and the EPA have the expertise, resources, and authority to establish appropriate environmental regulations for the generation sector. We believe that the DES is the most appropriate agency to enforce the provisions of RSA 374-F:3, VIII and protect New Hampshire's environment and we believe the Legislature recognized this. *See* RSA 374-F:1, III. In addition, the Federal EPA is in the best position to establish and enforce environmental regulations among the states in order to establish a level environmental playing field while not running afoul of the Commerce Clause. Given our concern for the environment and for the establishment of a full and fair competitive generation market, we will continue to work with the DES to coordinate changes in utility and environmental regulation to establish an efficient electricity industry structure that has minimal impact to the environment.

We also believe, as Reps. Below and Bradley have commented, that customers benefit from requirements that suppliers disclose information regarding the environmental characteristics of the power in their resource mix. We support the National Association of Regulatory Utility Commissioners' resolution in support of customer "right-to-know" and product labeling standards. As discussed in Section VI.F, we have established a working group to make recommendations regarding the disclosure of a supplier's resource mix. We will also request that group to evaluate the feasibility of requiring suppliers to disclose the environmental emission impact of the power in their resource mix.

Renewable Energy Resources

There appear to be two contrary views relative to the encouragement of renewable resources in a restructured industry: one view supports regulatory intervention to encourage the development of a competitive renewable resource market and another supports market driven approaches to the development of a competitive renewable resource market. Parties taking the latter position, including CEED, PSNH, Unitil, and WEPCO, asserted that support for renewable resources, as mandated in the late 1970s by PURPA and LEEPA, contributed to the high rates which are currently experienced in New Hampshire and that the imposition of portfolio requirements may continue to create upward pressure on electric prices without creating any significant benefits for the State and its residents. In fact, CEED argued that mandated portfolio requirements for renewable resources may hamper the competitive market's ability to efficiently price and allocate resources. Supporters of this view also opposed ongoing subsidies for renewable resource commercialization or research and development, finding those subsidies antithetical to a competitive electric industry. CEED noted that experience in other industries demonstrates customers pay a premium for products they believe are more environmentally friendly and argued that reliance on customer choice in a restructured electric industry may be a more economic way to spur the development of renewable resources.

The second view, supportive of regulatory intervention, is shared by CLF, OCA, GSEC, and GSHA. While the proponents of this view did not necessarily agree on the most effective method of encouraging the development of renewable resources, they did agree that there should be regulated support for the development of renewable resources. Some of the options suggested by supporters of this view include funding for commercialization of or research and development for renewable technologies through a systems benefit charge, a

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requirement for competitive suppliers to include a certain percentage of renewable resources in their supply portfolios, and a program of renewable energy credits. These parties seek regulatory intervention. They argue that the competitive market will not remove the market barriers which they believe prevent the entry of renewable resources into the market.

We see three options for our consideration. The first option is to create a fund to subsidize renewable energy technologies that show promise of public benefits in the long term. The second option is to require competitive suppliers to include renewable resources in their power portfolios. Tradable renewable energy credits, as suggested by some parties, would be used in conjunction with portfolio requirements. The third option is to focus efforts on developing an effective competitive market where customers send clear signals to the market regarding product preferences without regard to subsidies.

As our Legislature recognized, "Over the long term, increased use of cost-effective renewable energy technologies can have significant environmental, economic, and security benefits." RSA 374-F:3, IX. The question then is whether the market for renewables will develop on its own or whether regulatory intervention is needed. RSA 374-F:3, IX and 378:37 provide us

with a framework for determining the Commission's role, as does RSA 374-F:1, I which states "The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets."

We do not believe creating a subsidy, funded through a systems benefit charge, for commercialization of or research and development for renewable energy resources is consistent with RSA 378:37, 374-F:1, I, or 374-F:3, IX. Support for commercialization and research and development of renewables is more appropriately and economically addressed on a regional and national basis. In a small state like New Hampshire, it is unlikely that any meaningful level of funding for renewables could be obtained without significantly impacting the price paid for electric power. It would be far more economic to support those regional and national organizations that already conduct research on renewable resources. Neither do we believe that establishing portfolio requirements for suppliers is an effective method of encouraging the development of a renewable energy resource market. We agree with CEED and others that the imposition of portfolio requirements may only continue to create upward pressure on electric prices without creating any significant benefits for the State and its residents, an outcome which we find inconsistent with RSA 374-F:1 and 374-F:3, IX. We also believe those suppliers who believe there is untapped demand for energy generated by renewable resources will have the opportunity to meet and profit from those market opportunities. We saw evidence of this in the Pilot.

The third option available to us, focusing our efforts on developing an effective competitive market where customers can make un-subsidized generation choices and send clear signals to the market regarding product preferences, is consistent with both the electric utility restructuring statute and the State's energy policy as well as the concept of customer choice. Rather than imposing choices on customers, we will focus our efforts on disclosure of information so all customers are provided with sufficient data to make an informed choice, thereby allowing customers to send clear, unbiased signals to the market regarding the products they want.

No amount of regulatory intervention can create a market for a product customers do not want. Based on the data we have collected from Pilot Program customers, as well as comments received during the public information forums, however, we believe that some customers will choose a supplier based solely on the environmental impact of the supplier's resource mix. Requiring suppliers to disclose the nature of their resource mix is, therefore, an appropriate and the effective method of providing support for the development of a competitive renewable resource market. We would also expect that while many customers will initially make comparisons of suppliers based solely on price, once they've eliminated all but a handful based on price, they may want additional information to help differentiate between the remaining

suppliers and to make an informed choice. Given the choice, and all other things being equal, we expect customers will choose more environmentally responsible power sources over less environmentally responsible power sources. Accordingly, all suppliers shall disclose their resource mix to prospective customers.

We recognize that a supplier's resource mix could change daily or even hourly, and as such, suppliers shall provide prospective customers with an approximation of what they expect their normal resource mix to be. We believe it would be useful to allow those parties whose interests are affected by this requirement the opportunity to provide input on the details of this requirement. We, therefore, direct our staff to establish a working group to develop appropriate standards for resource mix disclosure. In its January 24, 1997 comments, CLF indicated its interest and willingness to work on this issue, and we accept their offer. Other parties interested in working collaboratively to develop standards for the disclosure of resource mix information are invited to attend an organizational meeting as specified in Appendix B. We recommend that the working group consider the appropriateness of any re-disclosure requirements should any part of a supplier's mix change significantly. As we indicated earlier, we find it appropriate that this requirement be addressed through the promulgation of rules. We direct this working group to coordinate its efforts with those of our staff members responsible for drafting supplier rules and revising, where appropriate, NH Administrative Rules, Puc 1200.

While it is our expectation that customer choice will encourage the development of renewables more economically than regulatory intervention, we will monitor the development of renewable resources over the next two years. In light of the changing industry structure, we will recommend the NH Legislature review the Limited Electric Energy Providers Act (LEEPA) and either amend or repeal it. We will work through the National Association of Regulated Utility Commissions to recommend appropriate amendments or to repeal the federal legislation, the Public Utilities Regulatory Policy Act (PURPA).

Tax Effects

[82-84] It is likely that restructuring New Hampshire's electric utility industry will change the level of state and local tax revenues as currently levied, absent some changes in the law. In 1995, New Hampshire utilities paid approximately $11.0 million to the General Fund and contributed significant revenues to municipalities. We believe the Legislature should consider the tax implications of the Final Plan and determine whether legislation to address changes in tax receipts is necessary or appropriate and note that legislation is already being considered. We recommend that any taxes levied on market participants be competitively neutral.

State Taxes:

a. Franchise tax (FT): The FT rate is 1% and is applied to a utility's retail electricity sales revenue. The FT, which produced approximately $9.0 million in 1995, can be applied as an offset to the Business Profits Tax (BPT). Assuming competition reduces retail electricity prices, revenues from the FT will decrease unless accompanied by a offsetting increase in usage. The net effect is uncertain.

b. Business Enterprise Tax (BET): The BET has traditionally been small, contributing approximately $0.7 million in 1995 to the General Fund. Restructuring the electric industry is not expected to significantly effect BET receipts. The BET can be applied as

an offset to the BPT.

c. Business Profits Tax (BPT): The BPT rate is 7% and is applied to the net profit of all businesses, not just franchised utilities. Since the FT and the BET can be used to offset a company's BPT tax obligation, most New Hampshire utilities have not paid BPT taxes. In 1995, PSNH paid approximately $1.6 million.

Local Taxes:

a. Property Tax (PT): Currently, utilities

pay PT on plant and equipment located in New Hampshire. Property tax rates vary by locality. PT receipts, which currently yield approximately $34 million, may decline if generating assets are valued based on market prices instead of book or replacement value.

b. Payments in Lieu of Taxes: For the purposes of state taxation, a qualifying SPP facility and a qualifying cogeneration facility are not considered public utilities and the owners of those facilities and the city or town in which they are located may enter into an agreement to make a payment in lieu of taxes.

CONCLUSION

We recognize that much work remains to be done before retail competition can be implemented in 1998. We also anticipate that certain parties may attempt to avoid the risks of litigation by achieving a negotiated resolution substantially consistent with this Final Plan. While we do not oppose such efforts, in no event should such settlement or collaboration delay the filing of compliance plans or any other obligations imposed on the utilities in this Plan. In addition, we do not see it as our role to facilitate such efforts, primarily because the time frames imposed on us by the legislation leave us little time but to work toward accomplishing all of the tasks that remain in order to have competition in place by 1998. Unless otherwise directed by the Legislature, therefore, we intend to focus our resources on the various tasks that remain to be completed as outlined in this Plan and the compliance filings that will be forthcoming this summer.

We also note that the designation of our staff under RSA 363:30 et seq., as provided in Order No. 22,419, ends with the issuance of this Final Plan and the conclusion of the adjudicative portion of this proceeding reflected in the Interim Stranded Cost Orders.

Finally, we would like to thank all of the participants in these proceedings for their hard work in addressing the many complex issues that must be resolved in order to transition to a restructured electric industry. We believe that the record before us was greatly enhanced by the tremendous efforts of those utilities, intervenors, legislators and members of the public who

devoted substantial time and resources to provide us with their views on these important topics. We also commend the Legislature for providing us with the specific directives contained in RSA 374-F rather than merely delegating this important task to us with no guidance. Lastly, we are especially appreciative of the tireless efforts of our staff and consultants in assisting us with this plan.

Appendix A - Intervenors

Parties Granted Full Intervention:

AARP State Legislative Representative (AARP)
American Hydropower, Inc. (AHI)
American National Power (ANP)
Appalachian Mtn. Club (AMC)
Audubon Society of New Hampshire (ASNH)
Senator John S. Barnes Jr. (Barns)
Business and Industry Association (BIA)
Cabletron Systems, Inc. (Cabletron)
Campaign for Ratepayers Rights (CRR)
Center for Energy and Economic Development (CEED)
City of Claremont (Claremont)
Senator Burton J. Cohen (Cohen)
Community Action Programs (CAP)
Competitive Power Coalition of New England, Inc. (CPC)
Greater Concord Chamber of Commerce (CCC)
Concord Electric Company (CEC)

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Connecticut Valley Electric Company (CVEC)
Conservation Law Foundation (CLF)
Coos County Commissioners (COOS)
Greater Dover Chamber of Commerce (DCC)
EnerDev, Inc. (EnerDev)
EnergyNorth Natural Gas, Inc. (ENGI)
Enron Capital & Trade Resources (Enron)
Exeter & Hampton Electric Company (E&H)
Federated Department Stores (FDS)
Senator Leo W. Fraser, Jr. (Fraser)

Freedom Energy Company (Freedom)
Granite State Electric Company (GSEC)
Granite State Energy, Inc. (GSEI)
Granite State Hydropower Association (GSHA)
Granite State Taxpayers, Inc. (GST)
Great Bay Power Company (Great Bay)
Green Mountain Energy Partners, LLP (GMEP)
Rep. Lawrence J. Guay (Guay)
Independent Power Producers (IPP)
KCS Power Marketing, Inc. (KCS)
Greater Keene Chamber of Commerce (KCC)
Sen. Frederick W. King (King)
City of Manchester (Manchester)
Greater Manchester Chamber of Commerce (MCC)
Rep. Jeffrey C. McGilvray (McGilvray)
Rep. Cynthia A. McGovern (McGovern)
Merrimack River Watershed Council (MRWC)
Moore Center Services (Moore)
New Hampshire Citizen Action (NHCA)
New Hampshire Department of Environmental Services, Air Resources Division (ARD)
New Hampshire Electric Cooperative (NHEC)
New Hampshire Municipal Association (NHMA)
North East England Energy Efficiency Council, Inc. (NEEC)
Office of the Consumer Advocate (OCA)
Professional Associations (PA)
Penti J. Aalto (Aalto)
Rep. Terence R. Pfaff (Pfaff)
Public Utility Policy Institute (PUPI)
Public Service Company of New Hampshire (PSNH)
Retail Merchants Association of New Hampshire (RMA)
Greater Rochester Chamber of Commerce (RCC)
Sen. Beverly T. Rodeschin (Rodeschin)
Sen. Jim Rubens (Rubens)
Save Our Homes Organization (SOHO)
Senator C. Jeanne Shaheen (Shaheen)
Bellwether Solutions (Bellwether)
Society for the Protection of New Hampshire Forests (PNHF)
Sen. Thomas P. Stawasz (Stawasz)
Rep. John H. Thomas (Thomas)
Tri-Chamber Governmental Affairs Council (TRI)
Unitil Corporation (Unitil)
Wheelabrator (Wheelabrator)
Wheeled Electric Power Company (WEPCO)

Wood-Fired Small Power Producers (Wood-Fired SPPs):

Bio-Energy Corporation (Bio-Energy)
Bridgewater Power Company, L.P. (Bridgewater)
Hemphill Power and Light Company (Hemphill)
Pinetree Power, Inc. (Pinetree)
Pinetree Power - Tamworth, Inc.
(Tamworth)
Whitefield Power and Light Company (Whitefield)

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Coos County Commissioners (COOS)
Greater Dover Chamber of Commerce (DCC)
EnerDev, Inc. (EnerDev)
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Enron Capital & Trade Resources (Enron)
Exeter & Hampton Electric Company (E&H)
Federated Department Stores (FDS)
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Rep. Terence R. Pfaff (Pfaff)
Professional Associations (PA)
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Public Utility Policy Institute (PUPI)
Retail Merchants Association of New Hampshire (RMA)
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Sen. Beverly T. Rodeschin (Rodeschin)
Sen. Jim Rubens (Rubens)
Save Our Homes Organization (SOHO)
Senator C. Jeanne Shaheen (Shaheen)
Society for the Protection of New Hampshire Forests (PNHF)
Sen. Thomas P. Stawasz (Stawasz)
Rep. John H. Thomas (Thomas)
Tri-Chamber Governmental Affairs Council (TRI)
Unitil Corporation (Unitil)

Wheelabrator (Wheelabrator)
Wheeled Electric Power Company (WEPCO)
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Bio-Energy Corporation (Bio-Energy)
Bridgewater Power Company, L.P. (Bridgewater)
Hemphill Power and Light Company (Hemphill)
Pinetree Power, Inc. (Pinetree)
Pinetree Power - Tamworth, Inc. (Tamworth)
Whitefield Power and Light Company (Whitefield)

Appendix B - Working Group Organizational Meetings and Deadlines

Electronic Data Interchange Standards Working Group

GSEC to submit proposal by March 21, 1997

Final recommendation to Commission by August 29, 1997

Staff contact: George McCluskey

Standards for Competitive Providers of Metering Equipment Working Group

Organizational meeting at 10:00 a.m. on March 21, 1997
Final recommendation to Commission by August 29, 1997

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Staff Contact: Michael Cannata

Low Income Assistance Program Working Group

Organizational meeting at 10:00 a.m. on March 14, 1997
Final recommendation to Commission by August 1, 1997

Staff Contact: Amanda Noonan

Supplier Registration Requirements Working Group

Organizational meeting at 10:00 a.m. on March 12, 1997
Final recommendation to Commission by April 25, 1997

Staff Contact: Amanda Noonan

Appendix B - Working Group Organizational Meet
Public Education Program Working Group
Organizational meeting at 10:00 a.m. on March 18, 1997
Final recommendation to Commission by August 29, 1997

Staff Contact: Amanda Noonan

Disclosure of Resource Mix and Environmental Characteristics
of Power Working Group

Organizational meeting at 10:00 a.m. on March 19, 1997
Final recommendation to Commission by April 25, 1997

Staff Contact: Thomas Frantz

Appendix C - Areas for Legislative Oversight Committee Review

We recommend the Legislative Oversight Committee on Electric Utility Restructuring review the appropriateness of the following statutes in light of the policies outlined in the Final Plan:

RSA 362-A Limited Electric Energy Producers Act

RSA 162-H Energy Facility Evaluation

RSA 378:38 Least Cost Energy Planning, Submission of Plans to the Commission

RSA 162-F Decommissioning of Nuclear Electrical Generating Facilities

RSA 362:2 Definition of Public Utility

RSA 83-C Franchise Tax

LEGAL ANALYSIS

I. *STRANDED COSTS*

[85-97] The Final Plan limits recovery of stranded costs by applying a benchmark. That benchmark is the regional average for New England utilities. New Hampshire utilities with costs exceeding the regional benchmark must absorb stranded costs to the extent of that excess.

Our utilities have raised a series of legal objections to this treatment. One set of objections is common to all utilities. We address this set in Part I.A. A second set of objections is raised by Public Service Company of New Hampshire ("PSNH"), based on the "Rate Agreement," the 1989 statutes and the

Commission's approval of the Rate Agreement in DR 89-244. We address this second set of objections in Part I.B.

A. *The Commission Has Authority to Limit Stranded Cost Recovery to the Regional Average for Utilities, Except for SPP Costs*

In this Part I.A, we begin by setting forth our affirmative authority under New Hampshire law to limit stranded cost recovery based on the regional average benchmark. We then turn to the objections raised by the utilities, based on the Takings Clause and the Contract Clause of the U.S. Constitution, the New Hampshire Constitution, and the Federal Power Act.

1. *The Statutes Authorize the Commission to Use Its Judgment and Limit Stranded Cost Recovery to Regional Average*

The Commission possesses authority to implement the limit stranded cost recovery described in this order. We find this authority in applicable statutes and case law, as discussed below.

a. *The Commission's Historic Statutes Direct the Commission to Use Judgment in Setting Rates*

The Commission must determine just and reasonable rates. In establishing this obligation, the statutes do not mandate a specific formula for establishing rates; rather, they obligate the Commission to exercise its judgment. Thus RSA 378:28 provides:

> The commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the Commission to be prudent, used and useful. Nothing contained in this section shall preclude the

> commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon.

This language does not require, or even permit, reflexive inclusion of all costs. The statute instead directs the Commission to consider objective evidence. The Commission has done so in this proceeding. The decision to limit stranded cost recovery to the regional average is based on objective evidence from the region, and assigns to the shareholders the risk of incurring costs exceeding the regional average. The Commission has used the judgment and evidence mandated by statute.

b. *Decisions of the New Hampshire Supreme Court Support the Regional Average Approach*

The Commission's approach is consistent with case law interpreting the statutes. The New Hampshire Supreme Court has found that the Commission must "balance the competing interests of ratepayers who desire the lowest possible rates and investors who desire rates that are higher," to arrive at a rate which meets the "just and reasonable" standard of RSA 378:7. *Appeal of Conservation Law Foundation*, 127 N.H. 606, 638 (1986). In the words of the Court, the analysis for balancing the interest of ratepayers and investors,

> [r]educed to its essentials, \&... may be expressed as a formula: R = O + (B x r), where R is the utility's allowed revenue requirement; O is its allowed operating expense; B is its rate base, defined as cost less depreciation of the utility's property that is used and useful in the public service, *see* RSA 378:27; and r is the rate of return allowed on the rate base.

Id. at 634, *citing Appeal of Public Service Co. of New Hampshire,* 125 N.H 46 (1984). The Court continued:

> The commission controls three variables in regulating rates to provide revenue to a utility\&... . A reasonable rate by definition *reflects the values placed on those variables and is the result of the process by which those values are derived in balancing customer and investor interests.* The obligation

> to engage in a balancing process guarantees that those values are not captive to either the investor or to the customer alone.

Id. at 639 (emphasis added) (internal quotations and citation omitted). This is what the Commission did here: applied its judgment to determine the values for the rate base variable.

The Court also has emphasized that the Commission may establish rates based on a rate base that does not

> necessarily reflect all the cost of the company's actual assets. The commission has this authority \&... because the object of the process is to strike a fair balance between recognizing the interests of the customer and those of the investor, rather than necessarily to guarantee bondholders their interest or stockholders their dividends. *Thus, it is realistic to stress the role that judgment must play in setting a rate of return.*

Appeal of Conservation Law Foundation, 127 N.H. 606, 635-36 (citations omitted). Likewise, the Court noted that decisions regarding allocation of burdens between investors and customers is "one to be made by expert policymakers" within the parameters of traditional ratemaking. *Id.* at 647. The Court explained:

> [T]here is no simple formulation that describes the standard of usefulness [citation omitted]. Prior case law has invested the commission with flexibility in determining what may qualify as used and useful, thus necessarily providing for policy judgments.

Id., 127 N.H. 606, 637. The Court based its decision in part on *Legislative Utility Consumers Council v. PSNH*, 119 N.H. 332, 343-44 (1979), a case pre-dating the anti-construction-work-in-progress ("CWIP") statute, where the Commission was held to have sufficient flexibility to define used and useful utility property as including CWIP.

In this case, the Commission has made the types of policy judgments which are not merely permitted, but are in fact required by traditional ratemaking. The Commission has applied its expertise and judgment and determined that capping recovery for stranded costs at the regional average strikes the appropriate balance between investor and customer interests. This fulfills our obligation under statute and case law.

c. *Appeal of Richards Does Not Limit the Commission's Authority*

The New Hampshire Supreme Court's decision in *Appeal of Richards*, 134 N.H. 148 (1991), does not require the Commission to ignore objective benchmarks in applying the traditional ratemaking formula to a utility's costs. To the extent one reads *Appeal of Richards* as requiring use of the traditional ratemaking framework, the Commission has not deviated from that framework here. We believe that the confines of traditional ratemaking framework, which require us to exercise our policy judgment, easily accommodate the mechanism for recovery of stranded costs which we have proposed.

We came to a similar conclusion in *New England Telephone and Telegraph Company*, 123 PUR4th 289, 303-304 (1991). We there concluded that we were required

> to strike the appropriate balance between the competing interests of NET and its

> ratepayers in recognition of the changes occurring in the telecommunication industry. RSA 363:17-a.

Referring to *Appeal of Richards*, we stated:

> We do not interpret the *Richards* decision as imposing a restriction on the Commission's ability to engage in this factual inquiry and respond appropriately. We therefore conclude that the language in *Richards* suggesting certain limitations on the Commission's regulatory discretion was not intended by the Court to apply outside of the particular circumstances of that case.

Id. We reaffirm that finding here.

d. *RSA 374-F Provides Renewed Authority to Base Stranded Cost Recovery on Costs*

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Reflecting the Regional Average

In addition to the authority set forth in our traditional statutes, the Legislature in 1996 provided renewed authority to base stranded cost recovery on costs reflecting the regional average. RSA 374-F:3,XI provides that "[t]o the greatest extent practicable, rates should approach competitive regional rates \&... [and] [t]he unique New Hampshire issues contributing to the highest prices in New England should be addressed during the transition, wherever possible." RSA 374-F:3,XII(a) states that the Commission must fulfill

> its responsibility to determine rates which are equitable, appropriate, and balanced and in the public interest. In making its determinations, the commission shall balance the interests of ratepayers and utilities during and after the restructuring process.

These passages provide affirmative authority to use a regional average benchmark, both as a means to addressing the "issues contributing to the highest prices in New England," as a way of balancing the interests of various stakeholders. As discussed in the Final Plan and in Part I.A.2 of this Legal Analysis, basing stranded cost recovery on costs reflecting the regional average is consistent with the reasonable expectations of shareholders and with the statutory protections intended for ratepayers.

Finally, RSA 374-F:3,XII(a) states: "Nothing in this section is intended to provide any greater opportunity for stranded cost recovery than is available under applicable regulation or law on the effective date of this chapter." As discussed above, existing law authorizes establishing of rates based on costs reflecting the regional average. We therefore are justified

based on RSA 374-F:3,XII(a) to limit stranded cost recovery to that level.

2. *The Takings Clause of the U.S. Constitution Does Not Preclude the Commission From Limiting Recovery of Stranded Costs to the Regional Average*

The utilities have argued that capping their recovery at the regional average violates the Takings Clause of the Fifth Amendment of the U.S. Constitution. For the reasons set forth below, we believe their arguments are incorrect.

The Takings Clause protects legitimate, investment-backed expectations of property owners from diminution of the value of their property by government action. *See, e.g., Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979) (holding government action to convert a privately owned marina into public park requires the government to pay just compensation). A "taking" occurs only when the "balance has been struck in the regulatory process so as unreasonably to favor ratepayer interests at the substantial expense of investor interests." *Jersey Central Power & Light v. Fed. Energy Regulatory Comm'n*, 810 F.2d 1168, 1189 (D.C. Cir. 1986) (Starr, J., concurring). The analysis is "essentially \&... ad hoc [and] factual." *Id.* at 1192 (quoting *Kaiser Aetna, supra*, 444 U.S. at 175).

a. *The Use of a Regional Average to Limit Recovery for Stranded Investment Balances the Interests of Ratepayers and Investors*

Some of the parties have intimated that the Due Process Clause requires us to order full recovery of stranded investment. One of the forms the argument has taken is the claim that once the investment in question has been found to be prudent, denial of recovery violates the Takings Clause. The Supreme Court rejected that argument decisively in *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-16 (1989), and we will not consider it further, at least in its unadorned version. In rejecting the claim, we note that the concurring opinion in *Jersey Central* observed:

> [T]he Fifth Amendment does not provide utility investors with a haven from the operation of market forces. *See, e.g., Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942). \&... Yet, the prudent investment rule, in full vigor, would accomplish virtually that state of insulation, all in the guise of preventing government from effecting a taking without just compensation.

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> ... [T]he prudent investor rule is, taken alone, too weighted for constitutional analysis in favor of the utility.

810 F. 2d at 1191. The concurrence also counsels us that moving to the other end of the spectrum

of ratemaking principles, to the full force of the "used and useful" rule would operate \&... as a restraining principle, reminding utility managers that they must assume the risk of economic forces working against an investment which is prudent at the time it is made.

Id. at 1190 n.1. However, rigid adherence to the "used and useful" concept would deny recovery for all costs in excess of market prices, a path we do not follow.1(69)

Instead, we note the cases grant us considerable constitutional leeway in the choice of methods for determining rates. *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (observing that the Constitution requires no particular formula); *Wisconsin v. Fed. Power Comm'n*, 373 U.S. 294, 309 (1963) (observing that the Court has repeatedly stated "no single method need be followed"); *Duquesne*, 488 U.S. at 315-16 (reviewing cases and reaffirming rule that the Constitution does not prescribe any one ratemaking methodology).

The Legislature has instructed us that one standard against which we should hold New Hampshire's utilities is the experience of the region's other utilities. RSA 374-F:3,XI. In determining the treatment, we have compared New Hampshire's utilities to those utilities having similar obligations and similar opportunities in the time frame that the utility at issue made its investment. More specifically, we will compare each utility's cost with the average cost for New England investor-owned utilities.

To date, we have been presented with no explanation of why New Hampshire's utilities could not reasonably be expected to have matched the regional average.2(70) It is unreasonable for shareholders in New Hampshire's utilities to have any expectation of being able to recover a level of costs in excess of the regional average for utilities with similar load obligations and having similar options for meeting that load.

The regional average cap authorized by the Final Plan gives our utilities much more than the Constitution requires. Rather than identify the lowest cost utility in New England and cap New Hampshire stranded cost recovery at that level, we will allow utilities to recover up to the regional average. Because utilities have wide discretion in determining how to meet their service obligations, the purpose of the regional average standard is to establish a reasonable benchmark against which to evaluate the results of the business decisions made in the exercise of that discretion. The utilities must bear the risk of not meeting the standard; the Constitution does not require recovery of the costs resulting from every utility business decision.

Except for the special circumstances discussed below, we presume that the regional average creates a standard for the capital investment protected by the Constitution, because we find the regional average is more than a reasonable benchmark determining the level of investment necessary to meet the utility's public service obligation. There are impressive differences in New England as to how the utilities' investment discretion was exercised. The Constitution does not require us to hold utility shareholders harmless for these differences. If the rates are below this average, ratepayers will bear the costs for stranded investments (*i.e.*, the excess of book over market); above average losses will fall on shareholders.

We are not suggesting there has been history of unfettered spending by utilities. We are instead emphasizing the difference between mandatory spending and discretionary spending. The standard applied by the Final Plan is one utilities reasonably should have expected: that when their discretionary spending exceeds the regional average, they are responsible for the difference.

b. *Setting Cost Recovery Based on the Regional Cost Averages Is Consistent with the Takings Clause, as the U.S. Supreme Court Ruled in Permian Basin Rate Cases*

Support for the outcome reached here lies in *Permian Basin Area Rate Cases*. 390 U.S. 747 (1968). In the Federal Power Commission

("FPC") proceeding below, the FPC had addressed the task of setting rates for a number of independent producers recently deemed "natural gas companies" subject to the federal Natural Gas Act. Rather than determining rates for each company based on that company's costs, the FPC identified certain "major producing areas" and set area maximum rates based on composite cost with a local and historical emphasis. The U.S. Supreme Court upheld this reliance on a regional cost approach, finding that such area maximum rates were constitutionally permissible. *Id.* at 770. The similarities between the circumstances before the U.S. Supreme Court in *Permian Basin* and those we are presented with here are striking, and they serve to convince us that the regional average cost cap is a reasonable resolution of the stranded cost issue in New Hampshire.

The constitutional arguments in *Permian Basin* were that area rates failed to account for the individual circumstances of high cost producers, and that the imperilled costs of those producers, if not recovered, would be "confiscated" within the meaning of the Constitution. The Court rejected both contentions.

As to the use of group proceedings and the use of representative data, the Court found

> This Court has repeatedly recognized that legislatures and administrative agencies may calculate rates for a regulated class without first evaluating the separate financial position of each member of the class; it has been thought to be sufficient if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the pertinent parties.

390 U.S. at 768-769. Besides the use of such evidence and proceedings, similar to those we have followed here, the Court relied on certain of its earlier due process cases.[3(71)] We are mindful of the teachings of those cases and believe the process here is consistent with their teachings. *See also Wisconsin v. Fed. Power Comm'n*, 373 U.S. 294, 308-10 (1963) (upholding, against a due process challenge, a departure from a prudent-investment, individualized cost of service to an area ratemaking formula).

In *Permian Basin*, the Supreme Court found that nothing in the Constitution forbids the imposition of maximum prices upon commercial and other activities, even though it explicitly recognized that the rate ceiling could more seriously affect high cost operators and reduce the value of regulated property. "No constitutional objection arises from the imposition of maximum

prices," 390 U.S. at 769, as long as the price caps or rate limitations balance investor and consumer concerns. *Id.* at 769-70. That balance is precisely what we have struck here, in using the regional average as a benchmark for cost recovery. Our reliance on *Permian Basin* is reinforced by the use of special exception procedures approved in that case, as noted above, and as described below at Part I.A.2.e.

c. *There Has Been No Taking of Investments Exceeding the Regional Average*

Some have argued that property is "taken" by the government when the utility commits capital to the public service. *See Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Comm'n*, 262 U.S. 276, 291 (1923) (Brandeis, J., dissenting). The "taking" is said to reflect the fact that the capital committed is in furtherance of the utility's obligation to serve. It is true that the utility must commit a certain amount of capital to the public service to meet its legal obligations. But in most cases, the magnitude of that commitment is the discretionary decision of the utility. The facts of New England make this clear. It is precisely because different utilities made different decisions — more or less capital-intensive investment paths — that embedded cost within the region have varied. Sums exceeding the regional average certainly exceeded the minimum amount necessary to meet the government-established obligation to serve. We do not see how the capital invested beyond this regional average as a result of these business decisions is "taken" by the government. The above-average costs are the result of discretionary decisions by the utility. If the government has taken anything, it has taken that minimum amount necessary to serve efficiently

(consistent with the legal analysis that follows). We think the Constitution does not view as a taking a government decision to hold the utility shareholder responsible for any costs exceeding that minimum efficient level. We think that, in a regime of monopoly regulation, the ratepayers are entitled to much more than "average" performance. For a variety of reasons, however, our Final Plan provides for greater recovery, allowing recovery up to the regional average.

i. *The Costs at Issue Were the Product of Business Decisions and Not Regulatory Fiat*

There was no government insistence that any New Hampshire utility devote more than the necessary amount to its public service obligation (or in fact to spend more than necessary to serve efficiently). The lack of governmental command implies that there is no constitutional right to a greater recovery. *See Jersey Central*, 810 F. 2d at 1190 (Starr, J., concurring) ("What is fundamental is that the government did not force upon the utility a specified course of action \&... ."). (As noted below, where a utility believes it has a special reason why it had to devote more than the average amount, the utility will have an opportunity to make this showing and seek special recovery.)

ii. *The Constitution Does Not Require Protection from Losses Resulting from Investments Exceeding Average Cost*

To grant higher costs and profit to investors who made decisions resulting in cost levels exceeding the regional average would be perverse. Entities that historically have been protected from competition would have been treated more generously (and would be permitted to treat their customers less generously) than entities that have had to face competition. That has never been the purpose of regulation. Such policy would invite the utilities under our jurisdiction to incur more costs than necessary. As noted in Judge Starr's concurring opinion:

> Indeed, it would be curious if the Constitution protected utility investors entirely from business dangers experienced daily in the free market, the danger that managers will prove to have been overly sanguine about business prospects or the danger that a particular capital investment will not prove successful \&... . [T]he Fifth Amendment does not provide utility investors with a haven from the operation of market forces.

Id. at 1190-91. To do otherwise would violate our statutory obligation as regulators to protect the public from inefficiency.

In return for the privilege of a government-granted franchise, the utility is obligated to serve at the lowest feasible cost. This obligation—which has been part of our analysis—has been confirmed by various authorities. *See, e.g., El Paso Natural Gas Co. v. Fed. Power Comm'n*, 281 F.2d 567, 573 (5th Cir. 1960) ("It is the obligation of all regulated public utilities to operate with all reasonable economies."), *cert. denied sub nom. California v. Fed. Power Comm'n.*, 366 U.S. 912 (1960); *Pacific Gas & Elec. Company*, 38 FERC ¶ 61,242 at p. 61,789 (1987) (public utility has "a mandate to bring about the production of electricity `at the lowest possible cost to the consumer in the long run—in the economist's terms, to ensure the efficient performance of an industry,") (quoting other authorities); *Midwestern Gas Transmission Co.*, 36 FPC 61, 70 (1966) ("cost" for ratemaking purposes meant that level of cost reflecting the "utilization] of all cost saving opportunities" by an "alert efficient and responsible management"), *aff'd sub nom. Midwestern Gas Transmission Co. v. Fed. Power Comm'n*, 388 F.2d 444 (7th Cir.), *cert. denied*, 392 U.S. 928 (1968).

The desired result of regulation has always been to have the regulated utility achieve a standard of cost effectiveness consistent with the standard that would have been achieved in a competitive market. Put another way, the goal is to elicit a result from management comparable to what would happen if management were subject to competition. In competitive markets even prudent decisions do not always turn out well. While the utility was required to undertake an obligation to provide service (in exchange for a protected service area and eminent domain authority), regulators rarely directed the utility

to pursue a specific course of action in order to achieve that mandated goal. The utility had the obligation to serve its load, but had discretion to select the manner in which it would meet its obligation. In the exercise of this discretion, as with any business decision, there can be more than one prudent choice. However, some choices will turn out better than others. For the choices that turn out to be worse than others, we must keep in mind that in a competitive market no investor would have a reasonable expectation of full recovery of his investment, without regard to how well that investment performs.

We also note that, even an investor in a regulated monopoly could not reasonably be expected to be insulated from all risk for its investment; any investment has some risk associated with it. We do not believe that the Constitution requires more of us. We find that the limitation of uneconomic cost recovery to a maximum set at the regional average of such costs is just and reasonable, and consistent with the Takings Clause of the U.S. Constitution.

d. *The Takings Clause Does Not Serve to Insure Cost Recovery for Uneconomic Decisions by Regulated Utilities*

Our limitation of recovery of stranded costs to the regional average does not violate any reasonable expectations of recovery. The approach does no more than require utility shareholders to bear the costs of the risk they undertook. That risk is that other utilities having similar obligations and facing similar choices would make different decisions and have lower costs.

There is no factual or legal basis for the suggestion that a utility could make discretionary decisions which produce an above-average cost result and not bear the consequences. A regulatory decision requiring the utility to absorb its above-average costs does not cause a loss of value to shareholders; the loss of value is sustained because of economic forces, represented by the ability of similarly situated utilities to carry out similar obligations at lower cost. A regulatory decision which causes such loss of value does not thereby necessarily violate the Constitution.

> The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values that have been lost by the operation of economic forces.

Market St. Ry. Co. v. R.R. Comm'n of Ca., 324 U.S. 548, 567 (1945).

The utilities appear to view the Takings Clause as a blanket protection of investment value. The discussion above shows that they are incorrect. The fact that costs were prudent does not make their recovery constitutionally guaranteed either. Disallowances have been found to be consistent with the Constitution even where the disallowed costs had been explicitly found to be prudent. Indeed, the U.S. Supreme Court in *Duquesne v. Barasch* explicitly rejected the notion that if an investment was prudent, its recovery is mandated by the Constitution. 488 U.S. at 314. The fully explicit possibility of less than complete utility recovery also withstood constitutional

attack in Permian Basin, 390 U.S. at 769-770. *See also, Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942) (noting that the "hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated, business"); *Jersey Central*, 810 F. 2d at 1189-1193 (reviewing the case law).

e. *Any Affected Utility Will Have an Opportunity to Establish That It Should Be Permitted Appropriate Relief from Application of the Regional Average*

There may be factual circumstances of which we are not aware, which are unique to a particular company, which justify deviating from the constitutionally permissible regional average approach. Though we believe that each utility had an opportunity in the interim stranded cost portion of the proceeding to raise utility-specific issues, we will give each utility an opportunity to demonstrate that this is so in a full stranded cost recovery hearing. The showing may relate to one of two propositions: (a)

there were facts unique to the company's resource planning and acquisition activities which caused it to deviate from the regional average for reasons beyond its influence or control; or (b) setting rates at the regional average will cause financial hardship. *See* RSA 374-F-4, IV(b).

Our providing an opportunity to submit evidence on financial hardship does not mean, however, that we view protection from such hardship as guaranteed by the U.S. Constitution. It is indisputable that the disallowance of costs explicitly found to be prudent causes some amount of financial hardship, yet, as described above, the U.S. Supreme Court has upheld such disallowances. *See Market St. Ry. Co.*, 324 U.S. at 568 ("We are unable to find that the order in this case is in violation of constitutional prohibitions, however unfortunate the plight of the appellant.").

We again find support for this position in *Permian Basin Area Rate Cases*. There the FPC had provided for an opportunity for producers to seek "appropriate relief" if that producer could establish that its out-of-pocket expenses incurred by the operation of a particular facility exceed the revenue obtained by that facility under the applicable area price. The Supreme Court recognized that "certain of [its] decisions might be understood to have suggested, that if maximum rates are jointly determined for a group or area, the members of the regulated class must, under the Constitution, be proffered opportunities either to withdraw from the regulated activity or to seek special relief from the group rates." *Permian Basin*, 390 U.S. at 770. However, there was no need to resolve any constitutional requirement of such relief since the FPC had provided such opportunities to seek special relief.

3. *The Contract Clause of the U.S. Constitution Does Not Preclude the Regional Average Limit*

a. *Introduction*

The utilities argue that the Contract Clause of the U.S. Constitution protects their right to full stranded cost recovery. Specifically, they argue they have a contract (with some unidentified entity) ensuring recovery of all prudent costs. Application of a regional average cap, they argue, impairs this contract, in violation of the Contract Clause.

We disagree. The Contract Clause does not apply unless there is a contract. There is no contract between this Commission, or any other state agency, with the utilities. As noted in Part I.B.2, to the extent there are investment-backed expectations associated with utility investments made to serve the public, they are appropriately analyzed under the Takings Clause and under state statutes. There is no contract protected by the Contract Clause, for the reasons we now explain.

b. *Background on Contract Clause Analysis*

The Contract Clause provides in relevant part that "[n]o State shall ... pass any \&... Law impairing the Obligation of Contracts." U.S. Const. art. 1, sec. 10, cl. 1.

In applying the Contract Clause, courts generally use a four part analysis: (1) whether there is a contractual relationship; (2) whether a change in law impairs that contract; (3) whether that impairment is substantial; (4) whether that substantial impairment is reasonable and necessary to serve an important public purpose. 2 Ronald D. Rotunda *et al., Treatise on Constitutional Law Substance and Procedure* §15.8, 103 n.74 (1986).

Our utilities' arguments do not make it past the first part of the analysis. The New Hampshire Supreme Court has stated:

> There can be no contract clause violation unless it is first shown that a contract has been substantially altered. "This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that relationship, and whether the impairment is substantial."

Opinion of the Justices (Furlough), 135 N.H. 625, 631-32 (1992) (*quoting General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992)) (citations omitted). *See also Indiana ex rel.*

Anderson v. Brand, 303 U.S. 95, 100 (1938) ("[I]n most cases brought to this court under the contract clause of the Constitution, the question is as to the existence and nature of the contract and not as to the construction of the law which is supposed to impair it."); *Conway v. Sorrell*,

894 F.Supp. 794, 799 (D.Vt. 1995) ("[i]t is axiomatic that the existence of a contract must first be established before a claim may be pursued under the Contract Clause"). As we explain below, under New Hampshire law the regulatory relationship between regulator and regulated is not a contract.

The analysis of this question must begin with several common sense principles. First, the question whether a contract exists for purposes of the Contract Clause must begin with an analysis of state contract law. *Indiana ex rel. Anderson v. Brand*, 303 U.S. at 100 (great deference is given to state law in determining whether a contract exists for Contract Clause analysis); *Parker v. Wakelin*, 937 F.Supp. 46, 51-52 (D. Me. 1996) (applying state common law of contracts to determine if a contract had been formed by the State for Contract Clause purposes).

Second, the courts have established a presumption that a state statute does not create a contract, absent a clear indication to the contrary. There must be a "clear indication that the legislature intends to bind itself contractually" for a statute to confer contractual rights that are enforceable against the state. *Parker*, 937 F.Supp. at 52 (quoting *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 465-66 (1985)). As one treatise states:

> [C]ourts should not rule that the government has entered into a contract ... unless it is clear that a governmental entity with authority to do so has contracted with the private party in a way that restricts the power of the government to act in the future. *Governmental actions relating to the use of property or business activity normally will be regulatory and not contractual in nature.*

2 Rotunda, *supra*, §15.8, 103 n.74 (emphasis added).

The common law requires three elements for the formation of a contract: (1) offer, (2) acceptance, and (3) consideration. *See Tsiatsios v. Tsiatsios*, 140 N.H. 173, 178 (1995); *Chasan v. Village District of Eastman*, 128 N.H. 807, 815 (1986) (both cases relying on Restatement (Second) of Contracts, which includes these requirements for contract formation). An offer is defined "as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement (Second) of Contracts §24. ("Restatement"). An acceptance is shown by an assent to the offer's terms "in a manner invited or required by the offer." Restatement §50(1). Consideration is "[a] performance or a return promise" that is given in exchange for the promise made by the promisor. Restatement §71(2).

c. *Application of Contract Clause Analysis to Utility Regulation in New Hampshire*

In the context of utility regulation in New Hampshire, there is no offer, no acceptance and no consideration. For each utility, there is a Commission order authorizing the utility to provide services to a particular service territory. *See*, RSA 374:22 and 26. There are statutes establishing the standards for such services. There are other statutes obligating the Commission to set appropriate rates for these services. These statutes and orders create obligations, set standards

and provide benefits. But every statute creating an obligation, setting a standard and providing a benefit, is not a contract. A contract requires offer, acceptance and consideration. We do not interpret the public utility statutes as containing offer, acceptance and consideration.

Although the decisions (or lack of decisions) in other states are not binding on New Hampshire, it is worth noting that challenges to state commission decisions have occurred for as long as regulation itself. On literally hundreds, and possibly thousands, of occasions, a utility has challenged a commission action for its alleged failure to provide a benefit which the utility argued it deserved for meeting its

statutory obligations. On at least five prominent occasions, such a dispute has gone to the U.S. Supreme Court.[4(72)] Yet no utility brief in this case points to any decision of any court in any jurisdiction which characterizes the statutory relationship between regulators and regulated as a contract. If utility investors over the last century have invested under a belief that they were parties to a contract, no Court has so concluded.

Under these circumstances, we think the presumption used by the courts against finding a contract, unless intent is clear, applies here. As Prof. Rotunda has explained, "[g]overnmental actions relating to the use of property or business activity normally will be regulatory and not contractual in nature." 2 Rotunda, *supra* at 103 n.74.

The notion that contract analysis is not the appropriate basis for determining the utilities' entitlement to stranded cost recovery is contained in *Appeal of Richards*, 134 N.H. at 158-59. The Court there stated:

> In the traditional ratemaking proceeding, when the utility files for a change in rates under RSA chapter 378, a course of action, well defined by that chapter, the PUC's regulations and the decisions of this court, is undertaken. In the reorganization of PSNH under the State's agreement with NU, the traditional approach could have been employed, initiated by a PSNH filing for standard and appropriate changes to its existing rates. The rate element of the reorganization could have come to the PUC, in the normal course, under the existing statutory delegation and with all of the judicial requirements attached. However, the rate element of the reorganization was far from traditional, since it envisioned contractual protections for NU, through a contractual guarantee of rates designed to cover the cost of acquisition required to be paid by NU. The contractual rates were intended to be in effect far beyond the period normally and historically appropriate for this utility.

We do not agree with the Court's suggestion that the rate agreement is a contract, for the reasons discussed in Part I.B.3.d below. The point for now is that the Court's discussion is notable for its description of normal ratemaking as something other than contractual.

d. *The Inapplicability of Winstar*

The sudden frequency of claims by utilities that the Contract Clause is relevant seemed to gain its momentum in July 1996, the month when the U.S. Supreme Court decided *U.S. v. Winstar* Corp., 116 S.Ct. 2432 (1996). Although *Winstar* has become a new rhetorical arrow in our utilities' empty quiver, *Winstar* need not give us pause. In *Winstar*, the threshold question, "whether there were contracts at all between the government and respondents" was not before the Court. 116 S.Ct. at 2448. Therefore the case is of no assistance in determining whether a contract exists.

Citations to a case which neither considered nor decided the existence of a contract will not cause us to pass over the important threshold question whether there is some generic antecedent unwritten contract between the state and the utilities. Under New Hampshire's general utility laws, there is no offer, no acceptance, and no consideration. Because there is no contract, the Contract Clause does not apply.

Winstar has no further application here because a careful reading discloses that it is not a Contract Clause case. The federal contractual doctrines under discussion in that case had their origins in Contract Clause jurisprudence, *see* 116 S.Ct. at 2454-55, but the decision does not purport to construe Art. 1 §10 Cl. 1 of the Constitution. That provision deals only with contractual obligations altered (or, sometimes, entered into) by States. In *Winstar* the contracting party defending against claims of breach was the federal government, and the legislature whose statute was deemed to have affected the contract was Congress. Those circumstances are not presented here.

e. *Conclusion*

The fact that the Contract Clause is not applicable here does not mean the government has no obligation to utilities that have made

investments. There certainly is some form of *quid pro quo* in utility regulation. Investors make investments based on expectations of treatment by government regulators. But the proper place to analyze this quid pro quo is under the Takings Clause, which protects investment-based expectations.

4. *Part I, Art. 23 of the New Hampshire Constitution Does Not Preclude the Regional Average Limit*

Part I, Article 23 of the New Hampshire Constitution states:

> Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made \&... for the decision of civil causes \&... .

This clause is not violated by the Commission's regional average cap. "Retrospective law" has been defined as follows: "`[E]very statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past must be deemed retrospective \&... .," *Woart v. Winnick*, 3 N.H. 473, 479 (1826) (*quoting Society v. Wheeler*, 2 Gallison 105).

New Hampshire statutes historically have not prevented a limit such as the Regional Average discussed here. The constitutional protection goes only to a vested right. The right of a public utility is defined by its franchise. In New Hampshire, a franchise is the permission to operate as a public utility, granted by the Public Utilities Commission after a finding that such operation is for the public good. RSA 374:26. As we have explained, we do not find that the "public good" includes recovery of above-average costs. We see no basis in state law for a different result.

We conclude that there is no vested right to recovery of costs above the regional average and therefore no violation of Part I, Art. 23 of the New Hampshire Constitution.

5. *The Federal Power Act Does Not Inherently Preempt the Commission From Limiting Cost Recovery to the Regional Average; a Final Answer on Preemption Requires Factual Adjudication*

a. *Introduction*

Each of New Hampshire's retail utilities buys some or all of its power supply from an affiliated utility under a wholesale rate subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the Federal Power Act. This situation has given rise to arguments by the utilities that the Commission is preempted from preventing full recovery of all costs incurred by them under these FERC-jurisdictional agreements. The utilities then extend their asserted right to cost recovery by combining their preemption argument with FERC's Order No. 888. Specifically, they argue that FERC's Order No. 888 allows wholesale sellers to recover costs beyond the term of a contract where the seller incurred such costs based on a reasonable expectation that the buyer would continue to buy beyond the term of the contract. The utilities thus seek Commission-ordered recovery of years of costs, well beyond the introduction of competition in New Hampshire and well beyond the notice period for contract termination.

These arguments are based on a misunderstanding of the Federal Power Act and the cases applying that Act to the context of state ratemaking. The arguments also are dependent on an element of FERC's Order No. 888 that is *ultra vires* and contrary to the Federal Power Act.

b. *The Federal Statutory Scheme*

The Federal Power Act (FPA) gives the Federal Energy Regulatory Commission (FERC)

exclusive jurisdiction over wholesale power transactions. For the New Hampshire utilities, wholesale power transactions consist of contracts between the retail utilities and generation affiliates. This Commission has generally permitted the costs incurred under these wholesale contracts to be passed through to retail customers. This section assesses the legal

constraints on the Commission's authority to affect the utilities' ability to recover these contractual costs from their retail customers.

Section 201 of the Federal Power Act vests in the FERC exclusive authority over "the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce" and "over all facilities for such transmission or sale of electric energy." 16 U.S.C. §824(b). FERC's authority therefore extends to wholesale transactions of electric power, including transactions between affiliates of registered holding companies, such as those undertaken by the New Hampshire utilities.

FERC's jurisdiction over wholesale transactions is exclusive, so that while a state may set rates for retail transactions, it may not set rates for wholesale transactions. *Narragansett Elec. Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977), *cert. denied*, 435 U.S. 972 (1978). That the FPA precludes states from setting wholesale rates, however, says nothing about whether states may take other action that might affect a utility's ability to collect costs under FERC-approved rates. On this question, the FPA is silent. As a result, we must turn to case law for an understanding of when states may take action that may affect recovery of FERC-approved rates without engaging in setting of wholesale rates.

c. *The Circumstances Required for Federal Preemption of State Ratemaking*

i. *The Two Types of Wholesale Transactions: Non-Preemptive and Preemptive*

Two types of wholesale transactions have been tested by the courts. When the transaction is non-preemptive, the courts have recognized the authority of states to limit a utility's ability to recover FERC-approved rates. When the wholesale transaction is preemptive, FERC approval of the wholesale rate preempts the States from taking any action that limits the pass through of the wholesale costs. The crucial differences between the two lines of cases involve the factual circumstances of the transactions. As demonstrated in the following section, the wholesale contracts of the New Hampshire utilities fall into the category of transactions that are not preempted. First we discuss the two categories of cases.

The first line of cases establishes the general principle that the wisdom of a retail utility's decision to make the wholesale purchase is subject to state review. *See, e.g., Kentucky West Virginia Gas Co. v. Pa. Public Utility Commission*, 837 F.2d 600, 609 (3d Cir. 1988) (citing the

"long standing notion that a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source"); *Pike County Light & Power Co. v. Pa. Public Utility Comm'n*, 77 Pa. Commw. 268, 273-74, 465 A.2d 735, 737-38 (1983) (similar holding). Under this principle, states retain the authority to disallow in retail rates the purchase costs associated with a FERC-approved sale. *See Appeal of Sinclair*, 126 N.H. 822 (1985) (Commission may inquire into utility's decision to purchase under FERC-approved rate).

The second line of cases creates an exception to the general principle established in the *Kentucky West Virginia-Pike County* cases. This exception precludes a state from disallowing costs associated with the purchase under a FERC-approved rate when the disallowance results in "trapped costs." Cost trapping interferes with FERC regulation and therefore is preempted under the Supremacy Clause of the U.S. Constitution (Art. VI, cl.2).

When "trapped costs" occur depends on the facts of the transaction. Every wholesale transaction has a seller and a buyer. FERC regulates the seller and the state regulates the buyer. Where the two regulatory agencies reach different conclusions about the same issue, a company's costs can get "trapped" in between. While the Supreme Court has not explicitly defined "trapped cost," its decisions suggest that a "trapped cost" occurs when (1) FERC issues a decision requiring the purchasing utility to take a particular action, and (2) the state sets the utility's rates as if the utility had made a different choice.

The two principle Supreme Court cases in which the Supreme Court held that costs had

been "trapped" are *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986), and *Mississippi Power & Light v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988). *Nantahala* involved a state commission's attempt to set rates as if the retail utility had acquired more low-cost hydroelectric power than the amount FERC had allocated. *MP&L* involved a state commission's attempt to set rates as if the retail utility had acquired less high cost nuclear power than allocated under a FERC-jurisdictional contract.

The "trapped cost" analysis used in both opinions is summarized well by this quotation from *Mississippi Power & Light* (487 U.S. at 372-74, emphasis added):

> *Nantahala* involved a FERC order *fixing* the utility's right to acquire low cost power; this case [*Mississippi Power & Light*] involves a FERC order *fixing* MP&L's *obligation* to acquire high cost power\&... . In *Nantahala* the state court attempted to approve retail rates based on the assumption that Nantahala was entitled to more low cost power than FERC had allocated to it. Here the state court seeks to permit the State to set rates based on an assumption that MP&L is obligated to purchase less Grand Gulf power than FERC has *ordered* it to purchase.

...

[I]t obviously cannot be unreasonable for MP&L to procure the particular quantity of high-priced Grand Gulf power that FERC *has ordered it to pay for*. Just as Nantahala had no legal right to obtain any more low-cost TVA [*i.e.*, hydroelectric] power than the amount allocated by FERC, it is equally clear that MP&L may not pay for less Grand Gulf power than the amount allocated by FERC.

The underlined language emphasizes the key fact in the Court's preemption reasoning: the buying utility's obligations were "ordered" by FERC. In *Mississippi Power & Light*, for example, because (1) FERC had "ordered" the buyer to purchase from its affiliate, then (2) a state commission could not set the utility's rates on the grounds that the utility should have taken some other action.

This key fact—FERC's "ordering" a buying utility to undertake a particular obligation—was missing from *Kentucky West Virginia* and *Pike County*. Conversely, in those cases the courts assumed that the purchasing utility had discretion to make the purchase or not make the purchase. Because the buying utility had discretion, the state commission could evaluate the wisdom of the utility's decision.

In *Nantahala* and *Mississippi Power & Light*, in contrast, the Supreme Court interpreted the facts to say that the purchasing utility had no choice but to follow FERC's decision. Where FERC had "ordered" the utility to make the purchase, the state could not treat the utility as free to make some other purchase. To do so would be to "trap costs."

That preemption does not exist when the wholesale buyer's decision is voluntary is readily inferred from a comparison of the leading cases. There are two key facts present in both *Nantahala* and *MP&L* (the preemption cases) but absent from *Pike County* and *Kentucky West Virginia* (the non-preemption cases). First, the purchasing utility was legally barred from exercising the discretion which the state commission assumed the utility had. Second, the barrier to discretion was the direct result of a FERC action. In *MP&L*, FERC "ordered" (the Supreme Court's words) MP&L to take the nuclear capacity. In *Nantahala*, FERC barred Nantahala from taking more than a fixed percentage of the low-cost hydroelectric power. These facts were missing from *Pike County* and *Kentucky West Virginia*.

ii. *The Utilities Misunderstand the Federal Power Act's Relationship to the States*

The error of the utilities, suggestion that the FPA broadly preempts Commission action with respect to wholesale transactions becomes apparent after the above analysis of the Supreme Court's decisions in *MP&L* and *Nantahala*. The argument incorrectly assumes that state action is inconsistent with federal regulation.

There is a distinction between FERC's

finding that the wholesale seller's rate is just and reasonable and a state's finding that the wholesale buyer should bear the risks associated with the purchase. FERC's exclusive power to approve the rates at which a wholesale transaction takes places does not constitute a determination that the buyer in the transaction was prudent. FERC itself has made this distinction frequently. *See Southern Company Services*, 26 F.E.R.C. para. 61,360 at p.61,795 (1984) ("the Commission is not empowered to disapprove or modify a power sales agreement on the grounds that the buyer may not be making the best possible deal\&... . [T]he question of the prudence of a utility's power purchase is properly an issue in the buying utility's rate case where it seeks to pass the costs of its purchased power on to its ratepayers."); *American Electric Power Corporation*, 49 F.E.R.C. para. 61,377 (1989) (same); Duke Power Company, 46 F.E.R.C. para. 61,315 (1989) (same); *Southern Company Services*, 43 FERC P61,003 (1988) (same). FERC may find as just and reasonable rates for an entire range of transactions that have different rates and conditions, without judging the wisdom of the buyer's selection among these options.

CVEC and GSEC therefore misunderstand the prohibition on state-level "cost-trapping" announced in *Nantahala* and *MP&L*. As discussed above, cost-trapping occurs not when the state declines to reflect in retail rates a FERC-*approved* rate, but when the state declines to reflect in retail rates the cost of a buying utility's action *ordered* by FERC.

The utilities cite *Appeal of Northern Utilities, Inc.*, 136 N.H. 449 (1992), to support their view of preemption. We believe the opinion, which arose out of a gas industry dispute, contains an interpretation of the preemption doctrine at odds with the federal decisions in the electric area.

In *Appeal of Northern*, the Court found that this Commission was required by the Supremacy Clause to pass through the full costs incurred by retail gas utilities under their FERC-jurisdictional contracts with gas pipelines. FERC had allowed the pipeline serving New Hampshire's retail gas utilities, including Northern, to recover 50 percent of its "take or pay" costs from its distribution utility customers, including the New Hampshire retail utilities. When the retail utilities sought to recover these costs from their retail customers, this Commission determined that 60 percent should be allocated to ratepayers and 40 percent to the utilities.

The Court reversed the Commission, finding that the Supremacy Clause required the Commission to pass through to retail ratepayers the full costs of any purchase made under a FERC-jurisdictional contract.

We respectfully believe the Court overlooked some important considerations. *First*, the Court appears to have disregarded FERC's explicit application of the Natural Gas Act to say that

> state regulatory agencies may implement, as some have, an equitable sharing mechanism similar to that established by the Commission [whereby pipelines agree to absorb 25-50 percent of take-or-pay costs] which requires LDCs [*i.e.*, local distribution companies] to absorb a portion of the costs if they desire to assess a fixed charge. In the Commission's view nothing precludes a state commission from requiring an LDC to absorb a share of the costs as the Commission is requiring of interstate pipelines here.

Id. at 454 (*quoting* 55 Fed. Reg. 47863, 47866 (Order No. 528) (1990).

In rejecting this argument, the Court referred to *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791 (D.C. Cir.), *cert. denied*, 111 S.Ct. 279 (1990), as authority for the notion that FERC cannot waive application of the statute. As the *Appeal of Northern* Court explained:

> [I]n *Columbia Gas*, the issue was whether the FERC could waive the notice requirements for changing the filed rate because public interest and equity required a change in the billing system. 895 F.2d at 796-97. "The [NGA] bars a regulated seller of natural gas from collecting a rate other than the one filed with the [FERC] and prevents the [FERC] itself from imposing a rate increase for gas

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> already sold." *Id.* at 794 (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981)). In reaching this conclusion, the court noted that it was "unaware \&... of any principle in equity or law that empowers an agency to ignore explicit legislative commands." *Id.* at 797.

Id. at 456.

We respectfully find that in the area of FERC-state relations, there are no "explicit legislative commands." As the U.S. Supreme Court made clear in *MP&L*, in describing FERC's decision as "ordering" MP&L to buy, it appears, whether FERC in approving a wholesale contract is ordering the buyer to buy, or otherwise limiting the buyer's choices, is an exercise of FERC's discretion. Not all wholesale arrangements constitute orders by FERC to the buyer. Similarly, not all FERC orders carry preemptive effect. In the *Northern* situation, FERC made clear it did not intend its approval of recovery of costs to be preemptive, a fact which the Court overlooked.

Second, the Court did not mention such prominent cases as *Pike County* and *Kentucky West Virginia*, which hold that FERC approval of a wholesale rate is not necessarily preemptive.

Third, the *Northern* Court's quotes from *Nantahala* do not explain the full context. The Court quoted, for example, the *Nantahala* statement that "interstate power rates filed with FERC or fixed by FERC must be given binding effect by State utility commissions determining intrastate rates." 476 U.S. at 962 (1986) (quoted in *Appeal of Northern*, 136 N.H. at 453). But the *Northern* Court did not note that in *Nantahala* the FERC had limited the buying utility to take a particular quantity of power, and that it was *that limitation* which the North Carolina Utilities Commission was preempted from disregarding. The *Northern* Court also omitted from its discussion this crucial language from Nantahala:

> Without deciding this issue, we may assume that a particular quantity of *power* procured by a utility from a particular source could be deemed unreasonably excessive if lower cost power is available elsewhere, even though the higher cost power actually purchased

is obtained at a FERC-approved, and therefore reasonable, *price*.

Nantahala, 476 U.S. at 972 (emphasis in original). If the *Nantahala* Court had believed that preemption resulted from every FERC-jurisdictional contract, it would not have included this proviso (repeated *verbatim* in *MP&L*), and would not in fact have engaged in the detailed factual analysis in both cases that was critical to its finding that FERC had deprived the buying utility of the options which the state commission viewed the buying utility as having available. It is the state's failure to accept the limitation placed on the buyer by FERC, rather than the mere existence of a wholesale rate, that has led to the findings of preemption.

The utilities also cite *Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822 (1985), but the Court's holding in fact supports our actions here. In that case, CVEC sought retail rate recovery of costs incurred under its FERC-jurisdictional contract with its affiliate, CVPS. Among the costs were CVPS's costs associated with the abandoned Pilgrim II and Montague nuclear plants. The Court rejected Sinclair's argument that the Commission should have applied its state anti-CWIP statute to prevent passthrough of the nuclear costs. The Court found that the Commission "is preempted from selectively disallowing portions of CVEC's cost of wholesale power which reflect Central Vermont's cost of abandoned plant." *Id.* at 830.

The Court also stated, however, that the Commission "may always inquire into the reasonableness of a utility's purchasing power under a FERC-approved rate, given other purchase options available to the utility." *Id.* at 825. The Court noted that a "modern trend has emerged by which State utilities commissions, without undermining the FERC's determination of the reasonableness of the wholesale rate, may limit recovery of the retailer's expenses incurred under that rate." *Id.* at 830 (*citing Pike County* and other authorities). The Commission had done precisely what the utilities here urge: pass through all the purchase costs on the

grounds that the costs had been incurred under a FERC-jurisdictional rate. The Court rejected this approach, as we do here. The Court remanded for an analysis of whether CVEC had alternatives. It is the availability of alternatives (such as actions which other New England utilities took to keep their costs below the regional average) that is the basis for our decision here to limit stranded cost recovery to the regional average.

d. *Outline of Analysis Applicable to New Hampshire's Utilities*

The preemption analysis must begin by asking the central question: Was the buying utility "ordered" by FERC to enter into the wholesale contract?

If the buying utility was not ordered by FERC to enter into the wholesale contract, then the contract fits within the *Pike County-Kentucky West Virginia* line of cases and there is no Federal Power Act preemption of the Commission. The Commission may set the retail rates for the buying utility as if the utility were a stand-alone utility. In general, therefore, the Commission

may cap recovery of the buying utility's costs at the regional average.

For a particular buying utility, the Commission may find that this utility should not be at risk for its decision to enter into the contract and that ratepayers should bear the associated costs, including costs above the regional average, for as long as the buying utility is obligated to purchase under the contract. Notwithstanding this finding, the Commission also may find that the buying utility should have given notice to terminate its purchase obligation when HB 1392 became effective on May 21, 1996. On that date the buying utility would have know that it no longer had an obligation to provide generation beyond December 31, 1997. The Commission thus could decline to permit recovery of costs incurred by the buying utility under the contract for any period beyond the time when the contract would have terminated had the buying utility given notice on that date. Provided the buying utility's relationship with its affiliated seller is subject to the *Pike County-Kentucky West Virginia* line of cases, nothing in the Federal Power Act precludes these findings.

Alternatively, the Commission could find that the buying utility should be at risk for its decision to enter into the contract, just as the buying utility would be at risk if it had built generation. In this situation the shareholders would absorb present contract costs above the regional average. Moreover, as with the previous paragraph, the Commission may find that the buying utility should have given notice of termination on May 21, 1996, and again decline to permit recovery of costs incurred under the contract for any period beyond the time when the contract would have terminated had the buying utility given notice on that date.

The rationale is straightforward. With competition, the buying utility no longer has an obligation to plan or incur costs for its present customers. Any costs it incurs prospectively are at risk. With a notice provision, any purchase costs beyond the notification period are avoidable costs rather than sunk costs. For the utility to use its monopoly position to require its customers to pay for avoidable costs is a classic tying arrangement, inconsistent with antitrust principles. There is no right to preemptive recovery of such costs.

e. *Application to New Hampshire's Utilities*

The Commission historically has expected and required its retail utilities to exploit the lowest cost power sources, even when that source is available from a seller other than an affiliate. This insistence has taken two forms: a warning that rates will be set based on the least cost option, and a requirement that the retail utility be represented by a person whose "*primary*" (italics in original) obligation be to think and act independently of any holding company or other affiliate:

> [A]s the regulatory body with the responsibility of protecting the interests of CVEC's ratepayers, we believe it is appropriate to suggest that there be at least one person in CVEC's management who has as a *primary* responsibility the advancement of CVEC's interests. [footnote omitted] In future

> proceedings, the testimony of such a person in support of a proposed power supply alternative will surely be more credible than the testimony of CVPS witnesses in support of options that may be of primary benefit to CVPS. *The record indicates that there may exist power supply opportunities, particularly purchases from PSNH based on its marginal cost, that could be of more direct benefit to CVEC customers if purchased by CVEC rather than CVPS. [citation omitted]* However, if management adheres to its current policy, such benefits would be allocated to CVPS; CVEC would be, at best, an indirect beneficiary. In a future Sinclair review, management will have the burden of proving that such a policy is reasonable. That burden will be more easily satisfied by the testimony of a witness whose primary function is to advance the interests of CVEC.

Re Connecticut Valley Electric Company, 71 NHPUC 145, 148 (1986) (italics in original; underscored emphasis added).

This 1986 decision represented no sea change in Commission policy. Since 1933, RSA 366:5 has put utilities on notice that, with respect to contracts between a utility and its affiliate,

> [t]he commission shall have full power and authority to investigate any such contract, \&... and, if the commission \&... shall find any such contract \&... to be unjust or unreasonable, the commission may make such reasonable order relating thereto as the public good requires. *In any such investigation, the burden shall be on the public utility and affiliate to prove the reasonableness of any such contract \&... . [T]he commission may disapprove the same and disallow payments thereunder\&... .*

(emphasis added).

In short, utilities receiving permission to serve in New Hampshire always have known that their legal obligation to serve ratepayers at least cost continued unaltered by changes in management or corporate structure.

Given this consistent state policy, there is no basis for treating a retail affiliate in New Hampshire as bound to buy from its affiliate. Our company-by-company analysis discussed below, moreover, reveals no evidence that FERC has "ordered" any of our retail utilities to buy from an affiliate. There is no evidence that any FERC decision precluded any of the retail affiliates from choosing a power source other than its affiliate. We emphasize the key to preemption is not merely lack of discretion on the part of the buying utility; the key is a lack of discretion resulting from a FERC action. Otherwise, an affiliated sale would be preemptive every time the CEO of the holding company directed an affiliate to buy. But that is not the law, as was made clear in *Pike County*, which involved a contract with an affiliate.

We turn now to each of our jurisdictional utilities.

i. *CVEC*

Before 1949, CVPS, a Vermont corporation, served a portion of New Hampshire. In *Central Vermont Public Service Corporation and Connecticut Valley Electric Company*, D-E2838 (1949), the Commission approved the sale of CVPS' franchises, works and system to a newly formed New Hampshire corporation, CVEC, which would be owned by CVPS. The two entities also entered into contracts for wholesale power supply and other services.

The Commission thus presided over, and approved, the transformation of a retail relationship into a wholesale relationship. At no point in its decision did the Commission suggest that it expected CVEC to buy its requirements only from its affiliate. Nor is there any evidence of a FERC order requiring CVEC to take all its requirements from its affiliated supplier.

Over the years this Commission has approved other contracts between the affiliates. At no point, however, did the Commission suggest that the relationship was permanent or that, upon the expiration of a particular contract, CVEC was bound to buy only from its parent. Nothing in any FERC order indicates that CVEC was so bound.

This analysis of the CVPS-CVEC

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relationship, and the regulators' role in it, is supported by the contract terms and other facts. The contract has a one-year notice provision. A one-year notice provision speaks volumes. It means that the wholesale seller has no reasonable expectation of serving its customer beyond that one-year term, because at any time the buyer could go elsewhere. This reading of an unambiguous contract is supported by CVEC's witness, who stated that CVEC is obligated to switch suppliers if the switch benefits ratepayers.

CVEC's obligation to provide generation to its present retail ratepayers ends on the day its customers obtain the legal opportunity to choose their own power supplier. As of that date, CVEC will no longer require service under its wholesale contract with CVPS. Further, since the contract contains only a one-year notice provision, CVEC had the ability to give notice after passage of H.B. 1392, such that contract termination would occur by January 1, 1998, thereby avoiding power charges from CVPS beyond that date.

For these reasons, the Commission considers itself legally free to decline to authorize recovery, beginning January 1, 1998, of any CVEC costs associated with purchases from CVPS. These purchase costs were, as of the date of the passage of H.B. 1392, completely avoidable, and therefore are not "sunk" and cannot be treated as "stranded costs."

ii. *Concord, and Exeter and Hampton*

In *Concord Electric Company*, 69 NHPUC 701 (1984), the Commission approved the organization of the Unitil system into a wholesale power supplier and two retail affiliates, Concord Electric Company and Exeter & Hampton Electric Company. The Commission cited

many benefits of the affiliation. Among the benefits was the likelihood of a power supply at better prices than from the retail affiliates, then supplier, PSNH. The Commission did not approve a particular power supply arrangement at that time, however. It noted that "[t]he proposed corporate structure will, in all probability, result in the execution of an all-requirements contract between each of the [retail affiliates] and Unitil Power Corp." *Id.* at 704. The "in all probability" language makes clear that the Commission did not view a FERC-jurisdictional contract as an inevitable result of the new corporate structure. Rather, the decision whether to buy from UNITIL Power Corp. or some other supplier would be a decision made by the retail affiliates.

The Commission then indicated its concern that by approving the new corporate structure, it would be preempted by the Federal Power Act from disallowing purchase costs when setting Concord's and Exeter's retail rates. *Id.* at 705. In this section of its opinion, the Commission offered a description of the relationship between the Federal Power Act and state law which we now believe is incorrect. The opinion does not cite *Pike County*, which had been decided the previous year. Moreover, the order was issued before the decisions in *Nantahala* and *MP&L*, which made clear that preemption depends on careful factual analysis, and is not the inevitable result of a FERC-jurisdictional power supply arrangement. The Commission's reasoning also relies on *Narragansett, supra*. But *Narragansett* stands only for the proposition that a state cannot set wholesale rates; it does not address the treatment by states of costs incurred by retail utilities under wholesale rates.

Despite its concern about preemption, the Commission correctly stated its intent to "closely scrutinize" any power supply transaction among the affiliates. *Id.* at 706. The Commission also put the companies

> on notice that, in the absence of a mechanism that will allow continuing Commission review of the power supply decision-making process (such as periodic renewals of the all-requirements contract between the [retail] Companies and UNITIL Power Corp.), they will have the burden of demonstrating that a contract which restricts the State's ability to protect ratepayers is in the public good.

Id. What the Commission is doing in the instant case is consistent with that "notice."

The Commission then applied that principle when it evaluated the initial wholesale arrangement between Unitil Power Corp. and

the two retail affiliates. *UNITIL Service Corp.*, 72 NHPUC 467 (1987). The Commission spoke as if the buying utilities had full discretion to make or not make the purchase. In this decision, the Commission approved the UNITIL System Agreement, a wholesale power contract between UNITIL Power Corp. and its two New Hampshire retail affiliates. The contract resulted from a decision by the two retail utilities to terminate their previous practice of buying their

requirements from PSNH. *Cf.* 31 FERC ¶ 61,267 (1985); 32 FERC ¶ 61,251 (1985). *Cf.* Public Service Company of New Hampshire, ¶ 61,267 (1985) (Order Denying Declaratory Relief and Terminating Docket); 32 FERC ¶ 61,251 (1985) (Order Denying Hearing).

The Commission found that Concord and Exeter's decision to leave PSNH for UNITIL was a reasonable one. Implicit, but unstated because it was obvious, is the fact that Concord and Exeter's decisions to buy from UNITIL were voluntary decisions. In fact, the Commission criticized Concord and Exeter:

> Based on the record in this case, the Commission can only conclude that Concord and Exeter's analysis of price and reliability and the situation of PSNH did not come up to these standards. Analysis of all these matters was, under the evidence presented at this hearing, either superficial or nonexistent, and were generally not repeated during the relevant time period during which it was still possible to receive all requirements service from PSNH. In addition, the top management seemed unfamiliar with the basic criteria upon which the decision was made.

Id. at 472.

Although the Commission did approve contracts, its statements make clear that this Commission viewed Concord and Exeter as having discretion to buy or not to buy from Unitil Power Corp. The Companies could not have assumed a future of contracting free of review by this Commission.

Moreover, Unitil Power Corp.'s retail affiliates have cited no FERC orders indicating that the retail affiliates were "ordered" by FERC to enter into their agreements with Unitil Power Corp., within the meaning of *MP&L*. Nor did this Commission, or FERC, suggest at any time that Concord and Exeter were without discretion to buy from another source on expiration of their contract with Unitil Power Corp., if they believed such source would present a better opportunity for ratepayers.

The Commission's decision approving the System Agreement did note that the Federal Power Act preempted it from "directly act[ing] upon the reasonableness of a FERC tariff." *UNITIL Service Corp.*, 72 NHPUC at 469. This was a correct statement of the so-called *Narragansett* doctrine. *Narragansett Elec. Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977) *cert. denied*, 435 U.S. 972 (1978). But the Commission proceeded to note, correctly, that "[d]espite this preemption, \&... the Commission may consider the reasonableness of the Concord and Exeter purchases or power as part of considering the reasonableness of Concord's and Exeter's rates." 72 NHPUC at 469 (*citing Appeal of Sinclair Machine Products*, 126 N.H. 822 (1985)).

iii. *GSEC*

GSEC asserts that the Memorandum of Understanding among the NEES retail companies and NEP, dated July 21, 1993 ("MOU"), supports its claim that the Commission is preempted from limiting the recovery of stranded costs. We disagree.

As GSEC argues, in the MOU GSEC agreed to pay NEP "the costs that NEP has incurred to serve" GSEC if "a new law, rule, or order promulgated by a legislature, court, regulatory agency or other lawful authority limits the right of [Granite State] to be the exclusive seller of electricity within its current franchise territory." This provision does not bind the Commission. It says only what it says: that GSEC must pay off NEP's costs even if GSEC loses customers to retail competition. The clause does not raise any preemption question distinct from the preemption analysis set forth in Part I.A.5 above. Whether GSEC can recover at retail the payments it makes to NEP is for the Commission to decide, unless the MOU falls under the *Nantahala-MP&L* line of cases. The

MOU does not fall under those cases because there is no sign that FERC "ordered" GSEC to sign the contract. FERC did not order GSEC to commit itself to pay NEP all stranded costs arising from retail competition in New Hampshire. That decision was GSEC's, and the Commission is not bound by it.

The Commission's order in DE 93-141, "Order Approving NISI the Memorandum of Understanding Regarding the Filing and Review of Integrated Resource Plans," Order No. 20,958 (Sept. 1993), does not change this analysis. The Order makes clear the Commission's view that "the only effect of the MOU on the review process in New Hampshire \&... is to commit the Commission to a timeline for its consideration that is consistent across the three states." Moreover, Section III(F) of the MOU states that "nothing in this Memorandum shall affect the existing authority of FERC, or the State Commissions with rate jurisdiction over reassigned resources, to determine ... whether the costs incurred are appropriately recovered in jurisdictional rates."

The MOU did not extinguish the Commission's authority to disallow costs. That authority is the authority described in Part I.A:1: to limit the recovery of stranded costs.

iv. *PSNH*

We find that PSNH's purchases from its affiliate North Atlantic, as well as its purchases from other Northeast Utilities ("NU") companies, fall under the *Pike County-Kentucky West Virginia* line of cases. It is true that FERC approved each of these agreements. But as explained in Part I.A.5.c above, FERC's approval of a wholesale rate does not mean that the buyer had no options.

In its order approving these agreements, FERC did emphasize the importance of the agreements to the resolution of PSNH's bankruptcy. This emphasis does not make FERC's approval any more mandatory than a *Pike County* situation. FERC was merely recognizing that not only were the sales arrangements just and reasonable from the perspective of the wholesale seller, they were desired by the buyer too. This recognition has no preemptive or other legal effect. As FERC has recognized on many occasions, when it acts in a case involving the justness and reasonableness of a seller's rate, it is making no decision about the wisdom of the purchaser.

All FERC did was recognize that the buyer wanted approval of these contracts also.

Furthermore, FERC has no jurisdiction to help companies out of bankruptcy. Its jurisdiction is confined to the determination of whether a seller's wholesale rate is just and reasonable. PSNH made its decision to enter bankruptcy on its own. That is why it is called "voluntary" bankruptcy. It had no directive, or even prodding, from FERC. There are no facts to support a finding that FERC, in the words of the U.S. Supreme Court in *MP&L*, "ordered" PSNH to buy from NU under these contracts or otherwise limited PSNH's options to the contracts ultimately approved.

f. *Effect of Order No. 888*

i. *In General*

In Order No. 888,[5(73)] the FERC provided wholesale sellers an opportunity to "seek extra-contractual recovery of stranded costs associated with" wholesale contracts executed on or before July 11, 1994. 61 Fed. Reg. at 21,542. FERC will permit these wholesale sellers, if they make the necessary showings, to amend their contracts to provide for the recovery of "prudently incurred, legitimate and verifiable" costs which are unrecovered at the end of the term stated in the existing contract. *Id.* at 21,557. This opportunity for recovery will be available even where the contract has a so-called *Mobile-Sierra* clause precluding contract modification. *Id.* FERC further stated that a wholesale seller seeking such an amendment faces a "heavy burden." *Id.* at 21,558.

Notwithstanding the preemption analysis set forth above, the New Hampshire utilities appear to argue that under Order No. 888, the FERC, by allowing wholesale sellers to amend their contracts to allow recovery of these "extra-contractual" costs, is establishing a "filed rate" which acquires preemptive status under *Nantahala* and *MP&L*; that is, a rate which the state commission must pass through. To prevail

on preemption, the New Hampshire utilities must go as far as to say that FERC, in allowing these contract modifications, has in effect "ordered" the buying utilities to buy, in the manner analogous to the *MP&L* facts described by the U.S. Supreme Court.

We have difficulty accepting this argument. We believe FERC is not authorized by the Federal Power Act to take this action of authorizing contract modification, and therefore will not view ourselves preempted if FERC does so. Preemption, if it exists, flows from the filed rate. When the contract expires, there is no filed rate.

We do not know how FERC can create some new form of obligation other than a filed rate. For this Commission to speculate about the lawfulness of such a creation, and to self-impose preemption based on such speculation, would be inconsistent with our own obligation to minimize costs for ratepayers. The "extra-contract" charge is not in place yet and therefore can

have no preemptive effect at this time.

Our rationale for viewing FERC as lacking authority to take this action is set forth next.

ii. *Under the Federal Power Act, the Only Source of Law for the Treatment of Wholesale Stranded Costs Is the Contract of the Parties*

The history of the Federal Power Act makes clear that the wholesale contract will determine who, as between the utility and its wholesale customer, is responsible for particular costs. A contract memorializes a series of agreements that both parties found acceptable at the time of execution. Such agreements might include the utility's obligation to plan for the future, minimum capacity payments, the contract term; *i.e.*, how much the customer must pay for capacity and for how long.

Assuming rational bargaining, the wholesale seller would have obtained compensation for the risk of the customer's departure through some other term in the contract, such as return on equity, or allocation of other costs. The FERC's approach, by permitting recovery for which the contract did not provide, without adjusting the contract's other terms, upsets the parties' *quid pro quos*, without logical or legal basis.

The Federal Power Act, as interpreted for more than 30 years, does not authorize the government to release companies from their bargains. *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 343-44 (1956) ("[T]here is nothing in the structure or purpose of the [Natural Gas] Act from which we can infer the right, not otherwise possessed and nowhere expressly given by the Act, of natural gas companies unilaterally to change their contracts."); *Power Comm'n v. Sierra Pacific Power Company*, 350 U.S. 348, 352-55 (1956) (applying reasoning of Mobile to the Federal Power Act; utility not "entitled to be relieved of its improvident bargain"). To vary from this principle where (and because) the wholesale power seller happens to control the essential transmission highway needed by the wholesale power buyer is to substitute monopoly rule for statutory rule. In short, the notion of "stranded investment" is foreign to the contract environment established by the Federal Power Act. Under the Federal Power Act, the historical treatment of contracts is

> refreshingly simple: The contract between the parties governs the legality of the filing. Rate filings consistent with contractual obligations are valid; rate filings inconsistent with contractual obligations are invalid.

Richmond Power & Light v. Fed. Power Comm'n, 481 F.2d 490, 493 (D.C. Cir. 1973) (*citing Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 332 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *United Gas Pipe Line Company v. Memphis Light, Gas & Water Division*, 358 U.S. 103 (1959)) (footnote omitted).

iii. *There is No "Unequivocal Public Necessity" Justifying FERC Modification of Private Contracts*

Proponents of "stranded investment" adders in transmission tariffs sometimes argue that "utilities did not see this coming." The facts do not support this argument. Efforts by wholesale customers to seek competitive options have

been well-known, and vigorously litigated, steadily for over two decades.6(74) The only argument theoretically available under current law is that allowing the customer to benefit from his bargain, specifically his right to stop paying the seller when the contract expires, would violate the "public interest." The Supreme Court has declared that this argument is available only under circumstances of "unequivocal public necessity." *Permian Basin Area Rate Cases,* 390 U.S. 747, 822 (1968). (The Natural Gas Act "contemplates abrogation of ... agreements only in circumstances of unequivocal public necessity").

7(75)

The emphasis is on the public interest, not the private interest. In determining whether to relieve a utility of its "improvident bargain," the sole concern of the Commission would seem to be whether the rate

> is so low as to adversely affect the public interest — as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory. That the purpose of the power given the Commission by [FPA] Section 206(a) is the protection of the public interest, as distinguished from the private interests of the utilities, is evidenced by the recital in Section 201 of the [Federal Power] Act that the scheme of regulation imposed "is necessary in the public interest." When Section 206(a) is read in the light of this purpose, it is clear that a contract may not be said to be either "unjust" or "unreasonable" simply because it is unprofitable to the public utility.

Sierra Pacific Power, 350 U.S. at 354.

The FERC recently reaffirmed its adherence to this concept:

> In the `classic' *Mobile-Sierra* situation, for example—when a seller utility unilaterally seeks an increase from a fixed-rate contract already on file with the Commission—the public interest (as opposed to the private interest of the party seeking the rate increase) only rarely is served by making the requested change (that is, granting the requested increase), and a strict standard is appropriate.

Northeast Utilities Service Company (Re: Public Service of New Hampshire), 66 FERC ¶ 61,332 at para. 62,076 (1994). FERC mentions no utility wholesale contract which, viewed from the utility's perspective, meets this standard. No one has suggested that, with respect to wholesale

contracts to which our retail utilities are a party, that the wholesale sellers' need for government-granted relief from these wholesale contracts, freely entered into, is a matter of "unequivocal public necessity."

g. *Conclusion*

We find that the Federal Power Act does not inherently preempt the Commission from limiting the pass through to retail customers of costs incurred by our retail utilities under FERC-jurisdictional wholesale contracts. We will afford each utility the opportunity to demonstrate that its obligation to purchase from its affiliated entity is a product of a FERC mandate. We emphasize that at this point the parties have presented no such evidence to us.

6. *The Public Utility Holding Company Act Does not Preempt Use of the Regional Average*

A portion of the costs reflected in the rates of GSEC, PSNH, Concord and Exeter & Hampton are costs passed through by a services company affiliate. Some have argued that the Public Utility Holding Company Act preempts us from precluding full recovery of these costs. They cite a decision of the U.S. Court of Appeals for the D.C. Circuit, *Ohio Power Co. v. FERC, Ohio Power Company v. FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 498 U.S. 73 (1992).

We disagree with this preemption argument. The Public Utility Holding Company Act, which was enacted to supplement state regulation, evidences no intent to weaken state regulation by denying this Commission the ability to evaluate our utilities' costs against an objective standard. We will not follow *Ohio Power*, for two reasons: It was not decided in this federal Circuit, and we believe the analysis is flawed.

We explain the second point below.

Before doing so we wish to explain clearly the costs which we are addressing.

a. *The Costs at Issue*

We will use the Unitil system as an example, realizing that each of the companies may vary from this example for particular kinds of costs.

In the Unitil system, a services affiliate, Unitil Services Corp., provides services to (a) the two retail electric affiliates, and (b) Unitil Power Corp. (Unitil Services Corp. also provides services to Unitil Resources, but because this last company does not supply services to our jurisdictional utility we will disregard it for purposes of this analysis).

The services provided by Unitil Services Corp. to the two retail affiliates relate to

distribution services only. The Final Plan explains that we will permit full recovery of these costs through the retail affiliates' distribution tariffs, which will be based on a traditional embedded cost revenue requirement.

As for the services provided by Unitil Services Corp. to Unitil Power Corp., the cost payments made by Unitil Power Corp. to Unitil Services Corp. go into FERC-jurisdictional cost of service, and then are recovered from the two retail affiliates through the FERC-jurisdictional, full requirements power contracts.

Therefore, in this example the SEC-jurisdictional are those which are passed through to the retail affiliates by Unitil Power Corp. under its FERC-jurisdictional rate.

Because we consider ourselves not preempted by the Federal Power Act in our ability to establish stranded cost charges for the two retail companies, see Part I.A.5, we will not entertain requests for full pass through by the retail affiliates of that portion of the FERC-jurisdictional rate attributable to the SEC-jurisdictional charge made by Unitil Services Corp to Unitil Power Corp. Therefore we will proceed as follows:

First, we must determine which costs are eligible for consideration as recoverable stranded costs. As noted in the Final Plan, in determining the recoverable stranded costs for Unitil's retail affiliates, we are excluding economically avoidable costs. There will be no recovery of avoidable costs through stranded costs charges, regardless of the jurisdiction in which these costs are incurred. We expect that the other economic regulators with responsibility to protect ratepayers from inefficiency will conclude similarly.

Second, we will apply the regional average to the retail affiliates' total cost of service.

Here is how these principles would be applied in the context of Unitil: The present charges by Unitil Services to Unitil Power Corp. include administrative and general costs associated with the management of UPC's power supply portfolio. Some of these A&G costs may be unavoidable; but most are in fact avoidable. We will exclude the avoidable A&G costs from recoverable stranded costs. The unavoidable A&G costs are eligible for recovery, but that recovery will be subject to the regional average benchmark.

b. *The Absence of PUHCA Preemption*

Because some still may argue that PUHCA requires us to pass through the full amount of the SEC-jurisdictional charges, we will turn to that question next.

In *Ohio Power Company v. FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 498 U.S. 73 (1992), the U.S. Court of Appeals for the D.C. Circuit found that approval by the SEC of a sale of goods and services from a non-utility affiliate to a utility affiliate of a registered holding company precluded FERC from inquiring into the reasonableness of the utility affiliate's decision to make the purchase.

The *Ohio Power* issue arises when each of three factors are present:

1. a registered holding company;

2. an interaffiliate transaction involving a utility affiliate and a non-utility affiliate; and

3. the transaction involves goods or services other than electricity.

An understanding of the *Ohio Power* problem begins with a review of two statutory provisions: PUHCA Section 13(b) and FPA Section

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205.

PUHCA Section 13(b) provides that

> it shall be unlawful for any subsidiary company of any registered holding company \&... to enter into or take any step in the performance of any ... sales \&... contract by which such company undertakes to \&... sell goods to any associate company thereof except in accordance with such terms and conditions \&... as the Commission \&... shall prescribe.

FPA Section 205(a) provides that

> [a]ll rates and charges made \&... by any public utility \&... shall be just and reasonable.

In a series of orders beginning in 1971, the SEC authorized the formation of Southern Ohio Coal Company (SOCCO), a subsidiary of the nation's largest public utility holding company, American Electric Power Co. (AEP). SOCCO would be acquired by Ohio Power Company (OPCO). SOCCO would mine coal and sell it to OPCO. The initial SEC order stated, among other things, that SOCCO's charges for coal would be based on an amount equal to SOCCO's actual cost of developing the reserve and mining the coal.[8(76)] Later SEC orders stated that the coal price would not exceed cost. The SEC never examined the reasonableness of SOCCO's coal cost or the reasonableness of OPCO's decision to buy coal from SOCCO.

In 1982, FERC found that OPCO's wholesale electric rates were not "just and reasonable" because OPCO had paid SOCCO a coal price exceeding the market alternatives. FERC therefore disallowed from OPCO's rates any SOCCO coal purchase costs exceeding "the price that would have been incurred if a comparable coal supply contract had been made with a nonaffiliated supplier."[9(77)]

After several intervening court decisions,[10(78)] the U.S. Court of Appeals reversed FERC's decision. In the portion of the case directly relevant here, the Court decided that FERC's denial of a utility subsidiary's request to recover the costs of a purchase under an SEC-jurisdictional contract would produce "trapped costs." In support, the Court cited the Supreme Court's decision in *Nantahala Power & Light v. Thornburg*, 476 U.S. 953, 971 (1986). Where such trapping occurs, the Court reasoned, the SEC's decision must prevail over FERC's decision because the

SEC's "at cost" standard is more specific than FERC's "just and reasonable" standard.

The D.C. Circuit erred in its analysis of what constitutes a "trapped cost." As explained in Part I.A.5.c, in *Nantahala* and *MP&L* the Supreme Court reasoned that FERC's approval of the interaffiliate power sale agreement was the equivalent of an "order" to the buyer to buy the allocated share. Because the state then treated the utility buyer as having the freedom not to buy that share, the state decision "trapped costs." In Ohio Power, there were no similar facts indicating that the SEC "ordered" Ohio Power to buy the coal from SOCCO.

B. *The Rate Agreement Does Not Exempt PSNH From the Foregoing Principles*

[98-110] The Final Plan limits each utility's recovery of stranded costs so that the total charge to ratepayers does not exceed the regional average for all utilities.

PSNH argues for exemption from this policy, and from any policy leaving PSNH with less than full recovery of its costs. PSNH argues that the combination of (1) the "Rate Agreement," (2) the 1989 statutes directing the Commission to approve or disapprove the Rate Agreement and, if the Commission approves it, to implement it; and (3) the Commission's order approving the Rate Agreement, together create a commitment, enforceable in law, to full recovery. If the Commission limits this recovery through a cap on stranded cost charges, PSNH argues, the Commission will violate the 1989 statutes. Such a result, they conclude, is precluded not only by the 1989 statutes, but also because it breaches a "contract" in violation of the Contracts Clauses of the U.S. Constitution and New Hampshire Constitution, violates the Takings Clauses of the U.S. and New Hampshire Constitution, and is preempted by bankruptcy law.

PSNH's argument is based on a

misreading of the statutes and the Rate Agreement. First we provide background on the Rate Agreement and PSNH's arguments. Then we provide our response, in three parts. First, PSNH is not exempt from our statutory obligation to balance interests in setting stranded cost charges. Second, the regional average approach, as we apply it to PSNH, does not modify the Rate Agreement. Third, PSNH cannot be fully exempt from the regional average method for an independent reason: the Rate Agreement grants the Commission discretion to determine the values for (a) the return on equity applicable to the acquisition premium, (b) Fuel and Purchased Power Adjustment Clause costs and (c) PSNH standalone costs. PSNH's separate argument that the Commission is preempted by the Federal Power Act from limiting stranded cost charges is addressed in Part I.A.5.

1. *Background*

PSNH contends that the combination of the Rate Agreement, the Commission's approval of it

in DR 89-244, and RSA 362-C:6 create an obligation in the Commission to set rates in 1998 and beyond designed to guarantee the full recovery of NU's $2.3 billion investment in PSNH along with an unspecified return, and to ensure full recovery of all FPPAC costs. According to PSNH, the State agreed to indemnify NU against the financial risk that the State would use new methodologies, after the fixed rate period, to carry out its statutory responsibility to set just and reasonable rates.

PSNH argues that the State's legal obligations derive from the language of the Rate Agreement and the directives set forth in RSA 362-C:6. We will begin, therefore, with a summary of these provisions.

a. *Summary of Key Provisions of the Rate Agreement*

The most prominent features of the Rate Agreement are as follows:

i. The "fixed rate period";

ii. The acquisition premium; and

iii. The Fuel and Purchased Power Adjustment Clause (FPPAC)

i. *The "Fixed Rate Period"*

The Rate Agreement established a series of seven average annual base rate increases of 5.5 percent subject to certain adjustments, including a return on equity collar. This seven-year period is referred to as the "fixed rate period" and it expires on July 1, 1997. There is no dispute about the rates established under this section of the Rate Agreement; the issue is whether after the fixed rate period the Commission is constrained in setting PSNH's rates by virtue of certain other sections.

ii. *The Acquisition Premium*

The Rate Agreement proposed a rate base for reorganized PSNH consisting of $800 million for the book value of PSNH non-Seabrook assets and an "acquisition premium" of $789-$800 million. Paragraph 2(b) of the Agreement establishes a formula to calculate the acquisition premium and provides that the amount so calculated "will be reflected on Stand-Alone PSNH's books as an acquisition premium to be recovered through rates as provided in Section 5(b)." Paragraph 5(b) provides for the recovery of $425 million of the acquisition premium during the fixed rate period, after which "[t]he recovery of that portion, if any, of the acquisition premium in excess of $425 million will be amortized on a straight line basis and recovered with a return over a period ending 20 years."

PSNH argues that the words "will be amortized \&... and recovered" create a commitment by the State that the entire balance of the acquisition premium would be recovered through rates

after the fixed rate period.

iii. *FPPAC*

The Rate Agreement established FPPAC as a means of allowing PSNH to recover certain non-base fixed and variable power costs. These costs include purchased power costs (including the cost of purchasing Seabrook power from NU's subsidiary North Atlantic), certain

deferred power expenses, and certain deferred costs of SPP purchases. *See* Section 7 of the Rate Agreement. The term of FPPAC under the Rate Agreement is ten years. *Id.* After the ten-year period, the Rate Agreement provides that "the cost of fuel and purchased power shall be recovered in the manner established by the NHPUC." *Id.*

b. *Summary of PSNH's Argument*

PSNH argues that these provisions create an obligation in the Commission to ensure that PSNH fully recover FPPAC-related costs after the first 10 years. It bases this argument on the relationship among the Rate Agreement, the 1989 statutes, and the Commission's determination in DR 89-244 that the Rate Agreement was in the public good. We address these matters next.

The Legislature enacted RSA Chapter 362-C for the express purpose of authorizing the Commission to determine whether (a) the proposed Agreement and acquisition of PSNH by NU was "consistent with the public good," and (b) the rates "proposed by the Agreement were just and reasonable." RSA 362-C:1, IV. Once that finding had been made by the Commission, the Commission was directed to

> establish and place into effect the levels of rates, fares and charges and the fuel and purchased power adjustment clause \&... in accordance with and during the time periods set forth in, the agreement \&... and take such other actions to implement the provisions of the [A]greement.

RSA 362-C:3.

The 1989 statutes also provide:

> If the commission takes final action \&... to approve the [A]greement and to fix the rates for [PSNH] \&... in the manner prescribed in the agreement \&... the commission shall not thereafter issue any order or process which would alter, amend, suspend, annul, set aside or otherwise modify such approval or result in the fixing of rates other than in the

manner prescribed in the agreement\&... .

RSA 362-C:6.

In DR 89-244, the Commission determined that the Rate Agreement was in the public good.

PSNH now claims that the foregoing statutory prohibition, coupled with the previously cited excerpts from the Rate Agreement, obligate the State to establish stranded charges which guarantee full cost recovery. They further argue that the establishment of stranded cost recovery at the regional average violates the obligation; in particular, RSA 362-C:6 obligation not to "alter" the Commission's earlier approval. That statutory violation, they argue, also breaches a "contract" in violation of the Contract Clause, works a taking of private property, and is preempted by bankruptcy law and by the Federal Power Act.

We reject all these arguments, for the reasons discussed in the sections ahead.

2. *PSNH is Not Exempt From the Commission's Statutory Obligation Under RSA 374- F to Balance Interests in Setting Stranded Investment Charges*

In Part I.A.1, we explained that the Commission is statutorily obligated to set stranded cost charges which balance the opposing interests of ratepayers and utility investors. These laws authorize the establishment of stranded investment charges which allow recovery of costs up to the regional average. Nowhere in that legislation has the Commission been delegated the authority to develop special exceptions for PSNH. On the contrary, the clear intent of the legislature was that no utility, particularly a high cost utility such as PSNH, should be guaranteed full stranded cost recovery.

To support its bid for full cost recovery, PSNH alleges that the Legislature created such a Commission obligation in 1989 when it enacted RSA Chapter 362-C. We reject PSNH's arguments for two distinct reasons. First, the 1989 statutes do not obligate the Commission to grant any special treatment to PSNH in setting stranded cost charges. Second, PSNH cannot be exempt from the regional average method for an independent reason: the Rate Agreement grants the Commission discretion to determine the

values for (a) the return on equity applicable to the acquisition premium, (b) Fuel and Purchased Power Adjustment Clause costs and (c) PSNH standalone costs.

3. *The Regional Average Approach is Consistent With, and Therefore Does Not Modify, the Rate Agreement*

There are two separate and independent reasons why the excerpted provisions of the Rate

Agreement do not secure the legal protections to which PSNH claims it is entitled. *First*, the literal language of the Rate Agreement does not support PSNH's arguments. *Second*, when we view this language in the context of the relationship between a utility and its regulators, we find it impossible to interpret in a manner that guarantees for one utility, but no other, recovery of hundreds of millions of dollars reflecting costs above the regional average, which is the standard established by the Legislature, and most of which (*i.e.*, other than the acquisition premium) are of a type no different than the costs incurred every day by all other utilities.

a. *The Rate Agreement Language Is Predictive, Not Prescriptive*

PSNH argues that the phrase "will be recovered" in Sections 5(v)(b) (related to the acquisition premium) and 7 (related to FPPAC) of the Rate Agreement mandate a particular full cost recovery after the fixed rate period. This represents a misreading of the language.

The phrase "will be recovered," written in the passive voice, reflects not an obligation but an anticipation or prediction: that the effect of the rate treatments ultimately chosen by the Commission over the many years following the fixed rate period would be that all costs would be recovered. But the language contains no guarantees. Had the parties intended a guarantee, the language would have looked very different, in the manner described next. The selection of the passive tense for the critical phrase "will be recovered" reveals that the intent of the language is predictive, not prescriptive.

The acquisition premium and FPPAC costs are long-term costs. Had the parties intended a guaranteed recovery, their language would have been active. Yet the language not only is passive; it references no recovery mechanism. To infer that parties intended a guarantee of the recovery of diverse costs over 20 years (a period of time that could include inflation, regional recessions, foreign wars, four changes of Presidential administrations, and several fundamental shifts in national energy policies, as did the last 20 years), when the parties specified no recovery mechanism but instead then left the regulators and legislators full discretion to establish (or not establish) any recovery mechanism, is not a credible interpretation of the language.

To underscore the point: While regulatory deferrals are not uncommon, a deferral of 20 years of costs so large is extraordinary. Its extraordinary nature requires an extraordinary mechanism, if the argument of guaranteed recovery is to be credited. We do not see the mechanism, and we do not credit the argument.

This foregoing interpretation of these provisions is consistent with the nature of rate regulation. It is not unusual for orders establishing rates, as well as the evidence and testimony supporting such orders, to contain projections, predictions and other non-binding expressions of future circumstances. For instance, during the proceedings in DR 89-244, NU argued that rates under the Rate Agreement would approximate those of the regional average after the fixed rate period. Such testimony was predictive and did not contractually bind PSNH to set rates at the regional average. Similarly, the language in the Rate Agreement which contemplated the recovery of certain costs after the fixed rate period did not bind the State to "guarantee" the recovery of such costs.

Our interpretation of the "will be recovered" language as predictive only is supported explicitly by the Commission's characterization of the Rate Agreement in its order in DR 89-244. The Commission adopted the following condition, suggested by the State, a signatory to the Rate Agreement:

8. *The Commission's traditional ratemaking authority resumes at the end of the seven year rate plan, at which point it can adjust rates*

as it deems appropriate.

75 NH PUC at 410. This paragraph, proposed by one signatory to the Rate Agreement, and not contested by the other (*i.e.*, NU, which conditioned its decision to acquire PSNH on acceptable regulatory approvals), supports our interpretation of the "will be recovered" words.

As explained above, our decision to impose the regional average approach on PSNH is founded in the interpretation of the "will be \&... recovered" language in the Rate Agreement. This language appears in Section 5 of the Rate Agreement (related to the acquisition premium), as well as in Section 7 (related to FPPAC costs after year 10 (which the Rate Agreement states "will be recovered in a manner prescribed by the Commission). The question remaining is the proper treatment of FPPAC costs during years 8-10. FPPAC is a formula prescribed by the Rate Agreement. The Rate Agreement at Exhibit C states that the FPPAC "will remain in effect for a period of 10 years following the First Effective Date." In Exhibit C to the Rate Agreement, "BA" is defined as "the annual base rate level of fuel and purchased power expense \&... set out in Schedule 1." Schedule 1 only has specified rates through 1996. In short, the Rate Agreement specifies values for fuel and purchased power recovery through FPPAC for the first 7 years only. The Rate Agreement contains no values for what must be recovered through FPPAC for years 8-10.

Consequently, it is the Commission's obligation to establish those values in FPPAC proceedings covering years 8-10. In establishing those values, the Commission will take into account the fact that PSNH, like CVEC, GSEC and the Unitil retail affiliates, has no obligation to serve retail customers beginning on January 1, 1998. The Commission also will take into account Finding 8 in DR 89-244, quoted above, noting that the Commission's "traditional ratemaking authority resumes at the end of the seven year rate plan, at which point it can adjust rates as it deems appropriate." This resolution is a logical and reasonable accommodation of the language of the Rate Agreement, drafted under an assumption of no competition, and our statutory obligation to implement competition.

b. *The Predictive Nature of the Provisions Is the Necessary Result of Interpreting the Commission's Obligations in the Context of a Regulatory Relationship Rather Than a Commercial Relationship*

We readily acknowledge that the Rate Agreement, the 1989 statutes and the Commission's approval in DR 89-244 are special events in the Commission's long regulatory relationship with PSNH. But these events, while special, did not transform that regulatory relationship into a commercial relationship. PSNH's argument to the contrary is its central error.

PSNH seeks to re-dress this regulatory relationship in commercial clothes, to replace "utility-regulator" with "landlord-tenant" or "creditor-debtor." That is not what happened in New Hampshire in the years 1989-91. The Rate Agreement did not create a debtor-creditor relationship. No one—not the Legislature, not the Governor, not the Attorney General, and certainly not this Commission—relegated the regulatory relationship to the status of parties to a private commercial transaction.

PSNH's error is exposed in the cases on which it relies and the words that it uses. PSNH relies upon bond cases where States committed to pay creditors under certain terms and conditions. *See, e.g., United States Trust Co. v. New Jersey*, 431 U.S. 1, 24 (1977). The 1989 statutes do not involve bonds and their terms. They involve utilities and the Commission: a Commission created by law to protect ratepayers as well as service providers.

To amplify its efforts to turn regulation into commercial transaction, PSNH uses words which are intimate to the latter but foreign to the former. PSNH says that the Legislature intended to "ratify" the Rate "Agreement," using its "agent" the Commission. PSNH says that the effect of these documents is to protect it from the normal changes in regulation experienced by all other utilities. These are not the words used by the Rate Agreement or the statutes—even though NU was intimately involved in negotiation and drafting of both—and they are

not words ever used to describe regulatory relationships. The regulatory relationship has been shaped and defined by over seventy years of statutorily and judicially created law. It is not a relationship of agency, ratification and indemnification, and it is not a relationship redefined by the 1989 statutes.

The Rate Agreement instead is a specialized, more detailed variation on the longstanding goal of regulation: establishment of rates which balance the interests of ratepayers and shareholders. (Actually the commitment in the Rate "Agreement" undertaken by the Attorney General and Governor is primarily to seek passage of legislation.) Throughout the entire history of regulation, a history marked by hundreds of judicially resolved disputes over whether costs "will be recovered," the courts have never defined the regulatory relationship as a commercial one. "Governmental actions relating to the use of property or business activity normally will be regulatory and not contractual in nature." 2 Ronald D. Rotunda *et al., Treatise On Constitutional Law Substance And Procedure* §15.8 n.74 (1986) (emphasis added). Only if the Legislature is clear will there be a commercial relationship. *See* Part I.A.3. No such intent, clear or otherwise, exists here.

Certainly there were commercial realities. NU committed real dollars and accepted real

responsibilities. But so does every utility when it invests in property for public service; yet that fact does not transform a regulatory relationship into a commercial relationship. The nature of the acquisition premium underscores the fact. NU's payment of the acquisition premium did not produce more electrons, better distribution facilities or more and better trained employees. It was a payment made to gain control. That the payment carries commercial content is undeniable. But the commercial content concerns the relationship between acquirer and acquiree, not between regulator and regulatee. The payment of the premium may have changed NU's relationship with New Hampshire, but it did not change the utility's relationship with its regulators.

Our rejection of this attempt to recast resonates with our discussion of bankruptcy law, see Part I.B.6. The courts there, including the court presiding over the PSNH bankruptcy, have made clear that while bankruptcy rearranges the relationships among debtors and creditors, the utility-regulator relationship remains fundamentally unchanged.

PSNH argues that no one would invest $2.3 billion without assurance of the recovery it now seeks. PSNH mischaracterizes the hypothetical to achieve the result it seeks. Commercial players make investments all the time, some even larger than $2.3 billion. It certainly is true that no one would have invested $2.3 billion without *some kind of commitment*. PSNH simply fills this blank with its desired outcome: a bond-like obligation by the State to require ratepayers to continue to pay, year after year, until NU fully recovers every dollar.

In enacting the 1989 statutes, the State intended to create an expectation sufficiently strong to induce NU to acquire PSNH. But a sufficiently strong expectation does not mean a guarantee that has never been enjoyed by a utility in the history of regulation.

c. *PSNH Is Getting the Rates it Expected When It Supported the Rate Agreement*

We are comfortable with regional average results for another reason: it is what PSNH expected. The seven years of annual 5.5 percent rates increases have produced real rate increases to customers more than *20 percent* above those projected by NU for the region during the hearings in DR 89-244. The Final Plan's limitation of rates to the regional average will produce rates consistent with those which PSNH originally projected for the end of the fixed rate period. In short, even if the rules that apply to strictly private transactions were applied here, PSNH and NU will receive the result they expected.

d. *PSNH's Contract Clause Argument Fails Because There Is No "Contract" Here*

PSNH argues that the combination of the Rate Agreement, the 1989 statutes and the Commission's approval in DR 89-244 create a "contract" protected by the Contract Clause of the U.S. Constitution. We reject this argument.

The United States Constitution prohibits states from enacting "any law impairing the Obligation of Contracts." U.S. Const. Art. I, §10. The Contract Clause limits the power of states to legislatively modify their own contracts as well as those between private parties. *See, e.g., Fletcher v. Peck*, 6 Cranch 87, 3 L.Ed. 162 (1810); *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629 (1819).

The New Hampshire Constitution offers equivalent protections where contract impairment is alleged.[11](79) *See Opinion of the Justices (Furlough)*, 135 N.H. 625, 629-630 (1992). Our Supreme Court relies upon federal precedent to resolve issues raised under the State Constitution when contract impairment is alleged. *Id.* Accordingly, the following discussion applies the term "contract clause" in reference to the commensurate protections offered under both constitutions.

i. *The 1989 Statutes Lack the Standard Prerequisites to a Contract*

As explained in Part I.A.3 above, the threshold question is whether there is a contract. PSNH's arguments do not get past this threshold. For reasons which echo those stated in the immediately preceding discussion, we find that there is no contract.

For the 1989 statutes to have created a contract, there must be evidence of the common law criteria for contract formation: offer, acceptance and consideration. Our analysis ends here. There is no contract because as explained previously, regulatory statutes have never created such a relationship. *See* Part I.A.3. RSA 362-C:6 is simply a specialized version of the regulatory statutes under which utilities have conducted business in this State for nearly a century. Put simply, States do not contract with utilities to provide service to its citizens.

PSNH argues that a formal contract need not exist; its commitment of the acquisition premium and other efforts to take over PSNH, constitute "detrimental reliance" which makes a contract. We disagree. The fundamental relationship is a regulatory one, not a commercial one; thus the same arguments that reject PSNH's theory of contract formation apply here. We also note that the premise of such an argument is inconsistent with RSA 491:8 which embodies the State's statutory waiver of sovereign immunity relative to contract claims. *See, Morgenroth & Assoc.'s Inc. v. Town of Tilton*, 121 N.H. 511 (interpreting RSA 491:8 to waive sovereign immunity only for "implied in fact" contracts, not those implied by law).

Any reliance protected by the law of contracts must be reasonable. Reliance on full, guaranteed recovery cannot be reasonable when the Commission order approving the Rate Agreement included the language quoted above, which we quote again here:

> 8. The Commission's traditional ratemaking authority resumes at the end of the seven year rate plan, at which point it can adjust rates as it deems appropriate.

This language, written in 1990, drew a bright and unmistakable boundary around PSNH's reasonable expectations. All that is left is PSNH's unilateral expectations, and unilateral expectations of continued benefits do not create contractual rights.

PSNH wrongly argues that NU paid consideration. NU did pay a purchase price, including the acquisition premium. But it made that payment to the creditors of PSNH, rather than the State; and what NU received in return was control of PSNH, rather than any promise from the State. Any additional "consideration" given, in the form of provision of service to New Hampshire, has been provided by PSNH, not NU, has been compensated through rates ordered by the Commission, and in any event is a product of the normal utility-customer-regulatory relationship. As indicated in Part I.A.3, that relationship is not a contract relationship.

PSNH's repeated assertion of the implied contractual obligation of good faith and fair dealing does not add to its argument. Invoking the doctrine entirely begs the question whether there was a contract in the first place.

Finally, PSNH never specifies the owing party to this "contract." There is no such party. It cannot be the Commission, because the Commission does not enter into contracts about rates

with the utilities it regulates. It cannot be the ratepayers because they pay what the Commission says they have to pay, not what they agreed to in a contract with the utility. It cannot be the Legislature, because the 1989 statutes did not impose the Rate Agreement; they directed the Commission to analyze the Rate Agreement, approve or disapprove it, and if approved, implement it. (Even if the statutes did impose the Rate Agreement, the result still would be a specialized version of the traditional regulatory requirements, not a contract.) And it certainly cannot be the state officials who signed the "Rate Agreement," *i.e.*, the Governor and the Attorney General. They lack any power under the New Hampshire Constitution to set rates; they committed only to lobby for legislation to implement the Agreement.

ii. *Doctrines Established by Contract Clause Cases Reinforce the Conclusion That No Contractual Right Supports the Rate Recovery Sought by PSNH*

(a) *Introduction*

PSNH's assertions of a contract fail for two additional reasons. Each reason, well-founded in decisional law interpreting the Contract Clause, derives from the special rules of contract formation to which the State is alleged to be a party. Their effect is to limit sharply the circumstances under which a State statute will be interpreted to create private contract rights. *See Winstar*, 116 S.Ct. at 2455 (Opinion of Souter, J.) (observing that these rules "serve the dual purposes of limiting contractual incursions on a State's sovereign powers and avoiding difficult constitutional questions about the extent of State authority to limit the subsequent exercise of legislative power").

As we explained in Part I.A.3, never in the history of regulation, a history including hundreds of court decisions involving disputes over cost recovery, has a Court interpreted the regulatory

relationship so as to find that a regulated public utility company has successfully argued that it had a contractual right to particular regulatory treatment, let alone a contractual right to be exempt from the very treatment experienced by its surrounding utilities. It is against this backdrop that PSNH advances an interpretation of the 1989 statute that it argues binds the State to place the company on a form of guaranteed income for a 20-year period.

We reject that interpretation for two reasons: the reserved powers doctrine, and the requirement that claims based on ambiguous language be construed strictly against the grantee.

(b) *The Reserved Powers Doctrine Prevents an Interpretation of the 1989 Statutes as a Contract*

As explained above, PSNH's argument for the existence of a contract depends on its ability to rewrite the regulatory relationship as a commercial one. By analogizing the relationship to a promise to pay money, PSNH can argue, as the plaintiffs did in *Winstar*, that there is no loss of sovereignty because the payment of money is never a loss of sovereignty.

That is where PSNH makes its error. Rate regulation is not a mere promise to pay; it is an exercise of the police power. "[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Arkansas Electric Cooperative Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983); *Appeal of New England Power Co.*, 120 N.H. 866, 871 (1980). The defect in PSNH's claim thus begins and ends with PSNH's premise: that the Legislature treated its sovereign authority as just another bargaining chip to trade away in a commercial transaction. The law properly rejects this notion, and for good reason: the State's police power is inalienable by contract. *See Energy Reserves Group, Inc., v. Kansas Power & Light Co.*, 459 U.S. 400, 410 (1983) ("[T]he Contract Clause \&... must be accommodated to the inherent police power of the State to safeguard the vital interests of its people.") (citation and internal quotations omitted).

The inappropriateness of the commercial transaction analogy also distinguishes our facts from those in *Winstar*. The parties there did not challenge the power or right of Congress to

change the applicable accounting regulations. Instead, the Court was construing the contractual provisions affected by those regulations as shifting the risks between the parties once Congress chose to act. Here it is the exercise of the sovereign power of the State, as delegated to this Commission, which PSNH challenges.

Thus, the interpretation of the Rate Agreement and related statutes proffered by PSNH requires us to consider whether the State has surrendered its police power by abrogating the authority to set rates. PSNH's claim, therefore, necessarily and directly implicates the reserved powers doctrine.

The U.S. Supreme Court has held repeatedly that the Contract Clause does not apply to

situations where a State attempts to contractually limit the future exercise of its police powers. *See, e.g., Stone v. Mississippi*, 101 U.S. 814, 817 (1880) ("[T]he legislature cannot bargain away the police power of the State."). This has become known as the "reserved powers" doctrine. Under this doctrine, among the police powers that a state cannot "bargain away" are those relating to economic regulation. *See Atlantic Coast Line R. Co. v. Goldsboro*, 232 U.S. 548, 558 (1914) ("[T]he power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community \&... can neither be abdicated nor bargained away, and is inalienable even by express grant.").

PSNH's citation of *Home Telephone & Telegraph Co. v. City of Los Angeles*, 211 U.S. 265, 273 (1911), confirms this point rather than contradicts it. The Court there acknowledged that such contracts might be possible in limited circumstances. But the Court then invoked the principle we follow, that even a limited abrogation of the sovereign power must be established beyond question, and, following the reserved powers analysis, denied the Contract Clause claim before it.

Since the regulatory relationship is not a commercial relationship, PSNH's argument for cost recovery can succeed only if the State gave up its ratemaking authority. But if the State did surrender its ratemaking authority, then the necessary effect of the 1989 statutes was to abrogate sovereignty irrevocably by means of a contract. Such an interpretation of the 1989 statutes would invalidate them because, as the Court declared in a case relied on by PSNH, *United States Trust Co. v. New Jersey*, 431 U.S. 1, 24 (1977), such a contract is invalid *ab initio.* "[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Ashwander v.TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (same).

Finally, our analysis readily accommodates the fact that the 1989 statutes limited the Commission's ability to set rates for seven years. The 1989 statutes directed the Commission to implement the Rate Agreement if the Commission approved it. This implementation obligation carried a specific rate path for a seven year period. Just as the Legislature itself could establish rates for seven years, so can it delegate this responsibility to the Commission, with specifics. But such a delegation would not be a contract. It would be a species of traditional regulation.

(c) *PSNH's Interpretation of Its Expectations Is Inconsistent with the Requirement That Such Claims Are Construed Strictly Against the Grantee*

As we have found, PSNH's reliance on the "will be recovered" misconstrues the term as a prescription rather than a prediction. Even if PSNH's reading were plausible—and we find otherwise, because it is based on the false notion that the regulator-regulatee relationship is the equivalent of a debtor-creditor relationship—PSNH has at best located an ambiguity.

This fact provides a separate and independent basis for rejecting PSNH's Contract Clause claim, for any ambiguity in the terms of the contract— if this were a contract, which it is not—must operate against the adventurer, and

in favor of the public. *Charles River Bridge v. Warren Bridge*, 36 U.S. 773 (1838). This reasoning is particularly apt here, given the prominent role NU played in drafting the Rate Agreement, lobbying for its passage and participating in the DR 89-244 proceeding which first interpreted its words.

Reinforcing this "construe against the drafter" principle is another one; namely, that "[a]ll public grants are strictly construed," and "[n]othing can be taken against the state by presumption or inference." *The Delaware Railroad Tax*, 85 U.S. 206, 225 (1874). "[N]either the right of taxation, nor any other power of sovereignty, will be held \&... to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken." *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 446 (1862).

In summary, even if there were a contract, these long-held and deeply-entrenched rules of construction require us to interpret the language at issue in favor of our ratemaking authority and against PSNH's extraordinary reading which, while perhaps consistent with PSNH's unilateral expectations, is inconsistent with our historic responsibilities.

iii. *The State Constitution Precludes PSNH's Interpretation of the 1989 Statutes as Contract*

To the extent PSNH claims not only a right to a flow of dollars, but also a right to government action protecting from competition while it collects those dollars, it runs into the blockade created by Part II, article 83 of the New Hampshire Constitution:

> 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.

There can be no vested right to a competition-free flow of dollars in a state blessed by such a provision. PSNH's interpretation of the 1989 statutes to the contrary is invalid. *See Appeal of PSNH*, 141 N.H. at 19 ("[L]egislative grants of authority to the PUC should be interpreted in a manner consistent with the State's constitutional directive favoring free enterprise").

iv. *Conclusion*

There is no more contract between New Hampshire and PSNH than there is between New Hampshire and its other utilities. There is no offer, no acceptance and no consideration. Moreover, the rules under the Contract Clause for when to infer a contract apply well here to support the finding that there is no contract.

In conclusion, the Contract Clause affords PSNH no special exemption from the application of RSA Chapter 374-F or the Commission's Final Plan implementing that statute. PSNH is entitled to the same level of regulatory protection from economic forces as those enjoyed by the State's other regulated electric utilities.

4. *PSNH Cannot Be Fully Exempt From the Regional Average Method for an Independent Reason: The Rate Agreement Grants the Commission Discretion to Determine the Values for (a) the Return on Equity Applicable to the Acquisition Premium, (b) FPPAC Costs and (c) PSNH Standalone Costs*

An independent basis for our limiting the full recovery of stranded cost charges is that the Rate Agreement explicitly anticipates that the Commission will have discretion to assign values to particular cost items in setting PSNH's rates after the fixed rate period. To the extent the Rate Agreement is interpreted to require full recovery of the acquisition premium, therefore, the Commission remains free (and in fact obligated under the 1996 statutes) to limit PSNH's stranded cost recovery for these other cost items.

The Commission discretion preserved in the Rate Agreement exists in three important areas: (a) the return on equity applicable to the acquisition premium, (b) FPPAC costs and (c) PSNH standalone costs. We discuss each in turn.

a. *Return on Equity Applicable to the Acquisition Premium*

Section 5(v)(b) of the Rate Agreement provides that

> [t]he recovery of that portion, if any, of the acquisition premium in excess of $425 million will be amortized on a straight line basis and recovered *with a return* over a period ending 20 years after the First Effective Date unless some other period is fixed by mutual agreement of Stand-Alone PSNH or NUNH and the State.

(emphasis added). By not specifying a return, this language leaves this responsibility with the Commission. The question is what return is appropriate.

We explained in Part I.B.3.a above that the Commission is not required to guarantee recovery of the acquisition premium because the language of this provision is the language of a regulatory relationship rather than a commercial agreement. If, however, the Rate Agreement does require the Commission to guarantee recovery of the premium, the appropriate return must reflect that guarantee.

The language also signals the period over which the return established by the Commission

must be calculated. That period "with a return over a period ending 20 years after the First Effective Date" signals that it is the total return received by PSNH over the entire 20-year period, not in any particular year, that is the relevant return.

An appropriate return for an asset with a government-guaranteed recovery would be a lower return than otherwise would be authorized, calculated over the life of the asset. Of course, the return implicitly earned on the premium during the last seven years is significantly in excess of that level. Therefore, the return which the Commission would establish for the remainder of the 20 year period would have to be commensurately low to produce a total return reflecting the risk free level.

Calculating the return in this manner does not violate any ban on retroactive ratemaking, for at least two reasons. First, it is not retroactive ratemaking because it is not setting rates now for service provided in the past. Rather, pursuant to a requirement in the Rate Agreement that the appropriate return be recovered "over a period ending 20 years after the First Effective Date," the Commission would be calculating the appropriate total return for that entire period, subtracting from that figure the return received by PSNH to date, and establishing a return for the remainder of the 20-year period that produces the appropriate total return for the period.

Second, even if this approach could be characterized as retroactive ratemaking, the concept is one rooted in traditional ratemaking concepts. The New Hampshire Supreme Court has found, in *Appeal of Richards, supra*, that it is not appropriate to analyze the Rate Agreement in traditional terms. In directing the Commission to implement the Rate Agreement (if the Commission found it to be in the public interest), the Legislature was directing the Commission to implement an approach different from traditional ratemaking.

b. *FPPAC Costs*

Under Section 7 of the Rate Agreement, the treatment of FPPAC costs falls into two distinct periods: the first 10 years after the First Effective Date, and the period thereafter. We first will address the period after the first 10 years.

After the first 10 years, the cost of fuel and purchased power "shall be recovered in the manner established by the NHPUC." We find that this phrase leaves the Commission free to treat PSNH's costs in the same manner it treats the costs of all other utilities. A superficial interpretation of this language would focus on the phrase "will be recovered" and infer a guarantee of all costs. But a moment's reflection makes clear that such a literal interpretation, in disregard of the surrounding language, would entitle PSNH to recover all FPPAC type costs in perpetuity. That is not the meaning of the Rate Agreement.

What prevents that result is the phrase "in the manner established by the NHPUC." If the phrase precludes guaranteed recovery in perpetuity, it does so because it hands the discretion over the costs to the Commission. And it hands that discretion to the Commission after

the 10th year. In summary, after 10 years the Commission is free, under the Rate Agreement to treat FPPAC type costs in whatever manner it deems appropriate, and otherwise consistent with State law. The Commission thus may, after the 10th year, apply its regional average limit to FPPAC costs. The one exception is the SPP component of these costs, for the reasons explained in Part I.C below.

Concerning the first 10 years, as discussed above, although the FPPAC component of the Rate Agreement contemplated the continuation of FPPAC for ten years, it specified base fuel and purchased power assumptions only for the seven-year fixed rate period. The Rate Agreement contains no values for what must be recovered through FPPAC for years eight through ten.[12](80) In other words, the Rate Agreement expressly reserved the Commission's authority to exercise discretion when establishing those values after the fixed rate period. In so doing, we intend to take into account the fact that PSNH, like the State's other jurisdictional electric utilities, will no longer be obligated to serve retail customers beginning on January 1, 1998. We also intend to take into account the State's requested Finding 8 in DR 89-244, quoted above, noting that the Commission's "traditional ratemaking authority resumes at the end of the seven year rate plan, *at which point it can adjust rates as it deems appropriate*." (emphasis added). We note that the one exception is the SPP component of these costs. We note again that for the reasons explained in Part I.C below, the SPP costs will not be subject to the regional average cap.

c. *PSNH Standalone Costs*

The third category of costs is PSNH's own costs, consisting of its distribution, transmission and generation facilities, as well as its SPP costs. Nothing in the Rate Agreement guarantees any special treatment of these costs. With the exception of the SPP costs, the PSNH standalone costs can be subject to the regional average.

d. *Conclusion*

We are bound by RSA 374-F:3,XII(a) to set stranded charges which are "equitable, appropriate, and balanced and in the public interest." We are to "balance the interests of ratepayers and utilities during and after the restructuring process." *Id.* Pursuant to this obligation, we have investigated carefully the arguments about limits on our authority imposed by the 1989 statutes. This Legal Analysis establishes two independent grounds for limiting PSNH's stranded cost recovery. The first, described in Part I.B.3, supports a Commission decision applying the regional average approach to all PSNH costs other than SPP costs. The second, described in Part I.B.4, supports a Commission decision to reduce the authorized ROE applicable to the acquisition premium, plus apply the regional average limit to PSNH's FPPAC costs and its standalone costs. Under either analysis, PSNH's claim to guaranteed, full cost recovery is invalid.

As explained at the beginning of this subsection, the Commission discretion explicitly preserved by the Rate Agreement over return on equity, FPPAC and PSNH's standalone costs is an independent basis for denying PSNH's claim for full stranded cost recovery. However, the

approach which carries out the full intent of the Rate Agreement, the 1989 statutes and the Commission's Order in DR 89-244 is the approach set forth in the Final Plan: stranded charges based on the regional average utility. PSNH has no entitlement to be treated differently from any other utility.

5. *The Takings Clause Does Not Preclude the Commission From Limiting PSNH's Cost Recovery*

We have explained that the combination of the 1989 statutes, the Rate Agreement and the Commission's Order in DR 89-244 does not provide PSNH with any special guarantees or other treatment after the Fixed Rate period. Consequently, there is no basis on which PSNH's shareholders could have developed any investment-backed expectations to receive treatment different from that accorded the other New Hampshire utilities. We conclude, therefore, that the Takings Clause analysis set forth

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in Part I.A.2, *supra*, applies equally to PSNH.

6. *Federal Bankruptcy Law Does Not Preempt or Otherwise Constrain the Commission's Authority to Limit PSNH's Stranded Cost Recovery*

a. *Introduction*

The Bankruptcy Court confirmed the PSNH's plan on April 20, 1990. Order Confirming Third Amended Joint Plan of Reorganization, Case No. 88-00043. *See also In re Public Service Co. of New Hampshire (PSNH)*, 114 B.R. 820 (Bankr. D. N.H. 1990) (Order on Objections to Plan of Reorganization). Pursuant to Section 1129(a)(6) of the Bankruptcy Code, 11 U.S.C. §1129(a)(6), the plan remained contingent upon the Commission's approval of the Rate Agreement embodied in the plan. The Commission approved the Rate Agreement in DR 89-244, and the plan became effective on May 16, 1991. At this stage the debtor was reorganized pursuant to the plan and the confirmation order. *In re PSNH*, 148 B.R. 702, 703 (Bankr. D. N.H. 1992).

PSNH argues that its passage through the federal bankruptcy process now disables the Commission from setting rates or limiting its permissible franchise in any manner authorized by state law. We disagree. The restructuring and reorganization plan initiated as a result of the PSNH's Chapter 11 reorganization do not have any preemptive effect today. Neither general principles of bankruptcy law nor the specific holdings of the Bankruptcy Court on PSNH's reorganization exempt PSNH from the Commission's full authority.

The issues arise in two distinct contexts: the Commission's ability to limit PSNH's stranded

cost recovery, and the Commission's ability to limit PSNH's permissible franchise activities. We will address the rate question in this section and the franchise activities issue in Part II.

b. *Bankruptcy Law Expressly Preserves State Authority Over Ratemaking by Conditioning Confirmation of a Plan on State Approval of Rates*

i. *Preemption of Ratemaking Is Narrowly Construed*

Regulation of retail rates charged by utilities is traditionally a state function. *In re Gulf Water Benefaction Co.*, 2 B.R. 357, 361 (Bankr. S.D. Tex. 1980) ("The power to regulate intrastate services such as utilities has historically been reserved to the states by Congress pursuant to the provisions of the Tenth Amendment."). Because of the significance of the state interest in rate regulation, federal law will not preempt such regulation unless Congress displays a "clear and manifest purpose" to do so. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). *See also Jones v. Rath Packing Co.*, 430 U.S. 519, 524-26 (1977) (noting that courts exercise caution in finding federal statutes preemptive of state law).

The first source of determining whether a federal statute preempts state law is the language of the statute itself. *In re PSNH*, 108 B.R. 854, 861 (Bankr. D. N.H. 1990) (Order on Preemption). The Bankruptcy Code contains express language reflecting Congressional intent to preserve rather than preempt the state's ratemaking function during the course of a reorganization by making confirmation of a plan of reorganization contingent upon approval by the appropriate regulatory commission of rates contained therein. Specifically, Section 1129(a)(6) of the Code provides, in relevant part:

> (a) The court shall confirm a plan only if all of the following requirements are met:
>
> ...
>
> (6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over rates of the debtor has approved any rate change provided for in the plan or such rate change is expressly conditioned on such approval.

11 U.S.C. §1129(a)(6). This language demonstrates that Congress not only has left room for state regulation, but has conditioned the confirmation of a plan on approval of rates by the state agency with jurisdiction over utility

rates. *Cf. Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (preemption can be inferred when Congress "leaves no room" for supplemental state regulation"). *See also 5 Collier on*

Bankruptcy, supra at §1129.02 (15th ed. 1996) (Section 1129 makes clear that "chapter 11 [is not] to be used as a device for circumventing the regulatory powers of any commission created under federal or state law which has jurisdiction over rates charged by the debtor.").

ii. *State Ratemaking Is An Exception to the Automatic Stay Provisions of Bankruptcy Code*

Section 1129(a)(6) is not the only evidence that Congress did not intend the Bankruptcy Code to preempt state ratemaking authority. Judicial precedent makes clear that Congress exempted state rate making from the automatic stay provisions of the Bankruptcy Code. Specifically, state rate making functions fall within the exception for enforcement of a governmental unit's police or regulatory power," *see* 11 U.S.C. § 362(b)(4), and thus, are not subject to the automatic stay of litigation invoked by the Bankruptcy Court upon filing of a petition of reorganization to protect the debtor. *In re Timeron Water Co. v. Behles*, the court upheld the state's setting of the utility's water rate as an exercise of the state's regulatory power and therefore exempt from the automatic stay provisions of the Code, even though the low rates ordered by the state had the effect of potentially impairing the reorganization. 114 N.M. 154, 836 P.2d 73 (1992). Similarly, in *Gulf Water Benefaction Co.*, the bankruptcy court refused to enjoin enforcement of rates set by the Texas Public Utility Commission, despite the debtor utility's claims that the rates set would work an extreme hardship on the utility's continued operation. 2 B.R. 357, 361 (Bankr. S.D. Tex 1980). Finally, while the bankruptcy court enjoined a state rate making proceeding in *Jal Gas Co.*, it emphasized that it did so only because it found that the state, by raising gas rates to reimburse customers for overpayment which predated the bankruptcy, was acting more as a creditor than a regulatory body. 44 B.R. 91, 94 (Bankr. D.N.M. 1984) The Court emphasized that if the rate increase was merely an adjustment of the gas rate rather than an attempt to collect a pre-petition debt, "then it is exclusively a function of [the Commission] and the Court will not intervene." *Id.* at 93.

The express language of the Bankruptcy Code, which conditions confirmation of a bankruptcy plan on approval of rates, combined with precedent exempting state ratemaking proceedings from the Code's automatic stay provisions, embody Congress, intent to preserve state rate making authority during reorganization. The reorganization of PSNH was completed long ago. General principles of bankruptcy law, therefore, cannot and do not preempt the Commission from exercising its full state law authority over PSNH's rates.

c. *The Bankruptcy Court's Decisions on PSNH Followed Bankruptcy Law, and Conditioned Confirmation of the Company's Plan on the Commission's Approval of Rates*

The Bankruptcy Court, with one limited exception, left the Commission's ratemaking authority entirely undisturbed throughout the reorganization period. To begin, in its Order on Preemption, the Bankruptcy Court held that notwithstanding its temporary preemption of state authority to approve the restructuring transactions in the Company's reorganization plan:

[t]he approval of any rate changes included in a plan of reorganization pursuant to

> Section 1129(a)(6) of the Bankruptcy Code remain subject to the approval authority of the New Hampshire Public Utilities Commission ("NHPUC") and any other regulatory commission having jurisdiction, after confirmation of the plan, over the rates to be charged by the reorganized entity or entities.

Order on Preemption, 108 B.R. at 892. Accordingly, the confirmed plan did not take effect until the Commission approved the Rate Agreement in DR 89-244. *In re PSNH*, 148 B.R. at 703.

The Court continued:

> Nothing in the [Bankruptcy Code] has the effect of exempting the reorganized entity or

> entities from any ongoing applicable regulatory requirements by NHPUC as to the future operations of said entity or entities (save for any questioning of the restructuring itself) \&... .

108 B.R. at 893. The setting of rates years later by this Commission is an example of what the Court had in mind when it referred to "applicable regulatory requirements \&... as to the future operations" of PSNH.

Finally, the Bankruptcy Court in the PSNH proceedings did enjoin this Commission from initiating an involuntary rate case shortly after the reorganization proceeding began. The Court stressed that its injunction was for the narrow purpose of preserving the prospect of the Company's reorganization, and in no way was to be construed as broadly preempting the Commission's ratemaking function. *In re PSNH*, 98 B.R. 120 (Bankr. D. N.H. 1989) (Order Granting Injunction). To dispel any suggestion that its injunction permanently barred the Commission from regulating the Company's rates, the Court stated:

> A debtor is not entitled to come into a bankruptcy court and overcharge its customers, where the debtor is subject to regulatory activity, and then take the position that the overcharge cannot be recovered because the regulatory authority was stayed from doing anything about it. It is an elementary equitable principle that a court must consider both sides of the coin. It would be inequitable to stay the State on one hand and on the other hand hold that the State forfeited some rights because it did not take action.

98 B.R. at 122.

In sum, the decisions of the Bankruptcy Court with respect to PSNH's reorganization confirm that the Commission's authority to regulate PSNH's rates remained intact throughout the course of the reorganization and, by implication, after the regulation. The Bankruptcy Court's decisions corroborate general principles of bankruptcy law which, as noted in Part I.B.6.b above, maintain

that ratemaking is an important state function, the preemption of which must be clearly manifest by Congress and narrowly construed.

Since the Commission's rate making authority was never preempted during the course of the reorganization (except temporarily), the Commission cannot be preempted now, years after the reorganization was accomplished.

d. *Contract Law Theories of Bankruptcy Do Not Bar the Commission From Limiting PSNH's Rate Recovery*

PSNH argues that its reorganization plan, which incorporates the provisions of the Rate Agreement, binds the Commission, which was a party in interest in the reorganization, as a matter of contract.

We do not doubt that a confirmed plan of reorganization "creates a new contract between the reorganized debtor and its creditors," *In re Lacy*, 183 B.R. 890, 892 n.1 (Bankr. D. Colo. 1995),[13(81)] and that the confirmed plan includes all documents which were confirmed together to form the contract.[14(82)] But PSNH's contractual rights in the reorganization plan do not reach the Commission's regulatory authority in this proceeding. The reason is that while the State is a party in interest to the reorganization proceeding, it is not a creditor and its status with respect to the state is bound by finality of judgment. Our regulatory function was not limited in Bankruptcy Court, and it is not limited here.

Over the objections of PSNH, the Court granted party in interest status to the State, and by extension, to the Commission, in the reorganization. *In re PSNH*, 88 B.R. 546, 556 (Bankr. D. N.H. 1988) (Order on Motions to Intervene). The Court stated that:

> The State of New Hampshire, unlike all other parties involved, has a statutory basis for being involved in this reorganization. *See* 11 U.S.C. §1129(a)(6) (requiring the approval of the pertinent regulatory agency as to any rate changes involved in the debtor's plan of reorganization). The State of New Hampshire and its regulatory agency (the PUC) are further implicated in this bankruptcy proceeding due to questions

> concerning the debtors' regulatory compliance within the meaning of 28 U.S.C. § 959, as the debtor prior to any plan of reorganization operates its business, sells assets, and engages in other activities that arguably are subject to the jurisdiction of both of the state regulatory agency and of this federal court\&... . I therefore agree with the assertion by counsel for the State of New Hampshire that the debtor and the Creditors' Committee have their heads "hidden in the sand" when they argue that the State of New Hampshire is not a party in interest in every practical sense in this unique reorganization\&... .
>
> The debtor and the Creditors' Committee argue that the concept of "party in interest"

> in bankruptcy reorganization has been interpreted generally to mean parties involved in a creditor-debtor or stockholder-debtor relationship\&... . No square holding by any court has been cited that stands for the proposition that a "non-creditor" or "non-stockholder" entity is not qualified for a party in interest status under Section 1109 of the Bankruptcy Code or for intervenor status under Bankruptcy Rule 2018.

Id. at 555 (citations and footnote omitted).

As demonstrated, the Commission's party in interest status rests upon its statutory obligation as a regulator and not as a creditor. Courts have held that a reorganization plan creates a binding contract between debtors and creditors and that this contract governs their respective obligations. *E.g. In re Bankeast*, 142 B.R. at 14; *In re Sugarhouse Realty Inc.*, 192 B.R. at 363 (realty contract incorporated as part of reorganization plan binds debtor and creditor/purchaser). However, because the Commission is not a creditor, this theory of contract would not operate to force the Commission to adhere to the Rate Agreement encompassed in the Bankruptcy Plan.

Moreover, while courts have held generally that parties in interest are "bound" by plans of reorganizations, these decisions arose in the context of precluding challenges by parties in interest to bankruptcy plans and not out of contract disputes. *See, e.g., Atlas Sewing Centers, Inc. v. Jones Financial Corp.*, 437 F.2d 607, 612-15 (5th Cir. 1971) (holding government precluded by *res judicata* from challenging reorganization decision because it is a party in interest).

In asserting that the Rate Agreement and the Reorganization Plan, by its terms, binds the Commission as a party in interest, PSNH has not cited any cases where a court has found that non-creditor parties in interest are bound by a reorganization plan as a matter of contract. The Commission was a party in interest wielding important regulatory functions. It was not a creditor whose contracts with the debtor were restructured by the plan of reorganization. The Commission therefore cannot be precluded, on the theory that the reorganization plan is a binding contract, from exercising its regulatory authority over PSNH.

PSNH also asserts that the Commission cannot at this time abrogate the terms of the Rate Agreement and the Reorganization Plan because PSNH undertook actions in reliance on that plan, including issuance of securities to new investors and entering into a merger with NU which was accomplished through an infusion of equity from NU. As explained previously, at the conclusion of the fixed rate period the Commission is not bound by the terms of the Rate Agreement at this time to set rates in a particular manner or to guarantee recovery of any particular amount. Consequently, any independent reliance on the bankruptcy process to ensure recovery of costs cited in the Rate Agreement must fail.

In conclusion, the bankruptcy laws cannot be held to bind the Commission to set rates in accordance with the Rate Agreement merely because the Rate Agreement is included in the reorganization plan, because the Bankruptcy Code preserves the state's authority to approve rates in the plan.

C. *HB 1392 Requires the Commission to Permit Full Recovery of Nonmitigatible Costs of Purchasing from Small Power Producers, Unless the Terms of the Utility's Purchase Were Discretionary With the Utility or the Utility Has Failed to Minimize Its Costs*

[111-114] In establishing the cap for stranded cost recovery, the Commission will exclude nonmitigatable SPP costs. RSA 374-F requires this result.

Section 374-F:3, XII(b) states that utilities "should be allowed to recover the net nonmitigatable stranded costs associated with \&... power acquisitions mandated by federal statutes or RSA 362-A." This language does not leave room for limitation of utility recovery of costs associated with SPP purchases, unless the purchases were not "mandated" or the costs are mitigatable.

There may be situations in which a utility's SPP purchase costs were entered into voluntarily. The Commission's decision here assumes no such situations exist. If someone brings such situations to our attention, we will address on a case-by-case basis whether the preemption is appropriate. RSA 374:F does not preclude the Commission from holding the utility responsible for not taking all reasonable actions to reduce its SPP costs, even where the utility originally incurred these costs under a legal mandate. The Commission expects the utilities to make reasonable proposals for buying out or otherwise reducing the costs of these contracts.

II. *ASSET OWNERSHIP, CORPORATE STRUCTURE AND UNBUNDLING*

A. *State Statutes Authorize Divestiture or Affiliated Unbundling*

[115-133] Pursuant to RSA 374-F:3, III the Commission's Final Plan states that an existing utility may no longer provide competitive and non-competitive services. If a jurisdictional utility chooses to be a distribution company, it must submit a plan by December 31, 1997 to accomplish the divestiture of generation and aggregation/marketing functions by the end of the two year period following the initiation of competition. It also must sell off the right to obtain power under existing power purchase contracts.

The Final Plan further provides that, beginning in 1998, the distribution company may not be an affiliate of any company which sells a competitive service in the service territory served by the distribution company; except that, if during the compliance filing proceedings, a utility is able to demonstrate that they have implemented safeguards to prevent anti-competitive behavior, it will allow an affiliated supplier to sell at retail in the distribution company's service territory during the two year transition period.

This limitation on permissible activities by jurisdictional utilities is authorized by state law and not in conflict with any federal law.

1. *The Language of the Statutes Create the Necessary Authority*

a. *Pre-RSA 374-F Statutes*

RSA 374:22, I requires that any entity seeking to operate as a public utility in New Hampshire must first obtain permission and approval from the Commission:

> No person or business entity shall commence business as a public utility within this state, or shall engage in such business or begin the construction of a plant, line, main or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the Commission.

RSA 374:26 sets out the standard to be applied by the Commission in granting or withholding such permission:

> *Permission*. The Commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; *and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest.* Such permission may be granted without hearing when all interested parties are in agreement.

(emphasis added).

This language contains neither limitation nor ambiguity. A public utility must obtain permission to operate. Not only is the Commission permitted to condition the terms of the operation, but it may determine what activities the utility may and may not undertake. The Final Plan contains precisely this sort of determination.

The Commission's authority also extends to various activities of a vertically integrated utility. RSA 362:2 states:

> The term `public utility, shall include every corporation \&... owning, operating, or managing any plant or equipment \&... for the conveyance of ... power \&... or in the generation, transmission or sale of electricity ultimately sold to the public \&...

This definition does not require a public utility to be in control of all of the activities. In its Freedom decision, the Commission interpreted this language as follows:

> A plain reading of RSA 374:26 reveals that we must grant franchise to companies applying to compete with currently franchised utilities when we find that applicant's operation would be in the public good.

Re Freedom Electric Company, 80 NHPUC 314, 161 P.U.R.4th (1995), *aff'd, Appeal of PSNH*, 141 N.H. 13 (1996). Consistent with that interpretation, the Commission may determine those services for which competition is appropriate, and establish the conditions for competition (such as prohibiting competitors who provide monopoly services in New Hampshire).

Furthermore, RSA 365:28 provides:

> At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside or otherwise modify any order made by it.

Under this language, there is no right to be the exclusive provider of any particular service. In fact, there is no right to be the provider of any particular service absent Commission permission. Thus the Commission may prescribe the conditions under which a supplier may provide a particular service.

The Final Plan concludes that it is in the public good for new companies to compete to provide competitive services identified by the Commission. To make this competition effective, the Commission further finds that, after a two-year transition period, the provision of competitive and monopoly services by entities in the same corporate family is no longer in the public good. RSA 374:26 unambiguously authorizes this finding.

Even if there were ambiguity in the statutory language, Part II, Article 83 of the New Hampshire Constitution requires us to construe the language as we have here. That provision states that:

> 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.

Thus, state agencies must be on the alert to eliminate or limit monopolies whenever they do not serve the public interest. *See Appeal of Omni Communications, Inc.*, which stated: "The role and duty of [the PUC] is to oversee and regulate those few necessary monopolies so that the constitutional rights of free trade and private enterprises are disrupted as little as possible." 122 N.H. 860, 862-63 (1982). We undertake that obligation here. An entity which carries on the monopoly task of transmission or distribution shall be limited to that activity, and not permitted to engage in competitive activities in the electrical industry in this state after December 31, 1999, except as specifically authorized by the Commission. Until that day, we will require functional separation of competitive and monopoly activities.

b. *RSA 374-F*

RSA 374-F does not reduce any authority over structure that the Commission had under

pre-existing statutes. In fact, RSA 374:3, III contemplates this very type of action. Section 374-F:3(III) states:

> Generation services should be subject to market competition and minimal economic regulation and *at least functionally separated* from transmission and distribution services\&... . However, distribution service companies *should not be absolutely precluded from owning small scale distributed generation resources* as part of a strategy for minimizing transmission and distribution costs.

(emphasis added). The underlined language establishes certain limits on Commission authority. The Legislature's intent to set these limits logically means that Commission actions not ruled outside of these limits are permissible. In stating that generation must be "at least" functionally separated, the Legislature intended to authorize greater separation than functional separation. The next step after functional separation is separation into independent companies, which is what the Final Plan requires after December 31, 1999. The Legislature also stated that distribution service companies should not be "absolutely precluded" from owning small scale generation for a particular purpose, *i.e.*, "as part of a strategy for minimizing transmission and distribution costs." By prohibiting Commission from precluding of this particular type of joint ownership, the language logically means that the Commission may prohibit other forms of joint ownership.

In arguing that the Commission lacks statutory authority to take this action, PSNH points to Section RSA 374-F:4, VIII, which states, in part: "The commission is authorized to require that distribution and electricity supply services be provided by separate affiliates." PSNH argues that by authorizing such affiliated unbundling, the Legislature intended to prohibit the Commission from ordering more, *i.e.*, that a utility provide only competitive or monopoly services.

To accept this reasoning, we not only would have to ignore the "at least" language in Section 374-F:3, III, we also would have to read the pre-RSA 374-F language as precluding this Commission action, *i.e.*, as guaranteeing to any franchised utility that it was free to continue to perform all components of vertically integrated operations in perpetuity. For the reasons set forth above, we reject that interpretation. Alternatively, we would have to interpret RSA 374-F as repealing previously existing authority. This interpretation also is off the mark, because it is inconsistent with the pro-competitive purpose specified in RSA 374-F:1, and because it is inconsistent with RSA 374-F:4,X which states that "[n]othing in this Chapter shall be construed to prohibit the commission from otherwise exercising its lawful authority under title 34."

The language in RSA 374-F:4, VIII quoted by PSNH, "The commission is authorized to

require that distribution and electricity supply services be provided by separate affiliates," is consistent with our interpretation of the pre-RSA 374-F statutes and with RSA 374-F:3, III and does not preclude the Commission from limiting the business activities conducted by the utility. Where the Commission chose to permit a utility to continue operating both competitive and non-competitive businesses (as we do until the year 2000), RSA 374-F:4, VIII simply allows the Commission to dictate the internal corporate relationships for the vertically integrated company —a subject that otherwise might be viewed as within management's discretion.

PSNH further argues that "it is not for the public good that public utilities be unreasonably restrained of liberty or action or denied the same rights as corporations not engaged in public service." *Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539, 540 (1915). It is PSNH that is asking for something denied to others. PSNH wishes to continue to be the exclusive provider of distribution and transmission service to its present customers, *and* compete to provide them aggregation and generation services. *No other competitor has that opportunity*. The Commission is applying the very principle argued by PSNH, that is, all companies will be treated the same. No company can, directly or through affiliates, engage in

New Hampshire in both competitive and monopoly businesses except to the extent that we have allowed the distribution companies to provide default power services after December 31, 1999.

For the same reasons, we reject PSNH's argument that this limitation on the rights of a utility franchisee violate the "equal protection" provisions of Part 1, Articles 2 and 12 of the N.H. Constitution. All competitors will be treated the same. Nor does the Commission lack the authority to apply these rules to owners of out-of-state generation assets which seek to enter New Hampshire's retail market. As long as the Commission applies the same rules to in-state and out-of-state competitors, there is no prohibition on applying reasonable business requirements on competitors who come from out-of-state. *See, Opinion of the Justices*, 117 N.H. 533, 538 (1977) (legislation imposing limitations on retail operations of both in-state and out-of-state oil suppliers does not discriminate against out-of-state suppliers or violate commerce clause).

In conclusion, we read RSA 374-F as creating affirmative authority to limit the utilities to monopoly or competitive businesses. Even if RSA 374-F did not create affirmative authority, it does not eliminate our authority found to exist in other relevant statutes.

2. *The New Hampshire Supreme Court in Appeal of PSNH Confirmed the Commission's Authority Under Existing Statutes to Require Unbundling*

The New Hampshire Supreme Court's decision in *Appeal of PSNH* affirms our interpretation of applicable statutes as affirmatively authorizing the Commission to impose limitations on utilities, franchises. 141 N.H. 13 (1996). In holding that the Commission had sufficient authority under statute to grant a competing franchise within the service territory of an incumbent utility,

the Court held:

> We find nothing in the statute to support PSNH's contention that the PUC may never grant a competing electricity utility franchise, regardless of the public good. Such a reading would contradict the "intent of the legislature as expressed in the words of [the] statute," (citation omitted), by depriving the PUC of authority to grant franchises for the public good.

Id. at 17. The Court went on to endorse a policy of interpreting the PUC's statutory authority in a manner consistent with the constitutional goals of promoting competition:

> [L]egislative grants of authority to the PUC should be interpreted in a manner consistent with the State's constitutional directive favoring free enterprise. Limitations on the right of the people to "free and fair competition," N.H. Const. Pt. II, art. 83, must be construed narrowly, *with all doubt resolved against the establishment or perpetuation of monopolies*.

Id. at 18. We have followed the Court's admonition in this proceeding.

3. *The Commission's Authority Over Franchises Is Not Compromised by Private Contracts*

PSNH argues that the corporate structures contemplated will affect its ability to meet the terms of its loan agreements. Among other things, PSNH explains that

> virtually all of its long-term financing has been accomplished under the assumption that the corporation will continue to operate as an unfragmented whole. PSNH's bond indenture provides a lien on virtually all of PSNH's generating, transmission and distribution facilities, as well as the Acquisition Premium, to secure the PSNH Series B First Mortgage Bonds and PCRB debt. The total secured obligation exceeds $650 million. The indenture expressly prohibits any amendment which would affect bond payment terms or deprive holders of the lien of the indenture on any material part of the trust estate, without the express consent of each bondholder. Series B First Mortgage Bonds mature on May 15, 1998 and, for all practical purposes, are not redeemable before that date."

(Forsgren at 31-32). PSNH adds that other debt instruments expressly prohibit the sale, lease, transfer or other disposition of 10 percent or more of PSNH's assets without the consent of the lenders.

PSNH's argument that the terms of its indebtedness disable the Commission from limiting PSNH's permissible franchise activities are without merit. Implicit in PSNH's argument is the mistaken notion that private parties can diminish the Commission's statutory obligations and authorizations. The Commission has authority under its statutes to limit the franchise activities of its utilities; as we noted above, two private parties may not limit our statutory authority by contract.

PSNH argues that the contracting parties shared a premise that the previously granted government authorization to be vertically integrated would continue. If the parties shared this premise, they should have (and may have—PSNH does not say) allocated among themselves the risk that government would change this authorization. *See Winstar*, *supra*, (parties allocated to the government the risk that banking regulation would change). A careful allocation of that risk would seem especially important given the Commission's authority to "prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest." RSA 374:26.

The Commission is sensitive to the contractual relationships which have helped finance the facilities that historically have served New Hampshire. The proper place to address those concerns is when we explore, in case-by-case adjudications, the appropriate procedures for disposing of assets. But our sensitivity to the issue of indentures does not warrant our accepting PSNH's argument that private parties may contract away the Commission's statutory authorization to limit the activities of a franchisee.

B. *An Order Limiting the Permissible Business Activities of a New Hampshire Utility Does Not Interfere With Vested Rights and Therefore Does Not Violate the Takings Clause of the U.S. Constitution*

Not only does the Commission possess ample authority under statute to modify utilities, franchises so as to limit them to either monopoly or competitive operations, but moreover, contrary to PSNH's claims, our action is not a taking of property rights in violation of the New Hampshire Constitution. We have held that utility franchises cannot be viewed as permanent "given the Commission's express authority to alter, amend, suspend, annul, set aside or otherwise modify" any order made. *In re Freedom Elec. Co.*, 80 NHPUC 314, 161 P.U.R.4th 491 (1995), *aff'd, Appeal of PSNH*, 141 N.H. 13 (1996). In light of our reserved authority, inherent in every franchise, to alter or amend it, franchise holders have no legitimate expectation that the Commission would not order divestiture or for that matter, any other action which might modify the terms of the franchise.

For that reason, PSNH's citation to the New Hampshire Supreme Court's finding that legislation prohibiting oil suppliers from selling gasoline at retail constitutes a "taking" does not apply. *Opinion of the Justices*, 117 N.H. at 537-38 (1977). In that case, the oil suppliers did not have state-granted franchises under a statute authorizing the Commission to "prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest." By contrast, because of our continued authority to alter or modify the terms of a franchise issued, utilities have no investment backed expectation in their

respective franchises, and thus, our modification to the terms of their franchises is not a taking.

C. *The Public Utility Holding Company Act Does Not Preempt the State From Limiting the Permissible Activities of the Incumbent Utilities*

The utilities argue that actions by the Commission to limit the franchise right to some but not all of the activities traditionally undertaken by vertically integrated utilities is preempted by the Public Utility Holding Company Act ("PUHCA"). This argument has no basis in, and is in fact contradicted by, the language of the statute. The Commission's structural actions are

consistent with and further PUHCA's goal of reducing the influence of corporate structures which were dominating the market and consumers.

1. *The Commission's Actions Carry Out PUHCA's Goals of Reducing the Influence of Corporate Structures and Promoting Competition*

Among the purposes of PUHCA, Congress declared, were to:

1. Prevent growth and extension of holding companies which bears no relation to economy of management and operation or the integration and coordination of related operating properties. 11 U.S.C.A. §79a(b)(4) (1996).

2. Protect against lack of economy of management and operation of utility companies, or lack of efficiency and adequacy of service rendered by such companies, or lack of effective regulation. *Id.* at §79a(b)(5).

3. Protect subsidiaries from —

a. excessive charges for services, construction work, equipment and materials
b. non-arm's length transactions or transactions which restrain free and independent competition. *Id.* at §79a(b)(2).

4. Prevent holding company systems from using —

a. service, management, construction, and other contracts to allocate charges among subsidiaries in different states so as to obstruct effective state regulation. *Id.*
b. subsidiaries, in conjunction with accounting practices and rate, dividend, and other policies, so as to complicate and obstruct State regulation of such subsidiaries. *Id.* at §79a(b)(3).

These themes are repeated in the case law. In *North American Co. v. Securities and Exchange Comm'n*, 327 U.S. 686, 710-11 (1946), the Supreme Court found that holding company "structures in and of themselves have been found by Congress to constitute an evil that cannot be met by simply regulating future transactions." PUHCA, the Court declared, was designed to "remove \&... potential if not actual sources of evil." *See also Detroit Edison Co. v. Sec. & Exchange Comm'n*, 119 F.2d 730, 739 (6th Cir. 1941) (Act is a "preventive measure intended to regulate action before the interests of those concerned are adversely affected").

The Commission's Final Plan addresses each of these goals directly. The Legislature and the Commission both found that "economy of management and operation" now requires unbundling of services and the provision of those services by multiple competitors, rather than the provision of identical services to all consumers by a single vertically integrated monopolist. The Legislature and the Commission also found that competition is more effective than monopoly regulation in "protect[ing] against lack of economy of management and operation of utility companies, or lack of efficiency and adequacy of service rendered by" the incumbent utilities. In addition, with effective competition, there will be far less risk of excessive interaffiliate charges, and the use of complicated service, management, construction, and other contracts which can "complicate and obstruct" effective state regulation.

The Commission is taking action to reduce the influence of the corporate structures which Congress targeted in PUHCA. We reject the utilities, position that PUHCA requires the Commission to leave intact the holding company structures authorized by the SEC in the years after 1935 without regard to new technologies, markets and demands placed by consumers. This interpretation would have the result of preventing a state from taking action against the very corporate structures whose adverse effects Congress explicitly intended to address.

Another purpose of PUHCA was to prevent the "concentration of public utilities." *See* 15 U.S.C. §79j(b)(1). Thus, Courts have upheld the notion that PUHCA was intended in part to prevent anticompetitive acquisitions. *See Municipal Elec. Assoc. of Mass. v. Sec. & Exchange Comm'n*, 413 F.2d 1052, 1055-60 (D.C. Cir. 1969) (requiring hearing into whether

utilities' proposed acquisition of nuclear plant subsidiaries, and their exclusion of small competitors from obtaining power directly from the plants, was inconsistent with antitrust principles); *City of Lafayette v. Sec. & Exchange Comm'n*, 481 F.2d 1101, 1104 (D.C. Cir. 1973) (*Municipal Electric* established the relevance of effect on individual competitors to concentration-of-control determinations; the statute was concerned with the risk that competition might be impaired through reduction of economic viability of individual competitors).

The Commission's policy is consistent with the goal of targeting anticompetitive acquisitions to prevent the "concentration of utilities." If a stand alone utility were to seek to acquire transmission, distribution, aggregation and generation assets, the Commission would not permit the acquisition on the grounds that it would interfere with orderly development of effective competition. Such a prohibition on these acquisitions would not be preempted by PUHCA. *See*

Baltimore Gas & Elec. Co. v. Heintz, 760 F.2d 1408 (4th Cir. 1985) *cert. denied*, 474 U.S. 847 (1985). The Commission's corporate structure limitation merely places the incumbent utilities on the same footing as all newcomers.

2. *PUHCA Allows for State Regulation of Corporate Structure*

Contrary to the utilities, claims, PUHCA does not vest in the SEC the exclusive authority over utility corporate structure. PUHCA not only leaves room for state regulation not in conflict with the statute, but moreover, does not bar states from prohibiting activities otherwise permitted by PUHCA to carry out the goals of the statute. *Baltimore Gas*, 760 F.2d 1408 (Maryland law prohibiting a non-utility corporation from acquiring more than 10 percent of a utility not preempted by PUHCA, which permits this structure).

The utilities cite several cases to support their argument that PUHCA preempts the Commission from limiting the permissible franchise activities. These cases do not support their argument, for several reasons. First, the cases cited construe the authority of the Securities and Exchange Commission, not the authority of states. None of the cases suggest—much less decide—that an exercise of state regulatory authority over a utility was preempted by PUHCA. In fact two of them— *Securities and Exchange Comm'n v. New England Electric System*, 384 U.S. 176, 180 (1966), and *In re North Continent Utilities Corp.*, 61 F.Supp. 419, 421 (D. Del. 1945)—do not mention state law at all, much less decide any preemption issue. And *Public Service Comm'n of New York v. Sec. & Exchange Comm'n*, 166 F.2d 784, 787-88 (2d Cir. 1948), was concerned with whether Section 11(e) of PUHCA, by its terms, required approval of a reorganization by the state commission. The section at issue did not require such approval, and the court refused to read the requirement into the federal statute. No potential conflict with state law was addressed or decided. The utilities, reliance on these cases is mistaken.

In *North American*, 327 U.S. at 705, and *Phillips v. Sec. & Exchange Comm'n*, 153 F.2d 27 (2d Cir. 1946), the courts acknowledged in *dictum* a proposition not in dispute here—that in cases of actual conflict the state law must give way—but neither case reached, much less decided, whether the state law in question was preempted by the Supremacy clause. In *Phillips* the court refused to construe two varying provisions of state law (dealing with the possibly applicable procedures for share redemption) so as to give rise to a conflict with the agency's enforcement of the federal statute. Conflict with an agency's pursuit of its mandate is not a circumstance presented in this case, where the Commission seeks to fulfill the objectives of the federal statute.

D. *PSNH is not Exempt from a Divestiture or Unbundling Order*

1. *Introduction*

There is nothing in the 1989 statutes, the Rate Agreement or the Commission's Order in DR 89-244 exempting PSNH from the legal principles set forth above. The Commission's general authority to condition or limit the

permissible activities undertaken by a utility in New Hampshire apply in full force to PSNH.

There are two areas of federal law warranting separate discussion. As explained below, neither the bankruptcy proceedings involving PSNH nor the SEC's approval of PSNH's acquisition by NU impose any limits on the Commission's ability to condition PSNH's permissible activities in New Hampshire.

2. *Neither General Principles of Bankruptcy Law nor the Bankruptcy Court's Decisions on the PSNH Bankruptcy Prevent the State From Limiting the Activities Which PSNH May Conduct in New Hampshire*

Although PSNH's affiliations with NU's existing structure resulted from its reorganization pursuant to federal bankruptcy laws, the Bankruptcy Code does not bar the Commission from now imposing certain conditions on or changes to that structure. This section covers three main areas. First, we address general principles of preemption and bankruptcy law. Second, we explain that the Bankruptcy Court's specific decision on preemption no longer applies to Commission actions which might affect PSNH's structure. Third, we explain that the reorganization plan does not create a contractual bar to the Commission's imposing conditions of operation on PSNH's franchise.

a. *General Principles of Preemption and Bankruptcy Law*

Preemption of state authority by federal law, including bankruptcy law, is narrowly construed. Congress' bankruptcy enactments contain no trace of intent to bar state regulation of activities which flowed from a reorganization process initiated almost a decade ago.

i. *Preemption of State Authority by Bankruptcy Law Is Narrowly Construed*

As discussed earlier in the context of preservation of state ratemaking authority during a Chapter 11 reorganization, *see* Part I.B.6, federal preemption of state regulatory functions must be narrowly construed. This principle applies equally with respect to the analysis of preemption of state regulation over company structure as it does to rates.

PSNH cites Section 1123(a)(5) as a source of preemption of state authority over the Company's structure. Order on Preemption, 108 B.R. 854. This section provides in relevant part that:

(a) *Notwithstanding any otherwise applicable nonbankruptcy law, a plan [of reorganization]*

shall—

(5) *provide adequate means for the plan's implementation*, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

* * * *

(I) amendment of the debtor's charter; or

(J)issuance of securities of the debtor[\&...]for existing securities, or in exchange for claims, or interest or for any other appropriate purposes.

11 U.S.C. §1123(a)(5) (1996) (emphasis added).

The Bankruptcy Court suggested that the phrase "notwithstanding any otherwise applicable nonbankruptcy law" reflects an intent to preempt state approval of the transactions enumerated in the statute for the limited purpose of facilitating implementation of a plan of reorganization. Order on Preemption, 108 B.R. at 882. However, the phrase "provide adequate means for the plan's implementation," indicates that the preemptive effect of Section 1123(a)(5) lasts only until such time as the reorganization plan is implemented and would not extend beyond the parameters of the reorganization.

ii. *The Bankruptcy Court's Jurisdiction Over Disputes Is Limited and Temporary*

The limited nature of the preemptive effect of Section 1123(a)(5) is further reinforced when viewed in the context of the Bankruptcy Court's limited and temporary jurisdiction following confirmation of the reorganization plan. In re Lacy, 183 B.R. 890, 892 (Bankr. D. Colo. 1995) (bankruptcy court lacks jurisdiction over claim for alleged breach of contract, since claims were state law proceedings and not core proceeding under bankruptcy jurisdiction). Judge Yacos, who oversaw PSNH's reorganization, stated in another case:

> Thus a court may retain jurisdiction, after confirmation, to guarantee that the plan of reorganization is complied with, *but it may not keep the corporation in 'perpetual tutelage*" by exercising control over all aspects of the corporate conduct or by assuming jurisdiction over controversies between the reorganized corporation and third parties.

In re BankEast Corp., 132 B.R. 665, 666 (Bankr. D. N.H. 1991) (emphasis added) (citing *Claybrook Drilling Co. v. Divanco Inc.*, 336 F.2d 697, 701 (10th Cir. 1964). Judge Yacos concluded that the court only maintains jurisdiction until the point that the plan is substantially consummated. *Id.* at 667.[15(83)]

Consistent with this limited authority, bankruptcy courts will not extend jurisdiction over debtors adversely affected by subsequent application of state law, even if the changes frustrate the success of the plan. For instance, in *In re Ambassador Hotel Corp.*, the Second Circuit stated:

> The future fate of the corporation was not within the control of the bankruptcy court, *nor could that court reserve power to adjudicate controversies in which it might become involved, whether they should arise from a change in state law* or from the corporation's own conduct.

124 F.2d 435, 436 (2d Cir. 1942) (court declines to consider impact of change in state law limiting the duration of voting trust agreement incorporated in reorganization plan). *See also In re Bankeast Corp.*, 132 B.R. 665, 668 (Bankr. D. N.H. 1991) (bankruptcy court's exercise of jurisdiction dependent upon provisions of confirmation order); *In re Scotland Guard Services, Inc.*, 179 B.R. 764, 768 (Bankr. D. P.R. 1993) (adjudication of claim by debtor that corporation refused to accept bid for debtor's services is outside bankruptcy court's jurisdiction).

Moreover, the likelihood that a bankruptcy court has authority to assert jurisdiction is further diminished when the conflicts arise many years after confirmation of the plan. *In re Leight & Co.*, the Seventh Circuit reversed an injunction barring an action for dissolution of a trust established by a bankruptcy plan on grounds that the action constituted an interference with the confirmed plan. 139 F.2d 313, 314 (7th Cir. 1943). The court stated:

> Even if it were true that the State court proceedings were a collateral attack upon some action of the bankruptcy court taken ten years before, it does not follow that the bankruptcy court had the right to resume jurisdiction and by injunction wrest from the State court its jurisdiction\&... *We cannot sanction a doctrine that would leave hanging in suspended animation the power of a bankruptcy court to resume jurisdiction over a composition agreement that had been confirmed and consummated for more than ten years.*

Id. (emphasis added). *See also Mattison v. Birkett*, 200 F.2d 351 (7th Cir. 1953) *cert. denied,* 345 U.S. 910 (1953) (court lacks jurisdiction to adjudicate a dispute between trustees of a voting trust twelve years after a final confirmation of the bankruptcy plan had been effectuated).

In sum, while Section 1123(a)(5) may have provided some basis for limited preemption of state approval over PSNH's restructuring during the course of the reorganization, this preemption must be narrowly construed and cannot be interpreted as a permanent shield against Commission regulation of PSNH's structure through imposition of conditions of operation on its franchise.

b. *The Bankruptcy Court's Specific Decisions on Preemption No Longer Apply To Commission Actions Which Might Affect PSNH's Structure*

The Bankruptcy Court's decisions on PSNH's reorganization accord with the foregoing general principles of bankruptcy law and do nothing further to preclude the Commission from imposing conditions of operation on PSNH's franchise.

The Bankruptcy Court did, for a short period, specifically preempt state laws governing Commission approval of PSNH's proposed restructuring transactions "necessary to an effective and feasible reorganization." Order on Preemption, 108 B.R. at 891. Because successful reorganization of PSNH has been accomplished, the restructuring transactions included in PSNH's reorganization plan are, by definition, no longer necessary to achieve a successful reorganization. To the extent the Commission's authority to condition PSNH's structure or activities were preempted by the Bankruptcy Court's decision during the course of reorganization, that jurisdiction has long been restored. Therefore, even if the Bankruptcy Court had preempted the Commission's state law authority to limit a public utility's franchise to particular activities during the course of reorganization, that preemption cannot outlive the reorganization process.

Finally, the Court's strategic concern about avoiding stalemate during reorganization cannot logically be implicated by a Commission order in 1997 limiting PSNH's permissible business activities.

i. *The Bankruptcy Court Did Not Broadly Preempt the Commission's General Regulatory Authority Over PSNH*

When the Court preempted, it preempted surgically. Only those state law approvals over the restructuring transactions proposed in PSNH's plan which potentially posed barriers to PSNH's ability to effectuate a successful plan of reorganization under Sections 1123 and 1129 of the Bankruptcy Code were preempted. The Court emphasized that its decision was not to be interpreted as a broad preemption of the Commission's regulatory authority over PSNH. This narrow preemption holding has no relevance in the instant proceeding now that reorganization has been completed.

(a) Summary of Bankruptcy Court's Decision

In 1988, PSNH filed a plan of reorganization under Chapter 11 which contemplated various transactions resulting in a complete restructuring of its corporate entity. *In re PSNH*, 99 Bankr. 506, 508 (Bankr. N.H. 1989) (Order Granting Declaratory Relief). PSNH's initial proposal, filed

in December 1988, was for a restructured PSNH, consisting of a holding company with three wholly owned subsidiaries. The Court early noted that this plan raised questions of preemption under the Federal Power Act, as well as questions of preemption under the "the more mundane features [of the plan] regarding a myriad of provisions for transfer of properties, issuance of securities or other transactions that will `inevitably be at least a part of a reorganization of a complex entity," ordinarily required Commission approval pursuant to state law, thereby creating a state obstacle to implementation of a plan of reorganization under the provisions of the Bankruptcy Code. Order on Preemption, 108 Bankr. at 859.[16(84)] In discussing preemption, the Court took pains to note that it was addressing only Bankruptcy Code preemption, not Federal Power Act preemption. The Court did not want its ruling preempting state approval of restructuring transactions for the purpose of effectuating a plan of reorganization to be construed as a broader preemption of state regulatory jurisdiction than intended or authorized by applicable provisions of the Bankruptcy Code.

Accordingly, at the outset of its decision, the court narrowly framed the question of preemption as:

> Whether the restructuring transactions included in the debtor's plan filed on December 27, 1988 requires the New Hampshire Public Utilities Commission's approval under various state statutes or whether those laws are preempted by the Bankruptcy Code. The fact that certain of those restructuring transactions would have the effect of allowing one aspect of the reorganized entities, operations, *i.e.*, the wholesale generation of power to come under the regulatory authority of the

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> Federal Energy Regulatory Commission is not the strict legal question presented for analysis in the first instance\&... . However, it needs to be emphasized that the question presented to this court for declaratory ruling is not whether plans of reorganization filed under the Bankruptcy Code will preempt regulatory jurisdiction generally.

Order on Preemption, 108 B.R. at 860-61. Later in its decision, the Court reiterated:

> It needs to be stated again that all that needs to be decided in the present proceeding is whether a plan of reorganization under chapter 11 of the Bankruptcy Code, which includes various restructuring provisions listed in Section 1123(a) (5) ordinarily requiring approval by NHPUC, can nevertheless be part of a plan submitted for approval and confirmation pursuant to Section 1129 of the Bankruptcy Code. More precisely, the question is whether "as a matter of law" such a plan could not be confirmed.

Id. at 887.

In addressing the narrow question of preemption which it framed, the court focused primarily on Section 1123 as the source of preemption of state approval requirements otherwise governing the restructuring transactions proposed in PSNH's plan of reorganization. *Id.* at 887; *see* Part I.B.6, *supra* for discussion of Section 1123. The court concluded that the plain language of Section 1123(a)(5) of the Bankruptcy Code authorized the restructuring transactions enumerated in Section 1123(a)(5) and included in and necessary to the debtor's plan of reorganization, thereby preempting state laws otherwise requiring approval of such restructuring transactions. Order on Preemption, 108 B.R. at 882-83.

In further discussion of Section 1123(a)(5) of the Bankruptcy Code, the Court revealed the underlying and narrow purpose behind its decision:

> Corporate restructuring cannot work without substantial restructuring of the corporate entity that is relatively prompt and free from litigation costs and delays in fragmented proceedings in numerous other forums apart from the reorganization court. Section 1123(a)(5) is a very powerful and necessary restructuring tool in this regard and is essential to the corporate reorganization process. [\&...].
>
> Accordingly, I conclude that Congress did intend to remove state regulatory agencies from the "restructuring" transactions necessary in any complex reorganization to avoid the time delays, confusion and interference with prompt and orderly processes necessary to an effective reorganization "before the patient dies." Any experienced professional involved in corporate reorganization proceedings will recognize that reasonable "promptness" in resolving corporate reorganization under chapter 11 is important—not only due to the enormous cost of reorganization proceedings in complex cases, but also to avoid the "suspended disasters" that can come loose in any reorganization case if the parties do not see a resolution coming forward within a reasonable time frame.

Order on Preemption, 108 B.R. at 891. The Court concluded:

> Those aspects of the debtor's plan of reorganization filed December 27, 1988 or any amended plan containing similar provisions filed by the debtor or any other party in interest, that are necessary and required to effectuate the "restructuring" of the debtor into a reorganized entity capable of achieving a feasible reorganization, subject to the confirmation requirements of Section 1129 of the Code and are actions specifically covered by Section 1123(a) (5) may be approved as part of confirmation of a plan of reorganization under the provisions of chapter 11 of the Bankruptcy Code notwithstanding any otherwise applicable law which would require approval of such actions by the New Hampshire Public Utilities Commission.

Id. at 892 (Ordering Paragraph).

Without conceding that the Bankruptcy Court's preemption analysis was correct, we

note that it was narrow. What the Court preempted was the Commission's state law authority to review the transactions which PSNH had to undertake to effectuate the reorganization required by the bankruptcy filing. The Court did not preempt, nor does the Bankruptcy Code preempt, the state laws generally applicable to all utilities once the bankruptcy process is complete.

The Bankruptcy Court confirmed PSNH's plan of reorganization on April 20, 1990. *In re PSNH*, Case No. 88-00043 (Bankr. D. N.H. 1990). The Commission approved the Rate Agreement embodied in the plan in DR 89-244, and the plan became effective on May 16, 1991. *In re PSNH*, 148 B.R. at 703. The Bankruptcy Court itself acknowledged that the reorganization "clearly was a success," resulting in full payment to all creditors, with unsecured creditors receiving the major portion of post-petition interest and in excess of $500 million in value was left for equity security holders. *In re PSNH*, 160 B.R. 404, 421 (1993) ("Order on Fees"); see also In re PSNH, 963 F.2d 469 (1st Cir. 1992), *cert. denied sub nom., Richards v. New Hampshire*, 502 U.S. 899 (1991) (affirms confirmation order and notes substantial consummation of plan).

(b) *The Court's Ruling Is Limited to Narrow Confines of the Restructuring*

The Court's narrow ruling on preemption does not constrain the Commission, almost ten years later, from applying to PSNH the same requirements it applies to all other utilities; namely, a limitation on the permissible business activities which it may conduct as a recipient of a government awarded franchise. The Bankruptcy Court repeatedly emphasized that Sections 1123 of the Bankruptcy Code preempted only those state laws requiring Commission approval of those restructuring transactions included in PSNH's plan of reorganization *and* necessary to implementing an effective and feasible reorganization:

> In terms of the literal language of Section 1123(a) (5) it seems obvious that section on its face contemplates that restructuring transactions necessary to a plan of reorganization may be provided notwithstanding nonbankruptcy law\&... .

Order on Preemption, 108 B.R. at 882. Further:

> The reorganization process of chapter 11 cannot work \&... if one party in interest has an effective veto over the *necessary* restructuring to implement the plan \&...

It should be noted that the judgment is drafted in the narrowest possible manner to find preemptive effect of the Bankruptcy Code provisions only as to the restructuring transactions *necessary to an effective and feasible reorganization.*

Id. at 891 (emphasis added); *see also id.* at 892 (Ordering Paragraph) (Court preempts aspects of debtor's plan as necessary and required to effectuate the restructuring of debtor into reorganized entity capable of achieving feasible reorganization).

Because the Bankruptcy Court has declared the reorganization a success— and no interim events have occurred which would alter this finding—by definition, none of the restructuring transactions which had been included in PSNH's plan are necessary to achieving an effective reorganization. Thus, at this point, nearly a decade since the reorganization was initiated and more than four years since it was declared a success, the Commission's authority to approve, alter or otherwise regulate the structure of PSNH through an order imposing conditions on its franchise is not affected by the Bankruptcy Court's limited ruling. Similarly, because the reorganization has been effectuated at this time, a Commission requirement of imposing conditions of operation on PSNH's franchise does not undermine the Bankruptcy Court's policy concerns of avoiding stalemate in reorganization.

ii. *The Final Plan Cannot Interfere with a "Restructuring" That Was Completed Successfully Years Ago*

The Bankruptcy Court did not interfere with the Commission's general regulatory

powers over PSNH's operations, which would include imposing conditions of operations on franchises of all state utilities, including PSNH. The Bankruptcy Court emphasized:

> This judgment is not a carte blanche for the debtor to run roughshod over all types of state regulatory processes both before and after confirmation of any plan of reorganization. It is designed to avoid this "parade of horribles" set forth by the State of New Hampshire in the arguments on the matter. Once restructuring under a confirmed plan is accomplished, the reorganized entity or entities so created will remain subject to all applicable regulatory requirements in their on-going operations save for any questioning of the restructuring itself.

Order on Preemption, 108 B.R. at 891.

The Commission's decision to condition PSNH's service activities will affect all utilities and not just PSNH. As such, it is the kind of ongoing regulation of operations from which the Bankruptcy Court intended not to exempt PSNH.

Notwithstanding the narrow scope of the Bankruptcy Court's decision, PSNH argues that the decision bars the Commission from any action which "questions the restructuring." *See* Order on Preemption, 108 B.R. at 891.

PSNH misinterprets both the Court's decision and the underlying statute. To the extent that the court barred the Commission from questioning the restructuring, it did so only to the extent to enable PSNH to achieve effective reorganization. There is nothing in the Court's decision to indicate that it intended permanently to insulate PSNH from state regulation which affects its structure once reorganization was successful. The Court could not have done so, even if it wanted to, given the narrowness of the preemptive provisions of Section 1123(a)(5) on which the Court relied.

In sum, the Bankruptcy Court's decisions do not restrict the state from imposing conditions on PSNH's franchise now that the reorganization has been declared a success. The Bankruptcy Court cautiously allowed preemption of Commission authority over the restructuring, during the reorganization, only to ensure feasible implementation of PSNH's plan of reorganization. Extending the Bankruptcy Court's decision to preclude the Commission from acting in this case long after the reorganization has been consummated conflicts with the Bankruptcy Court's repeated efforts to narrowly circumscribe its ruling on preemption to prevent its decision from being used as a "carte blanche" to "ride roughshod" over the Commission's regulatory authority.

c. *The Reorganization Plan Does Not Create a Contractual Bar to the Commission's Imposing Conditions of Operation on PSNH's Franchise*

As discussed above, in the context of rates, to the extent that the reorganization plan is a contract, this contract governs transactions between debtors and creditors in the reorganization and not non-creditor parties in interest such as the Commission, particularly when they exercise important regulatory functions. This same concept applies with equal force to the present issue; *i.e.*, whether the Commission now may impose limits on the permissible activities undertaken by PSNH as franchisee.

3. *The Securities and Exchange Commission's Approval of the NH-PSNH Acquisition Does Not Preempt the Commission*

NU's acquisition of PSNH was approved by the Securities and Exchange Commission ("SEC") in December 1990 in SEC Holding Co. Act Release No. 25221 (Dec. 21, 1990), Supp. Holding Co. Act Release No. 25273 (March 15, 1991) *aff'd Holyoke Gas and Elec. Dєpt v. Securities & Exchange Comm'n*, 972 F.2d 358 (D.C. Cir. 1992). Nothing about this approval preempts the Commission from taking the action it does in the Final Plan, limiting PSNH's permissible activities in the state. As explained in Part II.C, *supra*, the Public Utility Holding Company Act ("PUHCA") does not vest exclusive authority over holding company structure in the SEC. A state can take actions more protective of consumers than are required by the statute or the SEC. *See Baltimore Gas & Elec.*

Co. v. Heintz, 760 F.2d 1408 (4th Cir. 1985). That is what the Commission is doing here. Therefore, even if the SEC had intended to bind the State of New Hampshire to a particular set of business activities for PSNH in New Hampshire, such an intent would be unauthorized by PUHCA.

In any event, we are aware of no language, and no party has pointed to any, which remotely suggests the SEC had any such intent. For these reasons, we conclude that this Commission is not preempted from now limiting PSNH's permissible activities in the New Hampshire electric industry.

4. *Conclusion*

Because the Rate Agreement, Bankruptcy Orders and FERC Approvals did not promise insulation from a divestiture order, these documents created no vested right in PSNH to continue to be a vertically integrated utility company serving in New Hampshire. Therefore there is no protection offered by the Takings Clause or the Contract Clause.

III. *TRANSMISSION AND DISTRIBUTION ACCESS*

A. *The Federal Power Act Does Not Preempt the State from Directing Transmission Owners to File a Retail Transmission Tariff at FERC*

[134-139] The Final Plan requires New Hampshire's utilities to submit tariffs for the transmission of retail power for our review. Upon that review, this Commission will determine the appropriate rates, terms and conditions, and direct the utilities to file them with FERC. At that point, FERC will exercise its assertedly exclusive jurisdiction over these transmission tariffs and determine the rates, terms and conditions.

The Commission is not preempted from ordering the utilities to make these filings. In Order No. 888, FERC concluded that it has exclusive jurisdiction to determine the rates, terms and conditions for the transmission of retail power. Therefore if a New Hampshire entity is to provide such transmission service, it must do so only according to the terms of a transmission tariff filed with FERC.

The question we address here is different: May the state direct a transmission-owning entity to file a retail transmission tariff at FERC, thereby becoming obligated to provide the service according to the rates, terms and conditions established by FERC?

We answer in the affirmative. Order 888's treatment of the transmission of retail power implies that FERC believes a state is not preempted from directing a utility to file a tariff at FERC. Section 1.11 of the pro forma tariffs define "eligible customer;" *i.e.*, those customers eligible to take transmission service under the tariffs. The definition includes

> any retail customer taking unbundled Transmission Service pursuant to a state retail access program or pursuant to a voluntary offer of unbundled retail transmission service by the Transmission Provider.

Since the "state retail access program" option is distinct from the "utility voluntary action" option, the language anticipates a non-voluntary filing, *i.e.*, a filing directed by the state through a retail access program.

Some have argued that the Federal Power Act preempts a state from directing a utility to offer service whose terms and conditions are subject to FERC's exclusive jurisdiction. We disagree. Our authority to direct the filing stems from our authority over the activities of utilities which the state has granted an opportunity to serve. This type of action is not in conflict with the "primary purposes of the Federal Power Act, [*i.e.*,] to curb abusive practices by public utility companies and to protect consumers from excessive rates and charges." *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, IV FERC ¶ 32,514 at para. 33,052 (1995). A state requirement that a utility file a retail transmission tariff at FERC does not contradict this goal.

Nor would the directive to file at FERC interfere with FERC's exclusive authority set the rates, terms and conditions. FERC, not the

state, will continue to establish the rates, terms and conditions.

The Commission readily acknowledges that if the tariff which the state directed the utility to file at FERC went into effect before FERC approved it, albeit subject to refund, the state might be deemed to have set the transmission rates during the period before FERC approval. A state cannot of course set rates for services that are within FERC's jurisdiction. *See Narragansett Elec. Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977) *cert. denied*, 435 U.S. 972 (1978). To avoid this result, the Commission will direct that the filed tariff include a statement that it will not go into effect until FERC approves it.

In addition, the Commission will make the tariff filing voluntary by conditioning the transmission owner's right to do business in New Hampshire on its willingness to make the necessary filing. As explained in Part II.A, the Commission has the authority to establish the conditions under which a utility provides service in this state. The right to own and operate transmission facilities in New Hampshire is obtained only through the permission of the Commission. The Commission can and will condition that continued permission on the transmission owner's willingness to make a filing at FERC for retail transmission service consistent with the terms and conditions established by the Commission.

Thus, our approach is consistent with *Commonwealth of Massachusetts v. United States*, 729 F.2d 886 (1st Cir. 1984). There, the State commission had directed a wholesale seller to file a rate change at FERC. The First Circuit found that the Federal Power Act preempted this directive

because the Federal Power Act envisioned voluntary filings at FERC by wholesale sellers. *Id.* at 888 ("To accept Massachusetts' claim that Section 205 includes `regulator-compelled' utility-proposed changes would prevent the utility from choosing among reasonable rate-practice alternatives.") Here, by contrast, we do not compel utilities to file retail tariff filings at FERC, but rather, have made these filings voluntary.

Finally, FERC still will be the final decisionmaker on the terms and conditions of retail transmission service. Consequently, the Commission is not invading FERC's exclusive territory.

B. *The Takings Clause Does Not Preclude the State From Directing Transmission Owners to File a Retail Transmission Tariff at FERC*

1. *Introduction*

Several of the utilities argue that a Commission directive to provide retail transmission service and retail distribution service would constitute a "physical taking." The utilities do not make clear what relief they are seeking with this argument. Some argue for the difference in the value of the property before and after the taking. Some also argue for "severance damages."

These arguments ignore the realities of statutory ratemaking. If the Commission directs the filing of retail transmission tariffs at FERC, FERC will set rates pursuant to the Federal Power Act. Those rates, if lawful under the Federal Power Act, will comport with constitutional requirements with respect to fair compensation. If not, the transmission owners may petition for review of FERC's decision in the U.S. Court of Appeals. Similar reasoning applies to a Commission directive to provide distribution service. We will be required to set distribution rates consistently with New Hampshire statutes and the U.S. Constitution. We therefore see no legitimate reason for a confiscation concern at this time.

Given the availability of statutory procedures under which fair compensation will be determined, there is only one remaining reason why a New Hampshire utility might describe a Commission order to provide retail transmission service as a taking. That reason would be that the utilities believe they have a right, as owners of transmission facilities, to a return higher than that which they would obtain at FERC for transmission service and from this Commission for distribution service. The Commission, by directing them to file retail transmission tariffs at FERC, the reasoning would go, is depriving the utilities of this opportunity to earn that higher return.

The utilities making this argument must be assuming they have a right to use their control of transmission facilities to earn more than a statutorily determined return for providing service over those facilities, by, for example, using their control to obtain favorable treatment for their generation or aggregation services in the marketplace. They apparently seek compensation equal to the lost economic opportunity of leveraging the generation services with distribution due to

the required sharing of the incumbents, distribution facilities.

If this is what the utilities mean, we find it without merit. The incumbent transmission owners are not entitled to recover this monopoly rent for two reasons: (1) a public utility has no legitimate expectation of securing monopoly rent in a regulated industry; and (2) when the utility volunteered for a franchise, it consented to regulation, including a fair rate of return and no more.

2. *The Essential Facilities Doctrine Precludes any Expectation of Monopoly Rent*

The transmission facilities in New Hampshire are known as "bottleneck facilities" or "essential facilities." The United States Supreme Court has held that an "essential facility" does not have a legitimate expectation of earning a monopoly rent by denying the use of facilities to competitors who have no alternatives. In *United States v. Terminal Railroad Association of St. Louis*, 224 U.S. 383 (1912), the Court held that the Terminal Railroad Association which owned the only feasible terminal for rail traffic through St. Louis must allow competitor railroads equal access. In ordering access to the facility's competitors, the Court found that when the inherent conditions prohibit any other alternatives to the facility, "exclusive ownership and control of less than all of the companies under compulsion to use them [the facility] \&... constitutes a contract or combination in restraint of commerce." *Id.* at 409. The Court then ordered the railroads to allow "for admission of any existing or future railroad to joint ownership and control of the combined terminal properties." *Id.* at 411. *See also Associated Press v. United States*, 326 U.S. 1, 18, 21-22 (1945) (finding an unreasonable restraint of competition where membership to the news association controlling 96 percent of total newspaper circulation was severely limited by restrictive bylaws).

Closer to home is the Supreme Court's decision in *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973) (holding violation of antitrust laws where *Otter Tail* used its monopoly power to foreclose competition). The utility in Otter Tail precluded towns it served from establishing their own municipal power system by denying access to wholesale energy and refusing to wheel power from other suppliers of wholesale energy. *Id.* at 370-71. This denial of access to competitors was deemed in violation of antitrust laws, despite Otter Tail's claims that its conduct was necessary to preserve its economic interest. *Id.* at 380-81.

In conclusion, the transmission owners in New Hampshire have no legitimate expectation of receiving monopoly rent which otherwise would accrue in the absence of regulation. Provided that rates for retail transmission and distribution service are set consistent with the constitutional requirement of a reasonable opportunity to earn a fair rate of return on the capital committed to the transmission and distribution business, there is no reason to pause on the taking issue. Asserting a taking before the regulators have set the transmission and distribution rates are set is speculative.

Although it is clear that "where facilities cannot practicably be duplicated by would-be competitors, those in possession of them must allow them to be shared on fair terms," A.D. Neale, *The Antitrust Laws of the U.S.A.* 69 (1969), there are exceptions. For example, one court

has found that if the sharing is impractical or would inhibit the party's ability to serve its customers, then there is no requirement that the essential facility be shared. *Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 992-93 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956 (1978). This argument cannot work here. There is no evidence that it is infeasible to share the distribution facilities. In addition, the incumbents cannot argue that the customers are "their customers," since the entire goal of introducing competition to the distribution system is to allow

consumers a choice of distributors.

3. *By Accepting the Franchise Privilege, the Utilities Have Consented to Physical Occupation*

There is a second reason why it is not confiscatory to deny the utilities a right to receive monopoly rent from the ownership of transmission facilities. In volunteering for a franchise, the utility consents to physical occupation. Since there is consent, no physical taking can occur. *Federal Communications Comm'n v. Florida Power Corp.*, 480 U.S. 245, 252 (1987) (holding that FCC was entitled to lower rates charged by utility companies for cable operators, use of utility poles for stringing television cable).

A grantor of a public utility franchise, in reserving to itself the power to regulate the public utility, may reasonably restrict the exercise of the franchise. *Southern Pac. Co. v. Portland*, 227 U.S. 559, 573 (1912). In *Southern Pacific Co.*, the Supreme Court of the United States established the right of the city of Portland to prevent a railroad from transporting particular types of its cars through its streets. The Court held that this "power to regulate" could be exercised despite the fact that it "could defeat the franchise granted by the state" or "impair the contract" under which the franchise was formed. *Id.* at 573. While acknowledging that the power of the franchisor was not total, the Supreme Court held that the City could "legislate in the light of facts and conditions which would make the restrictions reasonable." *Id.* at 573-74.

Various state courts since *Southern Pacific* have repeated the principle of a grantor's right to reasonably regulate the utility to which a franchise is granted, more explicitly linking it to an implied consent by the franchisee. In New Hampshire, it is generally accepted that the state may reasonably regulate a public utility to which it has given a franchise. For example, an electric utility questioned the power of the state to subject their franchise to a special tax. *Opinion of the Justices*, 101 N.H. 549 (1958). In rejecting the utilities, claim, the Supreme Court of New Hampshire stated, "The exercise of a utility franchise is not a 'common right, but rather a special right which the State may and does grant or withhold at pleasure, to perform acts which are monopolistic and therefore subject to public regulation in the public interest." *Id.* at 557.

In *Opinion of the Justices*, the court approvingly cites another state case in support of this proposition. In *State v. Manchester & L. Railroad*, a railroad company challenged a series of charters and state acts which prevented the company from collecting continued profits from a

bridge which the state granted the plaintiffs to build. 69 N.H. 35, 38 A. 736 (1897). The court rejected the claim, finding that having consented to owning a franchise, the railroad company subjected itself to regulation by the state:

> The grantee need not accept the grant unless he chooses to do so. It is for him to say whether the benefits conferred the burdens imposed. He may reject the gift but, if he accepts it, he must take it with all the qualifications and burdens that to it are annexed. The [company], by accepting their charter and acting under it, bound themselves to do all things therein required of them.

Id. at 49, 38 A. at 740.

The Delaware Supreme Court similarly found that an electric utility franchise could be regulated reasonably by the grantor, and that the utility assented to such regulation because of the public nature of a utility franchise. *Delmarva Power & Light Co. v. City of Seaford*, 575 A.2d 1089, 1091, 1096 (Del. 1990), *cert. denied* 498 U.S. 855 (1990). In *Delmarva*, an electric utility franchised by the state utility commission claimed that a neighboring municipal utility, not franchised by the commission, but by a state charter, committed a taking without compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution when it assumed the accounts of two of Delmarva's customers. *Id.* at 1091. While granting the private utility's claims for damages on estoppel grounds, the court rejected its takings claim. The court rejected the argument that Delmarva was an exclusive franchise

immune from competition: "[F]ranchises have dual character in that they involve services which are public in nature. In this regard the grantee may be burdened by the sovereign in order to meet the needs of the public." *Id.* at 1096.

These cases collectively stand for the proposition that a public utility franchise consents to the reasonable regulation of the exercise of its franchise by accepting the franchise. Moreover, as explained previously, the incumbents have no legitimate expectation of permanent exclusivity; therefore, the argument that there is consent to Commission-ordered distribution and transmission service is even stronger.

In the present context, consenting to regulation means consenting to the common sense application of the essential facilities doctrine set forth in *Terminal Railroad* and *Otter Tail*. The utility historically has had an obligation to serve all customers; it accepted the franchise consenting to that obligation. No utility has complained of a physical taking growing out of that obligation. Under the competition intended in the Final Plan, the obligation to serve all customers is reduced to be an obligation to provide distribution service. Provided there is fair compensation for the use of the distribution facilities, this obligation remains. The utilities, argument, distilled, seems to be that a government-induced obligation to provide distribution service is not a physical taking if the utility can decide unilaterally who performs the aggregation

and generation parts of the bundle; but it is a physical taking if the competitive market determines who provides these other services. This reasoning is illogical, and we reject it.

FOOTNOTES

Restructuring Plan

[1]Under the provisions of the law, retail choice for all customers must be in place no later than June 30, 1998. RSA 374-F:4 also requires that the statewide plan be issued by February 28, 1997.

[2]Market institutions include an independent system operator, one or more power exchanges, and local transmission and distribution companies.

[3]The Commission contracted with the University of New Hampshire to conduct a survey of Pilot participants. The survey verifies the Legislature's and the Commission's belief that the Pilot Program would be a valuable tool and the results confirm the expectation that retail competition is technically feasible. Few respondents reported a concern with their new power supplier. Also, billing has not emerged as a source of concern. It was particularly gratifying to see that most respondents agreed that the Commission, new suppliers, and the existing distribution companies were all doing a good job serving the interests of consumers. The survey results are available on the Commission's web page at http://www.state.nh.us/puc/puc.html

[4]On June 21, 1996, PSNH filed a "Motion for an Adjudicative Proceeding, for Designation of staff, and for Other Relief." PSNH requested that the entire proceeding be designated as "adjudicative" in nature. The motion also requested that staff be designated into advocacy and advisory functions.

[5]The Commission subsequently allowed PSNH to raise issues related to the Rate Agreement in its interim stranded cost proceeding.

[6]Appendix A lists the individuals and organizations who participated in this proceeding. Prior to the panel hearings, technical sessions were held to clarify and further explore positions described in the Initial Comments of the Parties. Technical session topics addressed market structure issues, including NEPOOL reform and transmission pricing, corporate structure, stranded cost issues and all of the major public policy issues.

[7]The current system of economic regulation of electric utilities was established at a time when those firms were thought to possess natural monopoly characteristics. When this condition is present, the most efficient way to organize production is through a single firm.

[8]PURPA has been credited with establishing the independent power sector.

[9]*See*, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), III FERC Stats. & Regs. ¶ 31,036 (1996) (Open Access Rule).

[10]The debate over how to bring competition to bulk power markets dates back to the late 1970s. *See* Introducing Competition into the Electric Utility Industry: An Economic Appraisal, by J.D. Pace, and J. H. Landon, *Energy Law Journal*, Vol 3:1. 1982. By the late 1980s, the policy arguments for and against retail competition were well understood by industry experts. *See* Wheeling and the Obligation to Serve, by J.D. Pace, *Energy Law Journal*, Vol 8:2,

1987.

[11]A vertically integrated electric utility is generally one that owns and operates generation, transmission and distribution facilities. Of the six electric utilities in New Hampshire, only PSNH (which serves 70% of the state) owns assets in all three segments of the industry. Granite State Electric Company and Connecticut Valley Electric Company are distribution affiliates of vertically integrated parents. The Unitil Companies are distribution affiliates of a wholesale power supplier company which owns no generation assets. The New Hampshire Electric Cooperative (NHEC) purchases all of its power requirements from unaffiliated suppliers.

[12]On December 31, 1996, NEPOOL submitted to the FERC a restructuring proposal as required by Order 888. We comment on this proposal in Section IV.D. of this Final Plan.

[13]Effective competition is achieved when no individual seller or buyer is able to influence significantly the price of the service for a significant period of time.

[14]*See e.g.*, Raymond S. Hartman and Richard D. Tabors for Massachusetts Attorney General, April 1996, and Richard J. Gilbert for Massachusetts Electric Company, February 1996, in MDPU Docket No. 96-25.

[15]The seven indicators are:

(1) Local distribution facilities are normally in close proximity to retail customers.

(2) Local distribution facilities are primarily radial in character.

(3) Power flows into local distribution systems; it rarely, if ever, flows out.

(4) When power enters a local distribution system, it is reconsigned or transported on to some other market.

(5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.

(6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

(7) Local distribution systems will be of reduced voltage.

Open Access Rule, 61 Fed. Reg. 21,619.

[16]Retail marketing functions comprise retail promotional activities, sales forces and associated infrastructure.

[17]Spin-off is a form of corporate divestiture that results in a subsidiary or division becoming an independent company. In a traditional spin-off, shares in the new entity are distributed to the parent corporation's shareholders of record on a *pro rata* basis.

[18]*See*, for instance, Appendix C to FERC Order No. 888.

[19]*See*, Evaluation of NEES' Load Estimation, Settlement, and Reconciliation System, Hagler Baily Consulting, Inc., December 5, 1996.

[20]Each utility shall specify, in its compliance filing, the small customer rate classes which meet this criterion.

[21]PSNH asserts that load estimation reduced the accuracy of the NEPOOL billing process, while acknowledging that it is not technically possible to meter all customers within the timetable of HB 1392. PSNH adds that, if the timetable is to be met, the Commission, suppliers and customers must accept the increased costs and lesser accuracy associated with load estimation.

[22]While load estimation removes the option of real-time pricing, and thus the ability of customers to reduce costs through load shifting, we nevertheless see opportunities for marketers to aggregate loads of small customers with similar load profiles (e.g., electric space heating customers) and price that group on a time-of-use basis.

[23]Distribution companies will be allowed to separately bill a competitive supplier for additional metering and communications expenses associated with the use of equipment requested by that supplier.

[24]Our authorizing the distribution company to provide this service does not preclude a retail load aggregator from providing the same service.

[25]We recognize that units are sometimes dispatched out of economic order in the presence of transmission constraints or to avoid dropping load.

[26]We will establish a metering working group charged with the task of resolving issues concerning metering standards for competitive providers of metering equipment. We invite interested parties to attend an organizational meeting, as specified in Appendix B.

[27]Unbundled transmission and distribution rates shall exclude all generation-related operation and maintenance expenses and all costs associated with wholesale and retail marketing activities. In addition, utilities must allocate an appropriate share of administrative and general expenses and overheads to the generation function.

[28]Almost 30% of PSNH's large commercial and industrial load is currently served under special contracts. This figure increases to approximately one-third if all pending contracts are approved.

[29]We reject PSNH's argument that we are precluded from unbundling special contracts because to do so would modify the contractual terms.

[30]RSA 378:18-a, I applies only to special contracts entered into prior to the effective date of the legislation.

[31]The use of the word "stranded," instead of the more descriptive "uneconomic" or "above-market," is a recent addition to economic parlance. Some commentators assert that the introduction of the term "stranded costs" represents an attempt by the industry to shift the focus from bad or unfortunate management decisions to changes in federal and state regulatory policy.

[32]The notable exception is qualifying facility power purchases mandated by state and federal law, although even in this case, the prices at which the purchases are made were based on estimates of avoided cost furnished by the utilities.

[33]By "net" we mean the aggregate value of assets that have market values in excess of book and assets that have book values in excess of market.

[34]PSNH acknowledged that its administrative estimate of stranded cost does not reflect the potential value of its generation plant sites.

[35]A discussion of the legal justification for the conclusions reached in this section is found in the Legal Analysis, Part I.

[36]We note that we do not intend to re-litigate prudence questions decided previously. Managers can be prudent, yet still make decisions which are less successful than decisions made by other prudent managers. Our inquiry, therefore, will be geared toward determining whether a less successful decision is attributable to management discretion and performance.

[37]It goes without saying that in order to qualify for recovery, utilities must demonstrate by a preponderance of the evidence that their costs will be stranded as a result of the implementation of this Final Plan.

[38]For this conclusion to be valid, the utility must acquire the least cost resource if it chooses to pass on the QF purchase. This is not an unreasonable assumption given that each utility must purchase sufficient capacity to meet its allocated capability responsibility.

[39]Without self-interest, markets would not operate efficiently because customers would not seek out suppliers with the lowest prices and suppliers would not adopt least cost production methods.

[40]This problem can be avoided by requiring that the assets be sold prior to the introduction of competition so that the incumbent utility does not end up with both the cash and the paid-off asset.

[41]This duty is to be carried out in accordance with Commission approved line extension tariffs.

[42]As part of their compliance plans, distribution companies are invited to propose alternate line extension policies which exclude revenues from the market price component of the bill.

[43]A variation on this alternative is to allocate default customers to registered suppliers.

[44]Redlining is the practice of denying service to a geographic area based on general demographic information pertinent to that area. For instance, redlining would occur if a supplier refused to provide service to an area it identified as low income.

[45]For example, does the Commission have the expertise to model regional air emission dispersion and to interpret modeling results in order to determine whether the application of new source performance standards on existing generators would enable the state to meet the ambient ozone standards established by the DES or the EPA? In addition, does the Commission have the expertise to determine the average emissions for in-state generation, and to track the Company-wide emissions of all generation suppliers serving the state (including out-of-state suppliers) to ensure that such emissions does not exceed the average?

[46]For example, a significant contributor to NOx emissions in the state and the region is the transportation sector. Clearly, the Commission does not have the authority to establish emission standards for automobiles, trucks, buses, trains, etc. If it is more cost-effective and environmentally beneficial to reduce emissions from these sources, imposing additional emission controls on electric generators by the Commission, because it is the only sector to which the Commission has environmental improvement authority, would not necessarily further the public interest.

Legal Analysis

[1]We reject without further discussion the assertion of a number of parties that the Commission's adoption of the proposed stranded investment recovery methodology would violate *Duquesne*'s admonition against switching back and forth between regulatory practices. (*See* Briefs of PSNH, UNITIL, Granite State Electric Co. (GSEC). The concern is unfounded for two reasons. First, Duquesne spoke only to arbitrarily switching between methodologies. As described further below, requiring investors to absorb costs to the extent they exceed the regional average is consistent with their legitimate expectations. It is not a switch in methodologies to require investors to live with the above-average cost consequences of their discretionary decisions. Second, it is not accurate to assert that we are requiring the utilities to "bear the risk of bad investments at some times while denying them the benefit of good investments at others." *Duquesne*, 488 U.S. at 315.

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[2]We note that in calculating the regional average, we are excluding SPP costs, since the extent of these commitments, and their costs, can vary among the utilities in the region due to differences in state policy. We discuss this issue further in the Legal Analysis at Part I.C.

[3]*See, e.g., Tagg Bros. v. United States*, 280 U.S. 420, 436-38 (1929) (observing that ratemaking affects personal liberty and property rights but rejecting due process challenge to

order setting rates under the Packers and Stockyards Act of 1921); *Acker v. United States*, 298 U.S. 426, 429-30 (1935) (rejecting various challenges to rates established under the same Act).

[4]*Duquesne Light C. v. Barasch*, 488 U.S. 299 (1989); *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Market St. Ry. Co. v. R.R. Comm'n of California*, 324 U.S. 548 (1945); *Bluefield Water Works & Improvement Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1923); *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Comm'n*, 262 U.S. 276 (1923).

[5]"Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities," ("Order No. 888"), 61 Fed. Reg. 21,540 (1996), *reh'g pending*.

[6]*See, e.g., Conway Corp. v. Fed. Power Comm'n*, 510 F.2d 1264, 1268 (D.C. Cir. 1975) (wholesale competitors "seek to maintain customer satisfaction with the quality and price of their service in order to attract new industries and to retain existing customers"); *Town of Massena v. Niagara Mohawk Power Corp.*, 1980-2 Trade Cases ¶ 63,526 at p. 76,799 (1980) (Retail franchise competition provides consumers "with their most meaningful opportunity to compare alternate price, quality and service. Indeed, at the retail service level, it is this very potential that provides an incentive for [wholesale competitors] to control costs and improve their performance in the areas that they serve."). *See also Alabama Power Co.*, 13 N.R.C. 1027, 1061 (1981) ("the existence of a potential [wholesale] competitor may have an effect on the actions of another distributor"); *City of Groton v. Connecticut Light & Power*, 662 F.2d 921, 930, 934 (2d Cir. 1981). *See generally* James E. Meeks, *Concentration in the Electric Power Industry: The Impact of Antitrust Policy*, 72 Colum. L. Rev. 64 (1972).

[7]In *Permian Basin*, 390 U.S. 747, 822 (1967), the Court rejected gas producers' challenge to FPC-set area rates. The Court found that "[t]here was no evidence of financial or other difficulties that required the [FERC] to relieve the producers, even obliquely, from the burdens of their contractual obligations." *Id.* at 822. Turning to the statutory question, the Court stated:

> The regulatory system created by the Act is premised on contractual agreements voluntarily devised by the regulated companies; it contemplates abrogation of these agreements only in circumstances of unequivocal public necessity.

Id.

[8]*Ohio Power Co.*, SEC Release No. 17,383 at 2 (Dec. 2, 1971)

[9]*Ohio Power Co.*, 39 F.E.R.C. para. 61,098 (1987).

[10]The Court of Appeals initially vacated FERC's decision. *Ohio Power Co. v. FERC*, 880 F.2d 1400 (D.C. Cir. 1989). The lower court found that although OPCO was subject to FPA Section 205, OPCO also "plainly is \&... subject to [PUHCA] Section 13(b) with respect to its contractual relations with SOCCO." The court concluded that under FPA Section 318, concerning "Conflict of Jurisdiction," "it is for the SEC rather than FERC to determine the interassociate price." 880 F.2d at 1408.

The U.S. Supreme Court then reversed. *Arcadia. Ohio et al. v. Ohio Power Company,* 498 U.S. —, 111 S.Ct. 415, 112 L.Ed.2d 374 (1990). The Supreme Court found that Section 318 did not apply to the case because it dealt with conflicts involving only four categories of holding company activities, not including interaffiliate transactions.

[11]The New Hampshire Constitution, Part I, article 23 provides: "Retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made\&..." This provision protects contracts and other "vested rights." *Furlough*, 135 N.H. at 630, 609 A.2d at 1207. Where contract impairment is alleged, the New Hampshire Supreme Court interprets the State constitutional protections to be "equivalent" to those afforded under federal law. *Id.*

[12]As noted above, Exhibit C of the Rate Agreement defines the FPPAC "BA" as the annual base rate level of fuel and purchase power expenses set forth in Schedule 1." Schedule 1 only specifies base rate levels through 1996.

[13]*See* also *In re Bankeast Corp.*, 142 B.R. 12, 14 (Bankr. D. N.H. 1992).

[14]*In re Sugarhouse Realty, Inc.* 192 B.R. 355, 363 (E.D. Pa 1996).

[15]Substantial confirmation is defined by Section 1101(2) of the Bankruptcy Code as: "(A) transfer of all or substantially all of the property proposed by the plan, (B) assumption of the plan by the debtor ... under the plan of the business or of the management

of all or substantially all of the property dealt with by the plan and (C) commencement of distribution under the plan."

[16]State laws identified as applicable to PSNH's restructuring transactions proposed in the plan of reorganization included RSA 374:30, 374:31 (transfer of franchise, works, system); RSA 369:2 (mortgaging of property); RSA 369:1, 369:7 (issuance of stock, bonds, notes and other evidences of indebtedness) and RSA 366:5 (contracts with affiliates). *In re PSNH*, 99 B.R. 506, 508 (1989) (Order Granting Declaratory Relief).

EDITOR'S APPENDIX

Citations in Text

[F.E.R.C.] Re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95-8-000, RM94-7-001, Order No. 888, 168 PUR4th 590, Apr. 24, 1996. [F.P.C.] Re Midwestern Gas Transmission Co., 36 FPC 61, 64 PUR3d 433 (1966). [N.H.] Re Merrimack County Teleph. Co., DR 96-081, Order No. 22,315, 81 NH PUC

691, Sept. 16, 1996. [N.H.] Re Northeast Utilities/Public Service Co. of New Hampshire, DR 89-244, Order No. 19,889, 75 NH PUC 396, 114 PUR4th 385, July 20, 1990. [N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,234, 81 NH PUC 531, July 10, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,033, 81 NH PUC 130, 167 PUR4th 193, Feb. 28, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,421, 81 NH PUC 899, Nov. 25, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,244, 81 NH PUC 564, July 22, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,364, 81 NH PUC 774, Oct. 16, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,393, 81 NH PUC 838, Nov. 4, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,419, 81 NH PUC 896, Nov. 25, 1996. [N.H.Sup.Ct.] Re Appeal of Richards, et al., 134 N.H. 148, 123 PUR4th 512 (1991). [N.H.Sup.Ct.] Grafton County Electric Light Co. v. State, 77 N.H. 539, P.U.R.1915C 1064 (1915). [N.H.Sup.Ct.] Re Northern Utilities Inc., 139 PUR4th 586 (1992). [N.H.Sup.Ct.] Public Service Co. of New Hampshire, 125 N.H. 46, 60 PUR4th 16, 480 A.2d 20 (1984). [N.H.Sup.Ct.] Public Service Co. of New Hampshire v. New Hampshire Pub. Utilities Commission, 168 PUR4th 596 (1996). [N.M.Sup.Ct.] Behles v. New Mexico Pub. Service Commission, 135 PUR4th 176, 836 P.2d 73, (1992). [R.I.Sup.Ct.] Narragansett Electric Co. v. Burke, 119 R.I. 559, 23 PUR4th 509, 381 A.2d 1358 (1977). [U.S.C.A.(D.C.)] Columbia Gas Transmission Corp. v. FERC, 111 PUR4th 306, 895 F.2d 791 (1990). [U.S.C.A.(D.C.)] Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission, 98 PUR4th 536, 810 F.2d 1168 (1987). [U.S.C.A.(D.C.)] Municipal Electric Asso. of Massachusetts v. Securities & Exchange Commission, 134 U.S.App.D.C. 135, 79 PUR3d 309, 413 F.2d 1052 (1969). [U.S.C.A.(D.C.)] Ohio Power Co. v. Federal Energy Regulatory Commission, 105 PUR4th 530, 880 F.2d 1400 (1989). [U.S.C.A.(D.C.)] Ohio Power Co. v. Federal Energy Regulatory Commission, 129 PUR4th 447, 954 F.2d 779 (1992). [U.S.C.A.(D.C.)] Richmond Power & Light Co. v. Federal Power Commission, 156 U.S.App.D.C. 315, 1 PUR4th 209, 481 F.2d 490 (1973). [U.S.C.A.2] New York Pub. Service Commission v. Securities & Exchange Commission, 166 F.2d 784, 73 PUR (NS) 38 (1948). [U.S.C.A.2] Phillips v. Securities & Exchange Commission, 63 PUR (NS) 243, 153 F.2d 27 (1946). [U.S.C.A.3] Kentucky West Virginia Co. v. Pennsylvania Pub. Utility Commission, 92 PUR4th 542, 837 F.2d 600 (1988). [U.S.C.A.5] El Paso Nat. Gas Co. v. Federal Power Commission, 35 PUR3d 257, 281 F.2d 567 (1960). [U.S.C.A.6] Detroit Edison Co. v. Securities & Exchange Commission, 39 PUR (NS) 193, 119 F.2d 730 (1941). [U.S.C.A.7] Midwestern Gas Transmission Co. v. Federal Power Commission, 72 PUR3d 403, 388 F.2d 444 (1968). [U.S.Dist.Ct.) Re North Continent Utilities Corp., 61

F.Supp. 419, 60 PUR (NS) 328 (1945). [U.S.Sup.Ct.] Re Area Rate Proceeding for Permian Basin, 390 U.S. 747, 75 PUR3d 257, 20 L.Ed.2d 312, 88 S.Ct. 1344 (1968). [U.S.Sup.Ct.] Arcadia, Ohio v. Ohio Power Co., 118 PUR4th 479, 112 L.Ed.2d 374, 111 S.Ct. 415 (1990). [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 (1983). [U.S.Sup.Ct.] Duquesne Light Co. v. Barasch, 488 U.S. 299,

98 PUR4th 253, 102 L.Ed.2d 646, 109 S.Ct. 609 (1989). [U.S.Sup.Ct.] Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 50 PUR4th 489, 74 L.Ed.2d 569, 103 S.Ct. 697 (1983). [U.S.Sup.Ct.] Federal Power Commission v. Florida Power Corp., 480 U.S. 245, 81 PUR4th 613, 94 L.Ed.2d 282, 107 S.Ct. 1107 (1987). [U.S.Sup.Ct.] Federal Power Commission v. Hope Nat. Gas Co., 320 U.S. 591, 51 PUR (NS) 193, 88 L.Ed.2d 333 (1944). [U.S.Sup.Ct.] Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 42 PUR (NS) 129, 86 L.Ed.2d 1037, 62 S.Ct. 736 (1942). [U.S.Sup.Ct.] Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348, 12 PUR3d 122, 100 L.Ed.2d 388 (1956). [U.S.Sup.Ct.] Market Street R. Co. v. California R. Commission, 324 U.S. 548, 58 PUR (NS) 18, 89 L.Ed.2d 1171 (1945). [U.S.Sup.Ct.] Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354, 93 PUR4th 293, 101 L.Ed.2d 322 (1988). [U.S.Sup.Ct.] Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 74 PUR4th 464, 90 L.Ed.2d 943 (1986). [U.S.Sup.Ct.] North American Co. v. Securities & Exchange Commission, 327 U.S. 686, 62 PUR (NS) 257, 90 L.Ed.2d 945 (1946). [U.S.Sup.Ct.] Otter Tail Power Co. v. United States, 410 U.S. 366, 97 PUR3d 209, 35 L.Ed.2d 359, 93 S.Ct. 1022 (1973). [U.S.Sup.Ct.] Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 69 PUR (NS) 202, 91 L.Ed.2d 1447 (1947). [U.S.Sup.Ct.] Securities & Exchange Commission v. New England Electric System, 384 U.S. 176, 64 PUR3d 232, 16 L.Ed.2d 456 (1966). [U.S.Sup.Ct.] United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division, 358 U.S. 103, 26 PUR3d 314, 3 L.Ed.2d 153, 79 S.Ct. 194 (1958). [U.S.Sup.Ct.] United Gas Pipe Line Co. v. Mobile Gas Services Corp., 350 U.S. 332, 12 PUR3d 112, 100 L.Ed.2d 373 (1956). [U.S.Sup.Ct.] Wisconsin v. Federal Power Commission, 373 U.S. 294, 48 PUR3d 273, 10 L.Ed.2d 357, 83 S.Ct. 1266 (1963).

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NH.PUC*03/03/97*[97240]*82 NH PUC 261*EnergyNorth Natural Gas, Inc.

[Go to End of 97240]

82 NH PUC 261

Re EnergyNorth Natural Gas, Inc.

DR 97-020
Order No. 22,515

New Hampshire Public Utilities Commission

March 3, 1997

ORDER granting a natural gas local distribution company protective treatment as to the names of certain gas suppliers and the terms of those supply contracts, for the purposes of an upcoming cost of gas adjustment proceeding.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to the identity of suppliers — As to certain terms of supply contracts — In relation to a pending cost of gas adjustment proceeding — Gas local distribution company. p. 262.

BY THE COMMISSION:

ORDER

On February 18, 1997, EnergyNorth Natural Gas, Inc. (ENGI), filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment for identifying ENGI's gas suppliers and certain terms of the gas supply agreements negotiated by ENGI with said suppliers. ENGI seeks protection of this information as it relates to the pending Cost of Gas Adjustment (CGA) proceeding in both the discovery and the hearing phases of this docket.

In its Motion, ENGI states that the

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documents contain confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08. ENGI also states that it does not disclose the identifying information and terms to anyone outside its corporate affiliates and representatives.

[1] The Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff), and the Office of Consumer Advocate (OCA). This is the type of information which was anticipated would be protected when N.H. Admin. Rules, Puc 204.08 (b)(4)d.1 was adopted. Based on the representations in the motion, under the balancing test applied in prior cases, *e.g.*, *Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991) *et al.*, we find the benefits of non-disclosure to ENGI appear to outweigh the benefits of disclosure to the public. The Information should consequently be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and terms, ENGI shall submit a redacted CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that in future filings, ENGI shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Puc 204.08 (b); and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this third day of March, 1997.

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NH.PUC*03/03/97*[97241]*82 NH PUC 262*Northern Utilities, Inc.

[Go to End of 97241]

82 NH PUC 262

Re Northern Utilities, Inc.

DR 96-334
Order No. 22,516

New Hampshire Public Utilities Commission

March 3, 1997

ORDER adopting stipulation as to a natural gas local distribution company's 1996/1997 demand-side management program plan. The plan basically continues the plan last approved for the company, except for the elimination of wall insulation as a component of the residential heating program.

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1. CONSERVATION, § 1

[N.H.] Demand-side management programs — Continuation of program components for another year — Minor modifications pursuant to stipulation — Elimination of wall insulation projects for residential customers — Separate conservation programs and charges for small versus large commercial and industrial customers — Local gas distribution company. p. 264.

2. GAS, § 7

[N.H.] Operational practices — Demand-side management programs — Continuation of program components for another year — Minor modifications pursuant to stipulation — Elimination of wall insulation projects for residential customers — Separate conservation programs and charges for small versus large commercial and industrial customers — Local gas distribution company. p. 264.

Page 262

APPEARANCES: LeBoeuf, Lamb, Greene & MacRae, L.L.P. by Paul B. Dexter, Esq. for Northern Utilities, Inc.; the Office of the Consumer Advocate by Kenneth E. Traum on behalf of residential ratepayers; and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 18, 1996, Northern Utilities, Inc. (Northern or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management (DSM) Program filing for the period November 1, 1996 through October 31, 1997. On October 23, 1996, Northern filed schedules providing the benefit-cost ratios for each program along with supporting workpapers.

Northern's October 18, 1996 DSM Program filing contained a proposed budget of $472,028 of which $146,783 represented a carry-over of the prior year's budget. The Company essentially proposed to continue offering the four DSM programs approved in Order No. 21,881 (October 30, 1995), with one modification, for an additional year. Northern requested authority to eliminate wall insulation as an eligible measure in its Residential Heating Program based on monitoring and evaluation results from a similar program implemented in Massachusetts by Northern's parent company, Bay State Gas Company, which indicated that wall insulation is not a cost effective measure for residential customers. Northern's filing also requested authority to revise its Conservation Charges, the Company's DSM recovery mechanism.

Northern would be eligible to collect during the 1997/98 program year a Performance Bonus Incentive of fifteen percent (15%) of the net program benefits if it meets or exceeds fifty percent (50%) of the estimated program savings of 282,473 therms. The estimated incentive related to

this program is $116,995. The Company did not earn an incentive for the 1995/96 program year.

By an Order of Notice issued November 8, 1996, the Commission scheduled a Prehearing Conference for November 26, 1996, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required all parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

On November 13, 1996, the Commission issued Order No. 22,409 suspending the Company's tariff page NHPUC No. 8 - Gas, Third Revised Page 36 which details the rate schedule for the Conservation Charges. The Company was also ordered to continue to offer its DSM programs and to collect the Conservation Charges as approved by the Commission in Order No. 21,881 until the final order was issued in this docket.

Pursuant to the approved procedural schedule, the Company and Staff engaged in formal discovery and technical sessions. On January 29, 1997, the Company and Staff participated in a settlement conference.

Subsequent to the settlement conference, the Company, the OCA and Staff entered into a Stipulation and Agreement (Agreement). Although the OCA did not actively participate in formal discovery or meetings, it is a signatory to the Agreement. The Agreement resolves all of the issues in this proceeding and was signed and submitted to the Commission on February 13, 1997. A hearing was held on February 19, 1997 at which time testimony supporting the Agreement was presented to the Hearings Examiner.

II. STIPULATION AND AGREEMENT

Northern, the OCA and Staff agreed that the Company's 1996/97 Demand Side Management Program, as set forth in Northern's October 18, 1996 filing, should be approved subject to the following modifications:

1. Northern shall continue to offer the DSM programs that were approved by the Commission in Order No. 21,881 in DR 95-101 with the exception that wall

insulation will no longer be an eligible measure in the Residential Heating Program. Northern shall continue to collect DSM related costs (i.e., program costs, lost net base revenues and performance bonus incentives) as previously approved.

2. The budget for the November 1, 1996 through October 31, 1997 program year shall be $430,774. The Year One Costs as presented on the original budget have been eliminated. Of the $430,774 total budget, $4,766 is allocated to the Residential Non-Heating Program, $116,390 to the Residential Heating Program, $221,736 to the Small Commercial Program and $87,882 to the Large Commercial Program. These

programs are estimated to save 282,473 therms.

3. Northern shall charge separate Conservation Charges to its Small Commercial and Industrial (C&I) and Large C&I customers. The Conservation Charges will be charged to both firm and transportation customers.

4. Northern shall charge the following Conservation Charges which reflect projected over/underrecoveries through February 1997: Residential Non-Heating of $0.0053/therm, Residential Heating of ($0.0213)/therm, Small C&I of ($0.0183)/therm and Large C&I of $0.0240/therm. These Conservation Charges are lower than those approved to recover the 1995/96 program costs except for the Large C&I customers who will see a $0.0027/therm increase.

5. The installation goals for the Residential Non-Heating and Residential Heating Programs have been increased.

6. Northern shall continue the monitoring and evaluation plans as outlined in Appendix VII of the Agreement in DR 95-101 approved by the Commission in Order No. 21,881.

7. Northern shall file its 1997/98 DSM Program proposal on or before August 1, 1997 to allow for a thorough analysis of the proposal for a November 1, 1997 implementation date.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the Stipulation and Agreement, supporting testimony at the February 19, 1997 hearing and the exhibits, we find that Northern's proposed DSM programs, as modified by the Agreement, are reasonable and in the public good.

As mentioned by the Company in its filing and as more fully described by Northern's witness at the hearing, Northern only implemented its approved programs for approximately six months during the 1995/96 program year. Given this limited implementation experience, we are satisfied that the programs reflect no program modifications except for the elimination of wall insulation as an eligible measure for the Residential Heating Program. This is appropriate since Northern based its request on monitoring and evaluation results performed by Northern's parent company, Bay State Gas Company.

The revised budget of $430,774 as detailed on Appendix II of the Agreement is reasonable and is sufficient to enable the Company to provide cost-effective DSM programs to its customers. The budget reflects the elimination of the carry-over of Year One Costs, thereby eliminating possible confusion regarding budget variances and participation goals for the 1996/97 program year. The revised budget also reflects the additional costs of increased installations for the Residential Non-Heating and Residential Heating Programs as compared to the Company's original filing.

Although the Company's original filing contained two separate programs for its Small C&I and Large C&I customers, Northern proposed only one Conservation Charge applicable to both customer classes. The Agreement establishes two separate C&I Conservation Charges which

were developed based on separate program budgets, lost net base revenues and prior period over/underrecoveries for both classes. We believe that the separate Conservation Charges properly assess the costs of providing the two C&I programs against the rate classes that they are intended to serve, thereby reducing possible cross-subsidization between the C&I customers.

Finally, consistent with treatment we have recently allowed for the New Hampshire Electric Cooperative in Docket DR 97-010 in Order No. 22,506 (February 19, 1997), we waive the application of Puc 1203.05(a), which requires

generally that rate changes be implemented on a service rendered basis, and will allow Northern to implement its Conservation Charges on a bills rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED, that the proposed DSM programs, as amended by the Stipulation and Agreement, are hereby APPROVED; and it is

FURTHER ORDERED, that Northern's Conservation Charges be effective March 3, 1997 on a bills rendered basis; and it is

FURTHER ORDERED, that Northern file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this third day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 97-010, Order No. 22,506, 82 NH PUC 75, Feb. 19, 1997. [N.H.] Re Northern Utilities, Inc., DR 95-101, Order No. 21,881, 80 NH PUC 682, Oct. 30, 1995. [N.H.] Re Northern Utilities, Inc., DR 96-334, Order No. 22,409, 81 NH PUC 878, Nov. 13, 1996.

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82 NH PUC 265

Re Statewide Electric Utility Restructuring

Petitioner: Enron Capital and Trade Resources, Inc.

DR 96-150
Order No. 22,517

New Hampshire Public Utilities Commission
March 17, 1997

MOTION for rehearing and stay of Order No. 22,512 (82 NH PUC 101, *supra*), in which the commission had determined an appropriate level of interim charges by which Public Service Company of New Hampshire could recover stranded costs associated with industry restructuring. The motion is taken under advisement, with all interested parties directed to respond to the motion within one day.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Stranded costs — Interim charges — Request for rehearing — Deadline for responses to motion — Expedited response time. p. 265.

2. PROCEDURE, § 34

[N.H.] Rehearing — Concomitant motion for stay — Time limitations — As to responses to motion — Expedited response times — Electric service issues — Interim charges for restructuring-related stranded costs. p. 265.

BY THE COMMISSION:

ORDER

[1, 2] This order addresses a motion for rehearing and stay of Order No. 22,512 (February 28, 1997) filed by Enron Capital and Trade Resources, Inc. (Enron) on March 14, 1997. In the subject Order, the Commission established interim stranded cost charges for Public Service

Company of New Hampshire (PSNH) pursuant to RSA 374-F:4,VI. Enron seeks rehearing regarding the Commission's methodology for determining PSNH's interim stranded costs in light of the issues raised by PSNH in *Public Service Company of New Hampshire v. Patch, et al.*, N.H. Civil Action No. 97- 97-JD, R.I. Action CA 97-121L. Specifically, Enron requests that the Commission reconsider the use of its benchmark regional average approach and

instead adopt a cost-based methodology for setting PSNH's interim stranded costs, as proposed by several intervenors in this docket.

Enron's request to stay Order No. 22,512 addresses the same accounting issue raised by PSNH in the above-referenced United States District Court action. Thus, we believe that it is important to understand PSNH's position regarding Enron's Motion. In order to resolve this matter expeditiously, we will waive N.H. Admin. Rule Puc 203.04 and will require responses prior to the three days set forth by the rule. Accordingly, we will direct PSNH and invite any other parties with appropriate intervenor status to respond to Enron's Motion no later than noon on March 18, 1997.

Based upon the foregoing, it is hereby

ORDERED, that pursuant to N.H. Admin. Rule Puc 201.05 the Commission waives N.H. Admin. Rule Puc 203.04 and directs PSNH and invites all interested intervenors to file a response to Enron's Motion no later than noon March 18, 1997.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-150, Order No. 22,512, 82 NH PUC 101, 175 PUR4th 331, Feb. 28, 1997.

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NH.PUC*03/17/97*[97243]*82 NH PUC 266*Granite State Electric Company

[Go to End of 97243]

Re Granite State Electric Company

DR 96-322
Order No. 22,518

New Hampshire Public Utilities Commission

March 17, 1997

ORDER approving settlement as to an electric utility's 1997 conservation and load management (C&LM) programs. The utility is allowed to continue most programs already in effect from the 1996 C&LM year, except that certain residential programs may be combined for marketing purposes, the residential heat pump water heater program may be eliminated, and certain funds previously earmarked for residential projects may be transferred to small commercial and industrial accounts instead.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Settlement — Modification of program features — Elimination of residential heat pump water heater program — Increases in small commercial and industrial programs — Streamlining of reporting requirements — Transfers of funds between residential and commercial portfolios. p. 268.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Annual conservation and load management program filing — Settlement — Modification of program features — Elimination of residential heat pump water heater program — Increases in small commercial and industrial programs — Streamlining of reporting requirements — Transfers of funds between residential and commercial portfolios. p. 268.

APPEARANCES: Carlos A. Gavilondo, Esq. for Granite State Electric Company; Mark E. Bennett, Esq. for the Conservation Law Foundation; and, Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 4, 1996, Granite State Electric

Company (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) its Conservation and Load Management (C&LM) Program proposal for the program year January 1, 1997 through December 31, 1997 along with supporting testimony and proposed demand side management (DSM) adjustment factors. In Docket DR 95-276, Granite State sought approval for its C&LM programs for 1996 and 1997. This approval was granted by Order No. 21,968 (January 9, 1996). This filing fulfills the requirements of Order No. 21,968 by providing descriptions of revisions to Granite State's C&LM programs, budgets and DSM adjustment factors for 1997.

While Granite State proposed no changes to the overall pre-approved budget of $2,011,100, it stated it intended to combine the five approved Residential programs under three program categories in order to streamline customer communication and marketing efforts, reduce administrative costs and facilitate regulatory oversight. The three commercial and industrial (C&I) programs would continue as previously approved. Of the $2,011,100 overall budget, $571,500 would be allocated to the Residential programs and $1,439,600 would be allocated to the C&I programs. Granite State proposed only minor program modifications to enhance its C&LM programs. Granite State also proposed to modify the recapture of payments provisions in the terms and conditions of its Multifamily Retrofit, Energy Initiative and Design 2000 programs so as to accommodate retail customer choice in electric service.

By an Order of Notice issued October 30, 1996, the Commission scheduled a prehearing conference for November 22, 1996, set deadlines for intervention requests and objections, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. On November 19, 1996, the Conservation Law Foundation (CLF) filed a timely Motion to Intervene and a Motion to Reschedule Technical Conference. No party filed an objection to CLF's Motion to Intervene. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

On December 10, 1996, the Commission issued Order No. 22,443 suspending tariff pages NHPUC No. 16 - Electricity, First Revised Page 93 and Third Revised Page 94, which detail the rate schedule for Granite State's DSM adjustment factors. The Commission also ordered Granite State to continue to offer its C&LM programs and to bill the DSM adjustment factors as approved in Commission Order No. 21,968 until the final order was issued in this docket.

Pursuant to the approved procedural schedule, Granite State, CLF and Staff engaged in formal discovery and technical sessions. On January 6, 1997, Staff filed its direct testimony in this docket. As a result of these submissions and subsequent discussions, Granite State, CLF and Staff reached a settlement. The Settlement resolves all of the issues in this proceeding and was

signed and submitted to the Commission on February 21, 1997. A Hearings Examiner took evidence in support of the Settlement on March 5, 1997. The Hearings Examiner issued a report on March 11, 1997 recommending approval of the Settlement.

II. OFFER OF SETTLEMENT

Granite State, CLF, the OCA and Staff agreed that Granite State's 1997 Conservation and Load Management Program proposal, as set forth in Granite State's October 4, 1996 filing, should be approved subject to the following modifications:

1. The 1997 C&LM Program proposal, as modified by this Settlement, shall be effective April 1, 1997. Granite State shall file its 1998 C&LM Program proposal on or before October 1, 1997.

2. The overall 1997 C&LM Program budget shall remain $2,011,100. This is the same amount previously approved by the Commission for the 1997 program year. The C&I budget is $1,472,800 and the Residential budget is $538,300. The budgets reflect a transfer of $33,100 from the 1997 pre-approved Residential budget to the 1997 pre-approved C&I budget.

3. Granite State shall eliminate the Heat

Pump Water Heater (HPWH) program from its 1997 Residential portfolio. The budget for the Residential programs shall be correspondingly decreased by $33,100 — the amount previously approved for the HPWH program.

4. Granite State shall continue to track the performance of the remaining Residential programs such that cost-effectiveness can be determined on an individual program basis. It may combine the remaining Residential programs for marketing or other purposes so long as individual program performance can be tracked and reported to the Commission. Notwithstanding the foregoing, individual program tracking shall not be required for the Residential Space Heating and Multifamily Retrofit programs.

5. The Small C&I program budget shall be increased by $33,100, raising that program's budget to $431,300, and making the overall budget for the C&I programs $1,472,800 for the 1997 program year.

6. Granite State shall revise the "Customer Acknowledgment" language of its Multifamily Retrofit program to be consistent with the response to Data Request #6 filed December 3, 1996 and marked as Exhibit #3 at the hearing. To better accommodate the transition to retail choice in generation supply, and to clarify the five-year term of the agreement, Granite State shall revise the Recapture of Payments language associated with its Energy Initiative and Design 2000 programs as indicated in the October 4, 1996 filing.

7. During the 1997 program year, Granite State may transfer, without Commission approval, up to twenty percent (20%) of the budget for any approved C&LM program to one or more C&LM programs, provided the transfer is within the same rate class. Within thirty (30) days of any such transfer, it shall provide written notification to the Commission. Nothing herein prohibits Granite State from petitioning the Commission for authority to transfer greater amounts.

8. Reporting requirements shall be streamlined by eliminating the quarterly and semi-annual reports. Granite State shall continue to provide monthly reconciliation reports of expenses and revenues. Consistent with response to Data Request #8 filed December 3, 1996 and marked as Exhibit #4 at the hearing, it shall also report monthly on actual and projected expenses on a program basis.

9. Granite State shall examine its C&I programs to assess whether class specific surcharges should be considered for the 1998 program year. The examination shall entail reviewing the eligibility requirements for the C&I programs in relation to C&I rate class criteria. It shall include the results of the examination in its 1998 C&LM Program proposal which is to be filed on or before October 1, 1997.

10. The 1997 Residential DSM adjustment factor shall be $0.00053 per kilowatt-hour (kWh) and the C&I DSM adjustment factor shall be $0.00317 per kWh, effective April 1, 1997. These factors support the revised 1997 program budgets and include Granite State's 1996 maximizing and efficiency incentives. CLF, the OCA and Staff concur in the request for a waiver of Puc 1203.05(a) such that the DSM adjustment factors would become effective for bills rendered on or after the effective date of April 1, 1997.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the Offer of Settlement, supporting testimony and exhibits at the March 5, 1997 hearing and the Hearings Examiner's report, we find that Granite State's proposed C&LM programs, as modified by the Settlement, are reasonable and in the public good.

This filing represents the second year of a two-year C&LM program which was approved by the Commission in Order No. 21,968. Therefore, no substantive modifications were proposed. However, Staff identified various areas of concern in its testimony that we believe are adequately addressed in the Settlement.

We believe that allowing Granite State to combine Residential programs for marketing or other purposes is acceptable as long as

individual program performance can be evaluated. This will ensure that only cost-effective C&LM programs are continued as Granite State begins to phase out ratepayer funded energy

efficiency programs as outlined in our recent decision in DR 96-150 regarding the Final Plan for Restructuring of the Electric Utility Industry.

The Settlement eliminates the Heat Pump Water Heater program for Residential customers based on the program's benefit-cost screening which indicated that the program was not cost-effective on a stand-alone basis. Through the testimony of Ms. Laura McNaughton, we are convinced that the $33,100 allocated to the HPWH program should be transferred to the Small C&I program, which has experienced an overwhelming response over the past couple of years. The remaining Residential programs are mature programs which have already served a large number of eligible participants and would not benefit from the additional funds.

We commend Granite State for its efforts in revising the recapture of payments provisions in the terms and conditions for its Multifamily Retrofit, Energy Initiative and Design 2000 programs and we believe that the additional revisions made as a result of the Settlement are fair. The revisions achieve Granite State's goal to not penalize New Hampshire Retail Competition Pilot Program participants or participants who purchase their electricity requirements from another supplier after retail access is generally available. The revisions also serve to simplify the calculation of any refund that Granite State may recapture.

Finally, consistent with treatment we have recently allowed for the New Hampshire Electric Cooperative in Docket DR 97-010 in Order No. 22,506 (February 19, 1997), we waive the application of N.H. Admin. Rules, Puc 1203.05(a), which requires generally that rate changes be implemented on a service-rendered basis, and will allow Granite State to implement its DSM adjustment factors on a bills-rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills-rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED, that the proposed C&LM programs, as amended by the Offer of Settlement, are hereby APPROVED; and it is

FURTHER ORDERED, that Granite State's DSM adjustment factors be effective April 1, 1997 on a bills-rendered basis; and it is

FURTHER ORDERED, that Granite State file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 95-276, Order No. 21,968, 81 NH PUC 11, Jan. 9, 1996. [N.H.] Re Granite State Electric Co., DR 96-322, Order No. 22,443, 81 NH PUC 1009, Dec. 10, 1996. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 97- 010, Order No. 22,506, 82 NH PUC 75, Feb. 19, 1997.

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NH.PUC*03/17/97*[97244]*82 NH PUC 269*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97244]

82 NH PUC 269

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,519

New Hampshire Public Utilities Commission

March 17, 1997

ORDER scheduling an evidentiary hearing with respect to a local exchange telephone carrier's proposed increase in rates (from 10 cents to 25 cents) for local sent-paid calls placed from pay telephone stations.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay

Page 269

stations — Proposed increase in local sent-paid calling rates — Necessity of evidentiary hearing — To determine cost basis — Local exchange carrier. p. 270.

2. RATES, § 649

[N.H.] Practice and procedure — Notice and hearing — Necessity of evidentiary hearing — To determine cost basis of proposed rate increase — Local exchange telephone carrier — Coin or pay station service. p. 270.

BY THE COMMISSION:

ORDER

On January 24, 1997, New England Telephone & Telegraph Company, Inc. d/b/a NYNEX (NYNEX) filed revisions to NHPUC - No. 77, Part M Section 1, Page 29. The revisions eliminate from the tariff the local coin rate for customer-dialed local calls made from Public Access Smart Line phones, in essence de-tariffing the local coin rate. In addition, NYNEX states that it intends to institute a 25-cent rate for these calls.

By Order No. 22,508, we suspended the filed tariff revisions and set a prehearing conference for March 13, 1997. The New England Public Communications Council (NEPPC), represented by George Nyden; Union Telephone Company (Union), represented by James Sanborn; and the New Hampshire Legal Assistance Association (Legal Assistance), represented by Alan Linder on behalf of low-income ratepayers, sought intervention, all without objection. The Office of the Consumer Advocate, a statutorily recognized intervenor, was represented by James R. Anderson, Esq.

This filing constitutes part of NYNEX's efforts to comply with the orders issued by the Federal Communications Commission (FCC) in CC Docket 96-128 (the Payphone Orders) and the Telecommunications Act of 1996 (TAct). The Payphone Orders (consisting of the Order, dated September 20, 1996, and the Reconsideration Order, dated November 8, 1996) establish a plan to insure fair compensation for all calls made using a payphone, concurrently eliminating both intrastate and interstate payphone subsidies from basic exchange services. The Payphone Orders require NYNEX to have "effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies" no later than April 15, 1997. Reconsideration Order at Paragraph 131.

The FCC's plan, which was required by Section 276(b)(1)(A) and (B) of the TAct, deregulates the payphone market by a two-phase process. The first phase is a transition period of limited regulation to eliminate barriers to full competition.

During the first phase, states are responsible for "fair compensation to payphone service providers and also for protecting consumers from excessive rates." Payphone Order at Paragraph 60 and Reconsideration Order at Paragraph 9. Also during the first phase, "states may continue to set the local coin rate in the same manner as they currently do." Payphone Order at Paragraph 50 and Reconsideration Order at Paragraphs 5 and 9.

[1, 2] At the prehearing conference, Staff and all the parties, with the exception of Legal Assistance, agreed that this docket should proceed on written filings as to whether NYNEX's filing meets the requirements of the orders issued by the Payphone Orders and the TAct. In addition, Staff and all the parties, with the exception of Legal Assistance, agreed that the cost studies submitted by NYNEX adequately support NYNEX's proposed 25-cent rate; the Office of Consumer Advocate took no position on the adequacy of the NYNEX cost studies. Legal Assistance argued that an evidentiary hearing is necessary to determine that NYNEX's proposed

rate will not jeopardize universal service and is supported by valid cost studies.

We have considered the issues raised by Legal Assistance in light of the clear direction contained in the TAct and the Payphone Orders. We will hold an evidentiary hearing on the sole issue of whether the 25-cent rate is cost based on April 2, 1997. Our order will issue on or

before April 15, 1997. During the period from April 15, 1997 through October 1997, while we continue to have jurisdiction over payphone rates, parties may raise policy issues regarding universal service and public interest payphones.

Based upon the foregoing, it is hereby

ORDERED, that the parties and Staff shall conduct discovery immediately, upon the sole issue of whether the 25-cent rate is cost-based; and it is

FURTHER ORDERED, that a hearing on the merits shall occur on April 2, 1997, at 10 a.m.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,508, 82 NH PUC 79, Feb. 21, 1997.

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NH.PUC*03/18/97*[97245]*82 NH PUC 271*New Hampshire Electric Cooperative, Inc.

[Go to End of 97245]

82 NH PUC 271

Re New Hampshire Electric Cooperative, Inc.

DR 96-213
Order No. 22,520

New Hampshire Public Utilities Commission

March 18, 1997

ORDER accepting stipulation under which an electric cooperative may increase rates by $3 million (3.9%) as requested. It also is permitted to implement a surcharge for an eight-month period of time by which to recoup the difference between the newly authorized rates and the lower rates approved on an interim basis by Order No. 22,422 (81 NH PUC 903).

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1. RATES, § 432

[N.H.] Electric cooperative — Approved rate increase — Stipulation. p. 273.

2. RETURN, § 85.3

[N.H.] Electric cooperative — Times interest earned ratio (TIER) — Approved TIER of 1.25 — Coverage of cost of debt service — Stipulation. p. 273.

3. RATES, § 260

[N.H.] Surcharge mechanism — Temporary implementation — For the recovery of the difference between interim and permanent rates — Electric cooperative. p. 273.

APPEARANCES: Broderick and Dean by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; and James J. Cunningham Jr., Patrick J. Moast and James R. Thyng on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

The New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission), on August 26, 1996, a Base Rate Application seeking an increase in annual revenues of approximately $3.0 million or 3.9%. Subsequently, NHEC submitted a motion and testimony asking that its requested level of permanent rates be allowed to go into effect on a temporary basis, effective October 1, 1996. The Commission suspended the temporary rate tariff by Order No. 22,314 (September 16, 1996). In its order, the Commission proposed a procedural schedule to govern its investigation into the proposed rate increase, scheduled a prehearing conference for October 3, 1996, to be followed immediately by

an initial technical session, and set a deadline for intervention requests. The

Office of Consumer Advocate (OCA) was recognized as a statutory intervenor. There were no other intervenors in the docket.

On October 7, 1996, the Commission issued Order No. 22,342 approving the procedural schedule that had been agreed to by NHEC, OCA and Commission Staff (Staff).

On October 18, 1996, OCA filed Direct Testimony of Kenneth E. Traum and Staff filed Direct Testimony of James J. Cunningham Jr. addressing the temporary rate request. On October 24, 1996, the Commission heard evidence on NHEC's temporary rate request. In response to matters that arose during the course of the hearing, the Commission suspended the hearing and allowed the parties to meet in an additional technical session. The hearing on NHEC's temporary rate request was completed on October 31, 1996.

On November 26, 1996, the Commission issued Order No. 22,422, partially granting NHEC's request for temporary rates. The Commission approved temporary rates which, on an annualized basis, increased NHEC's revenues by $2.2 million as opposed to the $3.0 million requested by NHEC. The Commission ordered that the temporary rates be collected on an "across the board" basis as opposed to the interclass cost allocations proposed by NHEC. The temporary rates were effective as of December 1, 1996 on a service-rendered basis.

On January 17, 1997, Staff submitted prefiled testimony concerning NHEC's requested permanent revenue increase, incorporating information provided by Staff auditors, NHEC's cost of service study and proposed interclass cost allocations. Also, Staff's testimony addressed NHEC's proposed unbundling of delivery service rates and presented an overview and evaluation of the reliability of NHEC's distribution system.

Subsequent to the filing of Staff and OCA's testimony, the Parties and Staff engaged in discussions aimed at clarifying each party's positions and resolving any remaining issues, specifically, treatment of certain DSM-related expenses, amortization of gains on refinancings over the life of the new issues in accordance with the Federal Regulatory Energy Commission chart of accounts and submission of monthly reports tracking NHEC's actual spending on the added $1.0 million right-of-way clearing program.

NHEC and Staff filed on March 3, 1997 a Stipulation Regarding Revenue Requirements and Certain Rate Design Issues (Stipulation) resolving all issues. OCA concurred in all aspects of the Stipulation except for those issues relating to rate design and interclass allocations.

On March 6, 1996, the Commission heard evidence on the merits of NHEC's requested permanent rate increase.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Stipulation*

NHEC, OCA and Staff, the signatories to the Stipulation, (Signatories), recommend that NHEC's proposed permanent rate increase of $3.0 million, a 3.9% increase above annualized revenue at current permanent rates, is just and reasonable and should be approved.

NHEC and Staff, but not OCA, agree that NHEC's embedded cost of service study for its bundled rate design, its proposed interclass cost allocations and targeted class revenue increase are reasonable and consistent with the approach and methodology approved by the Commission in Order No. 21,693, in Docket No. DR 93-124, and should be approved. OCA's position on this issue is addressed subsequently.

The Signatories agree that the appropriateness and review of NHEC's proposed use of its cost allocation methodology for determining unbundled delivery service rates should be deferred for consideration in DR 96-150.

The Signatories agree that the proposed base rates as included in Exhibit DRE-8 of Dennis R. Eicher's prefiled direct testimony dated August 26, 1996 should be approved with one exception. For purposes of this Stipulation, NHEC agrees to move recovery of $94,200 of Demand Side Management (DSM) related payroll expenses from the proposed base rates back into NHEC's conservation and load management (C&LM) surcharge. The adjusted proposed base rates and C&LM surcharges to

which the parties are agreeing are shown in Attachment 1 of the Stipulation. Attachment 2 of the Stipulation shows the percentage increase or decrease in rates expected to result if these rates are approved by the Commission.

The Stipulation provides that the portion of the base wholesale cost of NHEC's purchased power which is currently recovered through the power cost adjustment (PCA) factor will be transferred into base rates. Concurrent with this transfer to base rates, the Signatories agree that the PCA factor in effect as of the date on which the permanent rates become effective will be reduced by $0.01052 per kWh. If permanent rates are approved prior to June 1, 1997 on a service-rendered basis, the current PCA rate of $0.00440 per kWh will change to a credit of $0.00612 per kWh.

The Signatories agree that NHEC should be allowed a recoupment for the variance between permanent rates and temporary rates, previously approved by the Commission, effective for services rendered on and after December 1, 1996. They further agree that the recoupment surcharge should become effective for service rendered as of the date on which permanent rates become effective and continue for a period of eight months. The recoupment surcharge will be equal to $0.00087 per kWh and will be charged to all members with the exception of certain member ski areas under special contract rates. At the end of the eight-month period, any over/under collection with interest will be reported to the Commission.

NHEC agrees that its 1995 and 1996 Financial Statements will be restated to remove the gain on refinancing of long-term debt and related expenses which had been recognized in its entirety in 1995 and 1996. The refinancing gain and related expenses will instead be amortized over the life of the new debt and, as revised, financial statements for 1995 and 1996 will include only the current year portion of the amortized gain and related expenses. NHEC will continue to report its monthly right-of-way clearing expenses.

B. *OCA*

OCA opposes the interclass cost allocations developed in DR 93-124 and, therefore, cannot support the allocations set forth in the Stipulation. OCA continues to recommend that the Commission adopt the alternative proposed by LaCapra Associates in DR 93-124.

In the event that the Commission should not adopt OCA's cost of service methodology, OCA supports the temporary rate surcharge included in the Stipulation.

Because most of the increase is due to the desire of the NHEC Board to improve the quality of service, OCA does not object to the Stipulation regarding the overall increase or the temporary surcharge of $0.00087 per kWh.

III. COMMISSION ANALYSIS

[1-3] The first issue for our consideration is the Stipulation. 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 customary practice required by law, but rather from the perspective of debt or TIER coverage. *Cf.*, RSA 374:3-a (Supp. 1994).

The Stipulation recommends a total revenue requirement increase of 3.9%, or $3.0 million. The stipulated revenue requirement results in a TIER coverage of 1.25. We find the TIER coverage of 1.25 should provide adequate protection for NHEC to cover its financial and operational obligations. This TIER coverage will result in just and reasonable rates.

We believe the cost allocations addressed in DR 93-124 remain appropriate and will continue to apply them in this docket. We reject, therefore, OCA's request that we adopt its alternate cost allocation methodology.

We will also approve the temporary

surcharge of $0.00087/kWh for eight months to recoup the difference between temporary and permanent rates.

Finally, NHEC's accelerated tree-trimming efforts should improve the reliability of its distribution system which the Board of Directors has acknowledged needs improvement. For these reasons, we find the Stipulation to be in the public interest and will approve it as filed, on a service-rendered basis, effective April 1, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation is approved for effect April 1, 1997 on a service-rendered basis; and it is

FURTHER ORDERED, that a temporary surcharge of $0.00087/kWh shall remain in effect for eight months, effective April 1, 1997; and it is

FURTHER ORDERED, that NHEC will file a monthly report summarizing the expenditures on its right-of-way clearing program; and it is

FURTHER ORDERED, that NHEC report the amount of the over/under collection of the recoupment in the temporary surcharge; and it is

FURTHER ORDERED, that NHEC file compliance tariffs within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New Hampshire Electric Co-op., Inc., DR 93-124, Order No. 21,693, 80 NH PUC 343, June 20, 1995. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-213, Order No. 22,314, 81 NH PUC 689, Sept. 16, 1996. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-213, Order No. 22,342, 81 NH PUC 730, Oct. 7, 1996. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-213, Order No. 22,422, 81 NH PUC 903, Nov. 26, 1996.

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NH.PUC*03/18/97*[97246]*82 NH PUC 274*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97246]

82 NH PUC 274

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-022
Order No. 22,521

New Hampshire Public Utilities Commission

March 18, 1997

ORDER approving a local exchange telephone carrier's proposed special Centrex service contract with a bank, Citizen's Trust Company.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and bank — Provisions for line growth and other options — Reasonableness vis-a-vis competitive pressures. p. 274.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and bank — Two-component pricing — Basic commitment amount — Monthly service charge. p. 274.

BY THE COMMISSION:

ORDER

[1, 2] On February 14, 1997, New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 97-03), under RSA 378:18, amending its special contract (No. 95-05) with Citizen's Trust Company (formerly known as First NH Bank). In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the

proposed amendment.

The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc 204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

The Commission approved a special contract for Centrex service to First NH Bank in 1995. The purpose of our approval was to allow NYNEX to respond to competitive pressures, specifically the availability of competitive substitutes for Centrex in the form of private branch exchanges (PBX). Permitting a special contract enabled NYNEX to retain revenues which contribute to shared and common costs.

The contract currently before the Commission contains amended terms for additional growth lines and additional optional features. The proposed changes maintain the two-element price structure, including a commitment amount and a monthly service charge for exchange access and system features. NYNEX has provided cost study details that demonstrate that the proposed rates for this service, when aggregated, exceed the relevant costs. Consequently, Staff has recommended that the Commission approve special contract No. 97-03.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 97-03 with Citizens Trust Company 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. 97-03, 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 Citizens Trust Company in Special Contract No. 97-03.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1997.

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NH.PUC*03/18/97*[97247]*82 NH PUC 275*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97247]

DR 97-023
Order No. 22,522

New Hampshire Public Utilities Commission

March 18, 1997

ORDER approving a local exchange telephone carrier's proposed amendments to a special Centrex service contract with a bank, Bank of New Hampshire.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and bank — Amendments to provide for additional analog lines at new locations — Reasonableness. p. 275.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and bank — Contract amendments — Reasonableness. p. 275.

BY THE COMMISSION:

ORDER

[1, 2] On February 14, 1997, New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 97-02), under

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RSA 378:18, amending its special contract (No. 95-01) with Bank of New Hampshire. In support of its petition, NYNEX filed documentation describing the costs and revenues associated with the proposed amendment.

The special contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc

204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

The Commission approved a special contract for Centrex service to Bank of New Hampshire in 1995. The purpose of our approval was to allow NYNEX to respond to competitive pressures, specifically the availability of competitive substitutes for Centrex in the form of private branch exchanges (PBX). Permitting a special contract enabled NYNEX to retain revenues which contribute to shared and common costs.

The amended contract currently before the Commission contains the addition of analog lines at new locations. Rates for the new locations are included in special contract No. 95-01. NYNEX has provided cost study details that demonstrate that the rates approved in special contract No. 95-01 exceed the relevant costs for service at the new locations. Consequently, Staff has recommended that the Commission approve special contract No. 97-02.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 97-02 with Bank of New Hampshire 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. 97-02, 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. 97-02.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1997.

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NH.PUC*03/18/97*[97248]*82 NH PUC 276*Beebe River Water System

[Go to End of 97248]

82 NH PUC 276

Re Beebe River Water System

DE 95-271
Order No. 22,523

New Hampshire Public Utilities Commission

March 18, 1997

ORDER scheduling a hearing at which to review the status of a small community water system and to determine the efficacy of its continued operation under receivership.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — As to continuation of appointment — Review of efficacy of operations under receivership — Water utility. p. 277.

2. WATER, § 13

[N.H.] Water utility operations — Under receivership — Review of efficacy of continuation of — Hearing schedule. p. 277.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 25, 1995, the New Hampshire Department of Justice (DOJ) filed

Page 276

with the New Hampshire Public Utilities Commission (Commission) a letter requesting that a receiver be appointed for the Beebe River Water System (BRWS) in accordance with RSA 374:47-a. As used herein BRWS describes the community water system operating in and serving the Beebe River Village (Village) in Campton, New Hampshire.

The Village is a community of approximately 25 single family homes, an "apartment building" and a casket factory. The Village formerly served as a "company town" providing housing to the employees of the mills in the Village. BRWS is the water system constructed to provide drinking water and fire protection to the Village and is in violation of RSA Chapter 485. *See* letter from Assistant Attorney General Geoffrey Ransom to the Commission dated September 25, 1995.

Since 1990, the New Hampshire Department of Environmental Services (DES) has been actively involved in an attempt to bring the system into compliance with its rules and regulations, but placed the matter in the hands of the DOJ when all efforts failed to remedy a pattern of unresponsiveness and neglect from the purported owners, which threatened the health

of the community. As the situation worsened, DOJ filed a request with this Commission for the appointment of a receiver to ensure competent management of the system.

On October 29, 1996, the Commission issued Order No. 22,385 placing the system under Commission receivership and appointing Lakes Region Water Company (Lakes Region) as its agent to carry out the day-to-day operation and maintenance of the system for a period ending March 25, 1997. Order No. 22,385 also indicated that receivership was not a solution to the system's problems but a means to maintain the status quo while the system owners, its customers and the Town worked towards a permanent resolution to the problems besetting the water system.

[1, 2] Given the impending expiration of the receivership, and having received no reports on the status of the system from the Beebe River Utilities Corporation as promised, we will reconvene a hearing to review the status of the water system and review the efficacy of continuing the Commission's receivership over the system.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held on March 25, 1996 at the Commission's offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 A.M. to consider the status of the Beebe River community water system, and to review our decision to continue to operate the water system under receivership; and it is

FURTHER ORDERED, that the purported owners of the water system shall appear at the aforementioned hearing.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beebe River Water System, DE 95-271, Order No. 22,385, 81 NH PUC 815, Oct. 29, 1996.

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NH.PUC*03/18/97*[97249]*82 NH PUC 277*Wilton Telephone Company

[Go to End of 97249]

82 NH PUC 277

Re Wilton Telephone Company

DR 97-011
Order No. 22,524

New Hampshire Public Utilities Commission

March 18, 1997

ORDER approving a local exchange telephone carrier's proposed revenue-neutral rate changes, which would eliminate the 31% discount now applied to intraLATA toll calls but which would also concurrently reduce intraLATA access charges.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — IntraLATA calling — Elimination of

Page 277

applicable discounts — Concurrent reduction in intraLATA access charges — Preservation of revenue neutrality — Local exchange carrier. p. 278.

BY THE COMMISSION:

ORDER

On January 23, 1997, Wilton Telephone Company (Wilton) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to remove the discount it currently applies to intraLATA toll charges and concurrently reduce its intraLATA access rate.

The 31% discount on intraLATA toll rates which Wilton now applies to its customers' intraLATA toll bills was part of a plan to reduce Wilton's overall rate of return, ordered by the Commission in DR 90-221, 77 NH PUC 101 (1992). Because at the time of that order there was minimal intraLATA competition, the discount has only been applied to toll service provided by NYNEX.

Wilton asserts that reductions in NYNEX's intraLATA toll rates, which are projected to occur shortly as a result of competition, will create an unfair barrier to new entrants in Wilton's territory, especially when combined with the 31% discount to NYNEX's toll service. Wilton proposes, therefore, to remove the intraLATA toll discount but preserve the reduction to its overall rate of return by reducing its intraLATA access charge, effective June 1, 1997.[1(85)] The effect of this change, according to Wilton, will be revenue neutral to Wilton, treat all intrastate

toll carriers equally as the market opens, and promote competition by avoiding any unfair advantage to NYNEX.

Staff has reviewed Wilton's petition and recommends approval for the reasons cited by Wilton. As carriers formulate strategies for entering New Hampshire markets, the existence of a Commission approved intraLATA toll discount that applies only to the toll services of the Regional Bell Operating Company will weigh against entry in the Wilton territory. In addition, the Commission's Consumer Assistance Department reports receiving two inquiries from Wilton customers concerning the lack of competitive providers offering services to Wilton customers. Reducing access rates is a mechanism that will be beneficial to competition while achieving the revenue reduction we required in Order No. 22,391.

[1] We find that the requested change will serve to promote competition in Wilton's telecommunications market and is in the public good.

We appreciate that Wilton identified the competitive issue and worked with Staff to devise a solution. We direct Staff to identify and report back to the Commission other independent telephone companies facing the same situation.

Although we do not consider it appropriate to mandate a reduction in toll prices commensurate with the reduction in access charges, we expect that all toll providers seeking to do business with Wilton's customers will reflect the reduction in the cost of their providing service when pricing intraLATA toll.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Wilton's petition for authority to reduce its intraLATA access rate and simultaneously eliminate the current discount applied to NYNEX intraLATA toll charges is GRANTED; and it is

FURTHER ORDERED, that on or before April 31, 1997, Staff shall identify other independent telephone companies which may be in the same position and submit a report recommending action; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Wilton 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 March 25, 1997 and to be documented by affidavit filed with this office on or before April 1, 1997; 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 8,

1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 15, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 17, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that Wilton shall file a compliance tariff with the Commission on or before April 17, 1997, 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 March, 1997.

FOOTNOTES

[1]Wilton, like all telephone companies, charges an access fee to any provider of toll service for use of Wilton's facilities in originating or terminating a call for a Wilton customer.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc. — Salem Division, DR 96-296, Order No. 22,391, 81 NH PUC 834, Oct. 31, 1996.

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NH.PUC*03/19/97*[97250]*82 NH PUC 279*Public Service Company of New Hampshire

[Go to End of 97250]

82 NH PUC 279

Re Public Service Company of New Hampshire

DE 96-328
Order No. 22,525

New Hampshire Public Utilities Commission

March 19, 1997

ORDER authorizing an electric utility to construct and maintain a 34.5-kilovolt distribution tie line over the Ammonoosuc River in Lisbon.

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1. ELECTRICITY, § 7

[N.H.] Authorization for new power lines — Distribution tie line — Connection to transmission grid — Facilitation of increase in generation output — Crossing of public waters as a factor. p. 279.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Distribution tie line — Crossing of public waters as a factor — Electric utility. p. 279.

BY THE COMMISSION:

ORDER

[1, 2] On October 15, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 371:17 to construct and maintain a new three phase, 34.5 kV distribution line (tie-line) over and across the Ammonoosuc River at the School Street Bridge in Lisbon, New Hampshire. The voltage of the existing interconnection between the Lisbon Hydroelectric Generating Station (Lisbon Hydro) and the PSNH electric system will be upgraded, which

will allow Lisbon Hydro to tie directly into the PSNH 34.5 kV transmission system. The proposed direct interconnection will enable Lisbon Hydro to increase its generation output to PSNH.

On February 20, 1997, PSNH filed a copy of the Town of Lisbon pole licenses for the existing pole numbers 205/2 and 205/3. Construction will be done in upland areas and will have no impact on the surrounding waters, as such, no permit is required from the Department of Environmental Services' Wetlands Board. The proposed crossing will be one span with an overall length of 282 feet.

PSNH has stated that the use and enjoyment by the public of the Ammonoosuc River will not be diminished in any material respect as a result of the proposed tie-line. PSNH has attested and Staff agrees that the construction of the crossing will meet or exceed the requirements of the 1997 National Electrical Safety Code as well as all other applicable safety standards.

The definition of public waters under RSA 371:17 includes "all ponds of more than ten acres,

tidewater bodies, and such streams or portions thereof as the Commission may prescribe." We conclude that this crossing is over and across public waters and find that a crossing is necessary for PSNH to meet its obligation to provide reliable electric service within its authorized franchise area.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PSNH is authorized, pursuant to RSA 371:17, *et seq.*, to construct and maintain a three phase, 34.5 kV distribution line over the Ammonoosuc River in Lisbon, New Hampshire as well as associated plant depicted in Drawing Number D-7649-397 and other documentation on file with this Commission; 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 a copy of this Order *Nisi* to be published once in a newspaper of general circulation in the Town of Lisbon, such publication to be no later than March 26, 1997 and to be documented by affidavit filed with this office on or before April 2, 1997; and it is

FURTHER ORDERED, that PSNH notify the Town of Lisbon of this matter by serving a copy of this order on the Town Clerk by First Class U.S. Mail, said notification to be verified by affidavit filed on or before April 2, 1997; 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 9, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 16, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 18, 1997, 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 March, 1997.

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NH.PUC*03/19/97*[97251]*82 NH PUC 280*Statewide Electric Utility Restructuring Plan

[Go to End of 97251]

82 NH PUC 280

Re Statewide Electric Utility Restructuring Plan

Petitioner: Enron Capital and Trade Resources, Inc.

DR 96-150
Order No. 22,526

New Hampshire Public Utilities Commission

March 19, 1997

ORDER granting limited rehearing of Order No. 22,512 (82 NH PUC 101, *supra*) and staying those portions of the decision mandating that stranded costs associated with the electric industry restructuring plan be calculated based solely on a regional average rate approach.

Page 280

Commission agrees to take under advisement a proposal that associated interim stranded cost charges be subject to an alternative utility-specific, cost-based method. Commission acknowledges that reliance solely on the regional average approach could cause some utilities to fail to recoup all such identified stranded costs.

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1. PROCEDURE, § 35

[N.H.] Rehearing — Parties — Who may petition for rehearing — Any party to underlying commission proceeding — Statutory rights. p. 282.

2. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs associated with industry restructuring — Recovery via interim charges — Calculation of based on regional average rate approach — Stay and rehearing — Consideration of alternative cost-based method. p. 282.

3. ELECTRICITY, § 1

[N.H.] Industry restructuring — Stranded cost recovery via interim charges — Regional average rate approach — Stay and rehearing — Consideration of alternative cost-based method. p. 282.

4. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Stranded cost recovery via interim charges — Regional average rate approach — Stay and rehearing — Consideration of alternative cost-based method. p. 282.

5. ACCOUNTING, § 48

[N.H.] Electric utilities — Stranded costs associated with industry restructuring — Recovery via interim charges — Calculation of based on regional average rate approach — Stay and rehearing — Consideration of alternative cost-based method — Provisions of Financial Accounting Standard 71 as a factor — Potential for regulatory write-offs absent alternative method. p. 282.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

This order addresses a motion for rehearing and stay of Order No. 22,512 (February 28, 1997) filed by Enron Capital and Trade Resources, Inc. (Enron) on March 14, 1997. In Order No. 22,512, the Commission established interim stranded cost charges for Public Service Company of New Hampshire (PSNH) pursuant to RSA 374-F:4,VI. Enron seeks rehearing regarding the Commission's methodology for determining PSNH's interim stranded cost charges. Specifically, Enron requests that the Commission reconsider its sole reliance on the benchmark regional average approach and supplement its order with a cost-based methodology for setting PSNH's interim stranded cost charges.

By Order No. 22,517 (March 17, 1997), the Commission directed PSNH (and invited other interested parties) to file responses to Enron's Motion by noon, March 18, 1997. PSNH filed a timely response to Enron's Motion, as did the following intervenors: the Office of Consumer Advocate (OCA), Freedom Energy, L.L.C. (Freedom), and Connecticut Valley Electric Company (CVEC). In addition, the following parties submitted a timely collective response as the "Customer Intervenors": the City of Manchester, the City of Claremont, Granite State Taxpayers, Inc., EnerDev, Inc., the New Hampshire Retail Merchants Association, Campaign for Ratepayer Rights and Cabletron Systems, Inc. The Commission also received a request from Representatives Bradley and Below to suspend Order Nos. 22,512 and 22,514 for 30 to 60 days in order to allow intervenors and other stakeholders to discuss alternative methodologies for setting interim

stranded cost charges.

II. POSITIONS OF THE PARTIES

A. Enron

As noted above, Enron asks the Commission to stay Order No. 22,512 and reconsider its sole reliance on the regional rate methodology and consider supplementing that approach with one based on company-specific costs. Enron argues that such relief is justified because it will "avoid the potential delay and frustration of the Legislature's mandate." Specifically, Enron argues that a cost-based methodology would address PSNH's claim that it would be required to discontinue the application of FAS 71 and write off its regulatory assets. Enron notes that PSNH has obtained a temporary restraining order enjoining the enforcement of Order Nos. 22,512 and 22,514 in a civil lawsuit filed in United States District Court for the District of New Hampshire. *See, Public Service Company of New Hampshire v. Patch, et al.*, N.H. Civil Action No. 97-97-JD, R.I. Action CA 97-121L.

B. PSNH

Although PSNH's response does not explicitly object to Enron's Motion, it argues that Enron lacks standing to file a request for such relief. Specifically, PSNH contends that Enron "has not and will not suffer any injury from Order 22,512." In support of this proposition, PSNH cites *Appeal of Richards*, 134 N.H. 148 (1991). PSNH also argues that the relief requested in Enron's Motion will not serve its stated purpose; namely, to avoid delays in implementing RSA 374-F. Specifically, PSNH contends that Enron's requested relief "would have no impact on the pending federal litigation or PSNH's request for an injunction." PSNH insists that any such relief must entirely stay Order Nos. 22,512 and 22,514 as those orders apply to PSNH and its affiliates to prevent the "real, immediate, and irreparable harm that is the subject of the federal lawsuit."

C. Positions of Other Parties

1. Parties Supporting Enron's Motion

The following parties submitted written responses in support of Enron's Motion: the Customer Intervenors, CVEC and Freedom. If the Commission grants Enron's Motion, the Customer Intervenors suggest that a prehearing conference be scheduled within five days of an order granting the rehearing request, and that any such stay should extend until the date when the Commission issues a decision regarding the merits of Enron's rehearing request.

2. OCA

The OCA asks the Commission to deny the requested stay, but indicates that it is not unreasonable to accept testimony on the issues raised by Enron.

III. COMMISSION ANALYSIS

[1] At the outset, we address PSNH's argument that Enron lacks standing to seek rehearing and a stay of the Order No. 22,512. Pursuant to RSA 541:3, a rehearing request may be filed by "any party to the action or proceeding before the commission." PSNH's reliance on *Appeal of Richards* is misplaced. In that case, the issue was whether certain parties had standing to appeal the Commission's decision to the New Hampshire Supreme Court. Here, Enron is simply exercising its statutory right to request rehearing, a right enjoyed by any party in DR 96-150.

[2-5] In Order No. 22,512, we addressed PSNH's contention that FAS 71 regulatory assets would have to be written off under a regional rate setting approach. We concluded that our rate setting approach, as described therein, would not require the FAS 71 write-offs. The arguments posed by PSNH in the Federal Court litigation indicate that our Order has not satisfied the accounting concerns. In light of these developments and the arguments of Enron in its motion, we find that Enron has demonstrated "good reason" to justify rehearing on this issue pursuant to RSA 541:3.

We will, therefore, schedule a prehearing conference for March 24, 1997 at 2:00 p.m. in

order to establish a schedule for rehearing and determine whether testimony is necessary. Until the conclusion of the rehearing process, Order Nos. 22,512 and 22,514 are stayed "to the extent, and only to the extent, that those orders establish a rate setting methodology that is not designed to recover [PSNH's] costs of providing service and would require [PSNH] to write off any regulatory asset under FAS 71." *Public Service Company of New Hampshire v. Patch, et al., supra*, Temporary Restraining Order at 1 (March 10, 1997). We believe that it is appropriate to mirror the stay in this proceeding to the one granted by the Federal Court in the above-referenced litigation. All other terms of Order No. 22,512 and of Order No. 22,514, such as the activities of the working groups, remain in effect.

Granting this limited stay is not intended to preclude or foreclose any party from exercising its rights to move for rehearing under RSA 541:3. Neither does it toll the deadline for filing rehearing requests.

Based upon the foregoing, it is hereby

ORDERED, Enron's Motion is GRANTED as set forth herein; and it is

FURTHER ORDERED, that Order Nos. 22,512 and 22,514 are STAYED to the extent delineated herein; and it is

FURTHER ORDERED, that all other terms of Order No. 22,514 remain in effect.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-150, Order No. 22,512, 82 NH PUC 101, 175 PUR4th 331, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, 175 PUR4th 193, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,517, 82 NH PUC 265, Mar. 17, 1997.

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NH.PUC*03/19/97*[97252]*82 NH PUC 283*Plymouth Village Water and Sewer District

[Go to End of 97252]

82 NH PUC 283

Re Plymouth Village Water and Sewer District

DE 96-200
Order No. 22,527

New Hampshire Public Utilities Commission

March 19, 1997

ORDER authorizing a water and sewer district to extend service into a previously unfranchised area of the Town of Holderness, so as to fulfill the service requests of two schools presently served only by wells.

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1. SERVICE, § 210

[N.H.] Extensions — Water and sewer district — Into town — Factors affecting approval — Municipal consent — Customer requests — Previously unfranchised area. p. 284.

2. FRANCHISES, § 53

[N.H.] Modification — Expansion of franchise area — Into previously unfranchised area — Customer requests as a factor — Water and sewer district. p. 284.

BY THE COMMISSION:

ORDER

On June 13, 1996, Plymouth Village Water and Sewer District (Plymouth Village or District) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 362:4 and 374:22, a request for permission to expand its franchise area to include a portion of the Town of Holderness in order to furnish water to the Holderness School and the Plymouth State College Field House. To the extent that there may be other customers located

within the requested franchise area, Plymouth Village is seeking authorization to furnish water service to those customers as well. The District filed supplemental information on July 25, 1996, September 12, 1996 and January 10, 1997, the latter amending its petition to include a request to provide sewer service to the same area as the proposed water franchise. This amended request would cover an existing sewer line that already serves both the field house and the Holderness School.

Plymouth Village is a New Hampshire Village precinct established in accordance with RSA 52 to furnish water and sewer service. Plymouth Village represents that the water and sewer rates it will charge to customers outside its precinct boundaries are no higher than the rates charged to customers within the precinct and that it will provide the same quality of service to both groups of customers. This exempts it from the definition of a public utility and from rate regulation. *See* RSA 362:4, III (a).

The Holderness School has requested water service from Plymouth Village. The school's current water supply is provided from a drilled well. Even though this well is an adequate source of supply for the school, its request for water service from Plymouth Village will relieve it from responsibility for compliance with the Safe Drinking Water Act. Plymouth Village intends to connect the existing Holderness School well to its own water system thereby providing a back-up water supply for Plymouth Village for use in an emergency.

In accordance with RSA 374:22, III., Plymouth Village has submitted letters from the Department of Environmental Services attesting to the suitability and availability of its water supply. Plymouth Village has also obtained the support of the Towns of Plymouth and Holderness for its franchise request regarding both water and sewer service, as evidenced by letters submitted during this proceeding.

[1, 2] Plymouth Village has presented sufficient information indicating that its request for a franchise would be for the public good. It has the managerial, legal, technical and financial expertise to furnish water and sewer service; the Department of Environmental Services attests that the water supply meets statutory standards for quantity and quality; consumers in the area to be served have requested water service; no other entity is willing and able to furnish such water

service; and ratepayers benefit from the availability of a back-up water supply for use in an emergency.

Since it appears that all interested parties are in agreement on the requested franchise, we will approve it *Nisi*. *See* RSA 378:26.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Plymouth Village is granted permission to furnish water and sewer service to a portion of the Town of Holderness consisting of Lots 32, 33, 33A, 34, 35, 36, 46, 49, 50, 51, 52, 53, 54A, 56, 72, 73, 74, 75, 76, and 77 as shown on Tax Map No. 7; and it is

FURTHER ORDERED, that Plymouth Village shall provide on or before March 26, 1997 a copy of this order *Nisi* to the Holderness and Plymouth Town Clerks; 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 newspaper of general circulation in the area in which Plymouth Village provides water and sewer service, such publication to be no later than March 26, 1997 and to be documented by affidavit filed with this office on or before April 2, 1997; 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 9, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 16, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 18, 1997, 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 March, 1997.

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NH.PUC*03/24/97*[97253]*82 NH PUC 285*Public Service Company of New Hampshire

[Go to End of 97253]

82 NH PUC 285

Re Public Service Company of New Hampshire

DE 96-238
Order No. 22,528

New Hampshire Public Utilities Commission

March 24, 1997

MOTION by electric utility for rehearing of Order No. 22,472 (82 NH PUC 1, *supra*) in which the utility had been faulted for its reporting procedures with respect to accidents involving utility property; denied, with the commission finding no new arguments presented to warrant such rehearing.

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1. PROCEDURE, § 33

[N.H.] Rehearings — Grounds for granting — New or novel arguments — Subsequent rule changes as irrelevant. p. 285.

2. ELECTRICITY, § 1

[N.H.] Public health and safety issues — Accidents involving utility property — Associated reporting requirements — Compliance review — Changes to rules only on going-forward basis. p. 285.

3. REPORTS, § 1

[N.H.] Necessity of filing — As to accidents involving electric utility property — Commission rules — Effect of subsequent changes thereto. p. 285.

BY THE COMMISSION:

ORDER

On January 6, 1997, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,472 which found that Public Service Company of New Hampshire (PSNH) had violated the Accident Reporting Procedure (incorporated by reference into PSNH's existing Officer-In-Charge Procedure approved by the Commission on May 15, 1995) and fined PSNH $1,000. The violations involved a fatal vehicular/utility pole accident in Colebrook, a fatal vehicular/utility pole accident in Marlow and a transformer bank explosion in Nashua.

On February 5, 1997, pursuant to RSA 541:3, PSNH filed a motion for rehearing of Order No. 22,472, to which Staff objected. The Motion alleges that the Commission: erred in its finding that PSNH violated reporting protocols; imposed on PSNH greater reporting requirements than those imposed on other utilities; and fined PSNH excessively. Further, PSNH argues that reporting of incidents since the issuance of Order No. 22,472 has caused Commission Staff (Staff) to advise that such reporting is not desirable.

[1-3] We have reviewed the motion for rehearing and objection filed thereto by Staff and find

no basis on which to grant PSNH's motion. The arguments presented by PSNH are the same as those presented at the hearing on the merits, with the exception of the later events involving post-hearing discussions with PSNH regarding appropriate reporting standards for the future. We directed Staff to explore the level of reporting of vehicular accidents on a going-forward basis. Our determination in Order No. 22,472 was based on the record at the time of the hearing and PSNH's compliance with the standards that were in effect at the time of the incidents in question. Subsequent discussions should not have any bearing on whether to rehear the underlying reporting violations. The motion for rehearing, therefore, is denied.

Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing filed by PSNH is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1997.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 96-238, Order No. 22,472, 82 NH PUC 1, Jan. 6, 1997.

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NH.PUC*03/24/97*[97254]*82 NH PUC 286*Public Service Company of New Hampshire

[Go to End of 97254]

82 NH PUC 286

Re Public Service Company of New Hampshire

DR 97-014
Order No. 22,529

New Hampshire Public Utilities Commission

March 24, 1997

ORDER adopting procedural schedule for addressing an electric utility's proposed fuel and purchased power adjustment clause (FPPAC) rate. Commission agrees to defer consideration of certain nuclear power plant outages and associated replacement power costs to a subsequent FPPAC proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 12

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause (FPPAC) proceeding — Nuclear generating costs as a component — Impact of plant outages and associated replacement power costs — Deferral to future FPPAC proceeding — Electric utility. p. 287.

2. EXPENSES, § 122

[N.H.] Electric utility — Fuel and purchased power costs — Replacement power costs — Incurred during outages at nuclear plants — Deferral to subsequent fuel and purchased power adjustment clause proceeding. p. 287.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Proposed rate — Procedural schedule — Electric utility. p. 287.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Dean, Rice and Howard by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc. and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission), on February 4, 1997, a letter requesting that a docket be opened to consider the Fuel and Purchased Power Adjustment Clause (FPPAC) rate to be effective from June 1, 1997 through November 30, 1997, proposing a procedural schedule and setting forth the issues.

On February 24, 1997, the Commission issued an Order of Notice scheduling a prehearing conference for March 5, 1997, setting forth a list of potential issues to be addressed in the proceeding, and setting forth a proposed procedural schedule to govern the Commission's

investigation into the matter.

On March 4, 1997, PSNH filed a motion to defer consideration of the prudence of certain nuclear outages and the corresponding replacement power costs incurred because of those outages. On March 4, 1997, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a motion to intervene. The Office of the Consumer Advocate (OCA)is a statutory party.

There was no objection to the NHEC's motion to intervene and the parties and Staff

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concurred to the proposed procedural schedule. On March 21, 1997, Staff filed a letter with the Commission supporting PSNH's motion to defer the consideration of certain nuclear outages subject to review in the next FPPAC proceeding should any changes in Base Assumptions result from the conclusion of the Fixed Rate Period or as a result of any rate proceeding initiated by the Commission or PSNH. The OCA indicated its support for Staff's position.

At the March 5, 1997 hearing, we orally granted the NHEC's motion to intervene. We formally adopt that finding herein.

[1-3] With regard to PSNH's motion to defer consideration of certain nuclear outages in this FPPAC proceeding, we will grant the motion and will defer consideration of the recovery of replacement power costs.

In accord with the agreement of the parties and Staff, the following procedural schedule shall govern this proceeding:

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

March 14, 1997  PSNH files testimony and
                exhibits.

March 25, 1997  Technical Session with all
                Company witnesses/Majority
                of Data Requests received.
                (Orally)

March 26, 1997  Staff and OCA fax data
                requests to PSNH.

March 27, 1997  Remaining Data Requests
                from Staff and Intervenors,
                in hand or by fax.

April 9, 1997   PSNH files responses to
                Staff and Intervenor data
                requests.

April 15, 1997  Technical Session with
                Company witnesses to attend
                on an as needed basis.
                Verbal follow-up data requests.
April 23, 1997  Responses to 4/15/97
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	requests filed.
April 28, 1997	Updated Exhibits with March 1997 actual data.
May 2, 1997	Staff and Intervenor testimony filed.
May 7, 1997	Written Rebuttal testimony.
May 7, 1997	Statement of Issues filed.
May 13-16, 1997	Hearings on the Merits.
May 20, 1997	Last transcript delivered (next day copies).
May 20, 1997	Revised statement of issues.
May 27, 1997	Briefs filed.
June 2, 1997	Commission deliberations on petition.

Based upon the foregoing, it is hereby

ORDERED, NHEC's motion to intervene is GRANTED; and it is

FURTHER ORDERED, that PSNH's motion to defer consideration of certain nuclear outages to a subsequent FPPAC proceeding, as well as consideration of the recovery of replacement power costs incurred during those outages, is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule set forth above shall govern our investigation into this matter.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1997.

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NH.PUC*03/24/97*[97255]*82 NH PUC 288*Freedom Ring Communications, L.L.C.

[Go to End of 97255]

82 NH PUC 288

Re Freedom Ring Communications, L.L.C.

DE 96-165
Order No. 22,530

New Hampshire Public Utilities Commission

March 24, 1997

ORDER authorizing an interexchange telephone carrier to provide switched and nonswitched intrastate local exchange telecommunications services. Consideration of a concomitant request to provide intraLATA high-capacity fiber transmission services via private line is deferred.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched intrastate local exchange service — Competitive provision — Interexchange carrier. p. 289.

2. SERVICE, § 467

[N.H.] Telephone — Switched and nonswitched services — Intrastate local exchange markets — Competitive provision — Interexchange carrier — Deferral of high-capacity private line service request. p. 289.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 21, 1996, Freedom Ring Communications, L.L.C. (Freedom Ring), filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g. RSA 374:22-g, effective July 23, 1995, directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of Freedom Ring and other applicants to become competitive local exchange carriers (CLECs).

Combined with its May 21, 1997 petition for authorization as a CLEC, Freedom Ring requested authority to provide intraLATA high capacity fiber transmission private line services in NYNEX's service territory. In addition, on November 18, 1996, Freedom Ring filed with the Commission a Supplement to its Petition, requesting that the Commission require that incumbent LECs provide customers with a "Fresh Look" opportunity to reconsider long-term special contracts. On December 27, 1996, the Commission opened a separate docket, Docket No. DE 96-420, to consider Freedom Ring's Fresh Look Petition.

During January, February, and March, 1997, the Commission Staff (Staff) corresponded with Freedom Ring to obtain supplemental information in support of Freedom Ring's petition, in order to review the petition in accordance with Puc Chapter 1300. Freedom Ring provided supplemental information on January 31, February 24, and March 18, 1997. In addition, on February 4, 1997, Staff obtained further documentation from Union Telephone Company, a New Hampshire corporation, to assist its review of the petition.

II. STAFF REVIEW

Staff reviewed Freedom Ring's petition for compliance with the requirements of Puc 1304.01. Puc 1304.01 requires the Commission to grant CLEC certification upon finding that (1) all information listed in Puc 1304.02 has been provided to the Commission, (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence, and (3) that certification for the particular geographic area requested is in the public good.

Freedom Ring has provided all the information required by Puc 1304.02. Staff has reviewed that information for support of

Freedom Ring's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g).

Staff raised concerns regarding Freedom Ring's financial independence, because of the sister-affiliate status existing between Freedom Ring's parent ACN, Inc. and Union Telephone Company (Union). ACN Inc. owns 50% of Freedom Ring and Union is a rate-of-return regulated New Hampshire utility which, like ACN, Inc., is wholly owned by UTEL, Inc. Staff's concerns that Union ratepayers could be tapped to subsidize Freedom's competitive activities have been alleviated by the filing of Affiliate Agreements between Union and ACN, Inc. and between Union and Freedom Ring. The Affiliate Agreements, both dated January 30, 1997, state that services provided by Union to either Freedom Ring or ACN, Inc., if any, shall be compensated for according to 47 CFR Part 64. In addition, the Affiliate Agreements bind Union to maintain records related to any such services.

Staff also raised a concern regarding technical competence which has been addressed by the March 18, 1997, filing of supplemental information.

III. COMMISSION ANALYSIS

[1, 2] This order considers only Freedom Ring's request for authority to provide switched and non-switched intrastate local exchange services. The request for authority to provide intraLATA high capacity fiber transmission services over private line is considered in an order to issue forthwith.

We find that Freedom Ring has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Freedom Ring in its intended service area, NYNEX's current service area, is in the public good. In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996.

As part of its application, Freedom Ring agreed to concur with NYNEX's present rates for intraLATA switched access, or charge a lower rate, for a period of one year from the date of this order. We will continue to monitor access rates as the intraLATA toll and local exchange markets develop. If, at any point after the initial year of operation, Freedom Ring seeks to exceed NYNEX's access rates, it shall first contact the Staff to review the proposal.

Based upon the foregoing, it is hereby

ORDERED, that Freedom Ring's Petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03.

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 March 31, 1997 and to be documented by affidavit filed with this office on or before April 7, 1997; 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 14, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 21, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 23, 1997, 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 April 23, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1997.

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NH.PUC*03/24/97*[97256]*82 NH PUC 290*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97256]

DE 97-013
Order No. 22,531

New Hampshire Public Utilities Commission

March 24, 1997

ORDER adopting procedural schedule in a proceeding reviewing a local exchange telephone carrier's compliance with the provisions of § 271 of the Telecommunications Act of 1996.

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1. TELEPHONES, § 3

[N.H.] Operating practices — Requirements of § 271 of the Telecommunications Act of 1996 — Generally available terms and conditions of service — Proceeding to determine compliance with thereto — Procedural schedule — Local exchange carrier. p. 290.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Local exchange telephone carrier — Requirements of § 271 of the Telecommunications Act of 1996 — Competitive checklist — Statement of generally available terms and conditions — Proceeding to determine compliance with thereto — Procedural schedule. p. 290.

BY THE COMMISSION:

ORDER

By Order of Notice dated February 6, 1997, the New Hampshire Public Utilities Commission (Commission) initiated an investigation into the compliance status of New England Telephone and Telegraph Company (NYNEX) with regard to Section 271 of the Telecommunications Act of 1996 (TAct). The investigation will enable the Commission to give to the Federal Communications Commission (FCC) a well-reasoned opinion as to NYNEX's compliance status, as required by Section 271 (d)(2)(B). The Order of Notice directed NYNEX to file an Initial Status Report, which it did on March 3, 1997, and set a date for a prehearing conference at which procedures for the conduct of the investigation would be established.

At the prehearing conference on March 13, 1997, the following parties requested and were granted intervenor status: AT&T Communications of New England, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and New England Cable Television Association, Inc.

(NECTA). Granite State Telephone Company, Merrimack County Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Hollis Telephone Company, Dunbarton Telephone Company, Northland Telephone Company of Maine, Bretton Woods Telephone Company, and Dixville Telephone Company (collectively the Independent Telephone Companies) requested and were granted limited intervenor status. Although not present at the prehearing conference, Sprint Communications Company L.P. (Sprint) and Vanguard Cellular Financial Corp. (Vanguard) were granted intervenor status on the basis of written requests received without objection. The Commission made NYNEX a mandatory party to the investigation; the Office of the Consumer Advocate (OCA) is a statutorily authorized party.

[1, 2] The purpose of this investigation, as clarified at the prehearing conference, is to establish a factual basis for the Commission's decision as to whether NYNEX meets the requirements of Section 271(c). Section 271(c) has two parts, the second of which consists of a 14 point Competitive Checklist. NYNEX indicated that the primary vehicle for satisfying all the points on the Competitive Checklist is a Statement of Generally Available Terms and Conditions (SGAT), as permitted under Section 271(c)(1). Accordingly, as agreed by the parties at the prehearing conference, the focus of this part of the docket will be on NYNEX's SGAT, which is to be filed on April 16, 1997. However, we recognize that there are two distinct actions

required of us within this docket, as we are both evaluating the SGAT pursuant to Section 252(f) and investigating NYNEX's compliance with Section 271.

At the prehearing conference, the Commission Staff indicated its intention to analyze NYNEX's SGAT by ascertaining the answers to four questions for each individual requirement of Section 251 and 252(d). The questions are:

(1) Is the requirement addressed in the SGAT?

(2) Is the requirement being provided by NYNEX to a competitor anywhere in New Hampshire?

(3) Is the requirement being provided in a manner consistent with the TAct?

(4) Are the prices consistent with the TAct?

AT&T, MCI, and NECTA stressed the need for NYNEX to provide the factual underpinning to support its SGAT.

The filing of NYNEX's SGAT triggers a 60 day period during which the Commission must complete its review of the SGAT, pursuant to Section 252(f). After the 60-day period, the Commission may extend its review of the SGAT but NYNEX may put the SGAT into effect and seek FCC review of its Section 271 compliance at that time. In order to assure completion of timely review, the parties agreed to the following process:


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

March 31, 1997     Staff propounds data
                   requests which NYNEX's
                   SGAT should answer
April 16, 1997     NYNEX files SGAT, including
                   cost studies
April 22, 1997     Data requests to NYNEX from
                   all parties
April 29, 1997     Staff issues proposed agenda
                   for technical
                   sessions
May 6, 1997        Data responses from NYNEX
                   to all parties
May 7, 8, 9, 1997  Technical Sessions
May 19, 20, 1997   Technical Sessions
May 30, 1997       Position Papers
June 3, 4, 5, 1997 Hearings
June 12, 1997      Briefs (optional)
June 16, 1997      Commission decision
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We find that, given the time constraints imposed by the TAct, the proposed procedural schedule is reasonable and, therefore, will approve it. Our decision regarding the SGAT, to be issued on or about June 16, 1997, will not close this docket, however. After NYNEX files its application for interLATA authority with the FCC, we must provide consultation to the FCC regarding NYNEX's Section 271 compliance. Hence, in this order we include latitude for Staff to propound and NYNEX to respond to data requests which will inform our consultation to the FCC. We will therefore order Staff and NYNEX to agree upon dates certain for data requests and responses for that purpose.

Based upon the foregoing, it is hereby

ORDERED, that AT&T, MCI, NECTA, Sprint, and Vanguard Cellular are granted full intervention in this docket and the Independent Telephone Companies are granted limited intervention; and it is

FURTHER ORDERED, that the proposed procedural schedule delineated above is approved; and it is

FURTHER ORDERED, that Staff and NYNEX shall agree upon dates certain for data requests and responses, as discussed herein, and report those dates to the Commission no later than May 16, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 1997.

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NH.PUC*03/25/97*[97257]*82 NH PUC 292*Pennichuck Water Works, Inc.

[Go to End of 97257]

Re Pennichuck Water Works, Inc.

DE 97-021
Order No. 22,532

New Hampshire Public Utilities Commission

March 25, 1997

ORDER authorizing a water utility to extend service into a previously unserved and undeveloped area of the Town of Salem, charging core system rates thereto.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Within municipal boundaries — Factors affecting approval — Municipal consent — Previously unserved and undeveloped area. p. 292.

2. FRANCHISES, § 53

[N.H.] Amendment — Expansion of franchise area — Into previously unserved and undeveloped area — Water utility. p. 292.

3. RATES, § 595

[N.H.] Water rate design — Core system rates — Applicability of — To customers in newly expanded franchise area. p. 292.

BY THE COMMISSION:

ORDER

On February 19, 1997 Pennichuck Water Works, Inc. (Pennichuck or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition to engage in business as a public utility in a portion of the Town of Salem pursuant to RSA 374:22 and 374:26, and to charge its core system rates pursuant to RSA 378. The requested franchise lies in the northwest corner of the Town and includes a proposed development known as Autumn Woods, consisting of approximately 70 single family units. The developer, MGP Realty Corp., has signed an agreement with Pennichuck whereby the developer will construct the water system for the development and turn the system and applicable easements over to Pennichuck. In turn, for a period of ten years, Pennichuck will reimburse the developer $500 for each new customer inside

the development upon actual connection to the system. This $500 amount is consistent with the level of investment per customer both in Pennichuck's core system and as authorized under Pennichuck's tariffed main extension policy. During the same period, Pennichuck will reimburse the developer $200 for each new customer connecting outside the development but within the proposed franchise area, providing that no additional investment in plant is required.

Pennichuck has provided a letter from the Town of Salem supporting the franchise request, as well as a letter from the Department of Environmental Services anticipating the support of that department once the requisite water supply protective easements are transferred at closing. *See*, RSA 374:22,III (Supp. 1996).

[1-3] The water system will be built to Pennichuck's specifications, with the first units expected to be connected this summer. No other water utility has expressed an interest in serving in this area. Pennichuck currently serves approximately 21,500 customers in Nashua and eight other towns and has the managerial, legal, technical and financial expertise necessary to operate as a public utility in the proposed franchise. Should any additional development occur outside the Autumn Woods development but within the franchise area, Pennichuck has stated that it intends to limit itself to the same level of investment per customer as that applied inside Autumn Woods. While it is anticipated that the application of core system rates outside Pennichuck's core system itself will be more fully addressed in the context of a soon-to-be-filed rate case, we find that Pennichuck's operation in the proposed franchise area, as well as

Page 292

the application of core rates on an interim basis therein, is in the public good. As it appears that all of the interested parties are in agreement on this matter, we shall approve the franchise and rates without a hearing. *See*, RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Pennichuck Water Works, Inc. is granted, pursuant to RSA 374:22 and 374:26, authority to operate as a public water utility in the northwest portion of the Town of Salem bounded by the Windham and Derry town lines, Rte 111, and Cobourn Road; and it is

FURTHER ORDERED, that Pennichuck is granted authority under RSA 378 to charge its tariffed core system rates on an interim basis inside the franchise area; 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 April 1, 1997 and to be documented by affidavit filed with this office on or before April 8, 1997; 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 15, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 24, 1997, 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 April 24, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1997.

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NH.PUC*03/25/97*[97258]*82 NH PUC 293*Northern Utilities, Inc.

[Go to End of 97258]

82 NH PUC 293

Re Northern Utilities, Inc.

DR 97-047
Order No. 22,533

New Hampshire Public Utilities Commission

March 25, 1997

MOTION by natural gas local distribution company for confidentiality of the names of its gas suppliers as well as the terms of associated supply agreements in the course of its pending summer cost-of-gas adjustment proceeding; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — For the duration of a pending summer cost-of-gas adjustment proceeding — Relative to the identities of gas suppliers — Relative to certain terms of associated purchase agreements — Factors — Openly competitive market — Sensitive commercial, financial, and marketing information — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 294.

BY THE COMMISSION:

ORDER

On March 14, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment of information that would identify Northern's gas suppliers and certain terms of the gas supply agreements negotiated by Northern with its suppliers. Northern seeks protection of this information as it relates to the pending revised Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket.

Northern states that its revised CGA filing contains confidential commercial information and trade secrets which fall within the exemption from public disclosure set forth in RSA 91- A:5, IV and N.H. Admin. Rules, Puc 204.08. Northern also states that it does not disclose the identity of its suppliers or the terms of its gas supply agreements to anyone outside its corporate affiliates and representatives.

[1] The Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits to Northern of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion for Protective Treatment is granted to allow Staff and the OCA to fully review the revised CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the revised CGA identifying information and contractual terms, Northern shall submit a redacted revised CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that, in future filings, Northern shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Puc 204.08(b); and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of March, 1997.

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NH.PUC*03/31/97*[97259]*82 NH PUC 294*EnergyNorth Natural Gas, Inc.

[Go to End of 97259]

82 NH PUC 294

Re EnergyNorth Natural Gas, Inc.

DR 97-020
Order No. 22,534

New Hampshire Public Utilities Commission

March 31, 1997

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment (CGA) filing, resulting in a rate of 0.14 cents per therm, an increase attributable to the combined effects of prior-period undercollections and recognition of additional winter-month demand charges. Consideration of sales versus transportation or gas-on-gas competition is deemed inappropriate for a CGA proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Replacement of credit with charge — Factors affecting increase — Assessment of additional winter-month demand charges — Prior-period undercollections — Local distribution company. p. 296.

2. MONOPOLY AND COMPETITION, § 58

[N.H.] Gas services — Sales versus transportation — So-called gas-on-gas competition — As inappropriate issue in cost-of-gas adjustment proceeding. p. 296.

Page 294

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc. and Stephen P. Frink on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 18, 1997, EnergyNorth Natural Gas, Inc. (EnergyNorth or "the Company") filed its Cost of Gas Adjustment (CGA) for the summer 1997 period. EnergyNorth requested a CGA rate of $.0014 per therm, an increase of $0.0756 per therm over last summer's CGA rate of ($0.0742) per therm.

Accompanying its CGA filing was a motion seeking protective treatment, which was granted on March 3, 1997 in Order No. 22,515. An order of Notice was issued setting a hearing for March 19, 1997. EnergyNorth informed customers of the impending change by publishing a copy of the Order of Notice in a local newspaper on February 28, 1997.

There were no requests for intervention filed in this matter and a duly noticed hearing was held on March 19, 1997.

II. POSITIONS OF ENERGYNORTH AND STAFF

EnergyNorth witness Mr. Mark G. Savoie, Rate Analyst, addressed the following issues: a) Calculation of the CGA; b) factors contributing to the increased cost of gas; c) the impact on customers; d) evaluation of the Demand Side Management (DSM) surcharge; and, e) the results of not allowing the use of transportation gas as an alternate fuel in calculating the 280-day sales service floor price as requested in last summer's CGA.

A. *Calculation of the CGA*

Mr. Savoie calculated projected costs using the most recent 15-day average of the NYMEX natural gas futures prices rather than those taken on the most recent single day, as was done in calculating the projected 1996 summer costs. The Company has monitored the futures prices since filing and updating the futures prices, using either the most recent 15-day average or the current daily prices, and there has not been a significant impact on projected costs.

B. *Factors Contributing to the Increased Cost of Gas*

Mr. Savoie testified that the increase was primarily due to two items. First, seven months of demand charges were included in the 1997 Summer CGA compared to six in the 1996 Summer CGA. This change resulted from the inclusion of five months of demand charges in the 1996/97 winter period rather than six months, as had been done for the two prior winter periods. And, second, a $2.4 million prior period undercollection was included.

The prior period undercollection of $2.4 million was attributed to two items: (i) higher than projected gas costs during the 1996 summer period, and (ii) Tennessee Gas Pipeline (Tennessee) having charged transportation rates substantially above the settlement rates approved by the Federal Energy Regulatory Commission (FERC) on October 30, 1996. The prior period undercollection included in the 1997 Summer CGA is offset by a $1.5 million refund due from Tennessee for the 1996 summer period overcharges. EnergyNorth anticipates receipt of the Tennessee refund in the current month, March 1997.

C. *Customer Impact*

Mr. Savoie testified that the proposed CGA rate of $0.0014 per therm would increase an average residential bill over last summer by approximately $4.15, or 13.5%.

D. *Demand Side Management Surcharge*

As part of EnergyNorth's Full Scale

Page 295

Demand Side Management Program for Residential and Small Commercial and Industrial Customers Settlement approved in Order No. 22,389, a surcharge adjustment was to be considered for effect with EnergyNorth's 1997 Summer CGA based on a review of the program at that time. Mr. Savoie testified that expenditures for the program are on budget and no significant over or undercollection is anticipated at the end of the program. Therefore, EnergyNorth did not propose changing the DSM surcharges.

E. *Calculation of the 280-Day Sales Service Floor Price*

During the 1996 Summer CGA proceeding, DR 96-049, EnergyNorth requested Commission clarification as to whether transportation gas would be considered an alternate fuel when determining the floor price of 280-day sales service. The Company identified seven 280-day sales customers, using either #2 fuel oil or propane and which provided very favorable margins, as being at risk to convert to transportation service, thereby, producing substantially lower margins. The Commission did not feel it was appropriate to address the issue in a CGA proceeding and did not grant the request. Mr. Savoie testified that since the start of last summer, only one of the seven "at risk" customers had switched to transportation service and the Company had added a new 280-day sales service customer that uses #2 fuel oil.

F. *Staff*

Staff stated that it believed EnergyNorth's gas purchasing policies are sound and reasonable and that the Company is utilizing its available resources in a manner which minimizes gas costs and that the proposed 1997 Summer CGA charge of $0.0014 is reasonable and should be approved.

III. COMMISSION ANALYSIS

[1, 2] After having reviewed the Hearing Examiner's recommendation, we conclude that EnergyNorth's 1997 Summer CGA is reasonable and consistent with its previous performance relative to minimizing gas costs. Accordingly, we accept and approve EnergyNorth's proposed 1997 Summer CGA rate of $0.0014 per therm.

Based upon the foregoing, it is hereby

ORDERED, that EnergyNorth's Sixth Revised Page 32 superseding Fifth Revised Page 32, N.H.P.U.C. tariff of EnergyNorth Natural Gas, Inc. providing for a Summer 1997 Cost of Gas Adjustment charge of $0.0014 per therm for the period April 1, 1997 through October 31, 1997 is hereby approved; and it is

FURTHER ORDERED, that the over/undercollection 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, EnergyNorth shall file a revised CGA; and it is

FURTHER ORDERED, that EnergyNorth file properly annotated tariff pages in compliance with this 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 thirty-first day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-214, Order No. 22,389, 81 NH PUC 827, Oct. 31, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-020, Order No. 22,515, 82 NH PUC 261, Mar. 3, 1997.

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[Go to End of 97260]

82 NH PUC 297

Re Connecticut Valley Electric Company

DR 96-392
Order No. 22,535

New Hampshire Public Utilities Commission

March 31, 1997

ORDER authorizing an electric utility to reduce its purchased power cost adjustment rate from 1.27 cents per kilowatt-hour (kWh) to 0.23 cents per kWh. The change is deemed appropriate given load data showing that the utility's coincident load compared to that of its power supplier's annual peak load was lower than had been projected.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment (PPCA) rate — Factors affecting reduction in PPCA rate — Differential between utility's coincident load and power supplier's annual peak load — Electric utility. p. 298.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 53

[N.H.] Overcollections — Remedy for variances exceeding 5% — Reduction in applicable charge — Purchased power cost adjustment clause rate — Electric utility. p. 298.

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

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 27, 1996, Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) tariff pages, testimony and exhibits supporting its purchased power cost adjustment (PPCA) of $0.0127 per kWh for effect from January 1, 1997 through December 31, 1997. The proposed PPCA included a production capacity allocation factor which was based on the expectation that January 1996 would be the annual 1996 peak. The Commission approved the $0.0127 PPCA in Order No. 22,469 (December 31, 1996).

On February 24, 1997, CVEC filed a request to reduce its PPCA in light of load data indicating that the annual peak of its power supplier, Central Vermont Public Service (CVPS), occurred in December 1996 rather than in January 1996 as projected. The change results in a significant reduction in the PPCA. CVEC requests an Interim PPCA of $0.0023 per kWh, effective with bills rendered on or after April 1, 1997 and continuing until December 31, 1997.

Settlement Stipulations were filed in CVEC's rate case (DR 96-170) and Conservation and Load Management filing (DR 96-362), all for effect on April 1, 1997. The decrease in the PPCA would serve to offset some of the increase in the rate case, if all Stipulations were approved.

On March 18, 1997, the Commission heard evidence on CVEC's proposed interim PPCA.

II. POSITION OF THE PARTIES

A. *CVEC*

CVEC proposes to decrease the PPCA factor from $0.0127 per kWh to $0.0023 per kWh. The primary reason for the reduction is that the actual ratio of CVEC's coincident load to the CVPS peak is lower in December 1996 than in January 1996. This lower ratio reduces CVEC's 1996 RS-2 capacity charges which are rolled forward into the 1997 PPCA.

Two additional factors contribute to the reduction in the 1997 PPCA factor. First, CVPS

capacity costs for 1997 are lower than forecast in the original 1997 PPCA filing. Second, CVEC has and will overcollect revenue in the PPCA in the months of January through March, 1997 under the PPCA rates now in effect.

B. *OCA*

Prior to the hearing, Kenneth Traum, Finance Director, advised Staff that he could not attend the hearing due to other pressing commitments. However, he indicated that the OCA supported CVEC's proposal to reduce the PPCA to $0.0023 per kWh and believes that this reduction is fair and reasonable.

C. *Staff*

Staff reviewed CVEC's Interim PPCA rate request of $0.0023 per kWh and verified the computational accuracy of this rate calculation and all other supporting schedules.

CVEC's proposed Interim PPCA reflects the adjustment to capacity costs based on the change to the CVPS annual peak and the December CVEC load, coincident with the December CVPS annual peak.

Based on the above, Staff believes that CVEC's request for an Interim PPCA rate of $0.0023 per kWh, a reduction from the currently approved rate of $0.0127 per kWh, is fair and reasonable and recommends that the Commission approve CVEC's request.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the record in this proceeding and find that CVEC's request for an Interim PPCA is just and reasonable. CVEC's filing is in accordance with the provisions of the Tariff 6th Revised Page 14 which states: "In the event ... that the total cost of capacity incurred and to be incurred by [CVEC] during the calendar year will vary by five percent (5%) or more above or below revenues collected and to be collected under such Purchased Power Cost Adjustment Rate and base capacity charges, [CVEC] may apply to the Public Utilities Commission for approval and authorization of an appropriate Interim Purchased Power Cost Adjustment Rate ... " Without the requested decrease, the 1997 PPCA will result in an overcollection of more than 5% by December 31, 1997.

We will approve the Interim PPCA for effect, on a bills-rendered basis, on or after April 1, 1997. The reduction shall be implemented concurrently with the permanent rate increase approved in DR 96-170 and the conservation and load management adjustment approved in DR 96-362.

Based upon the foregoing, it is hereby

ORDERED, that the Interim Purchased Power Cost Adjustment factor shall be $0.0023 per kWh for all bills rendered on or after April 1, 1997 and remain in effect until December 31, 1997; and it is

FURTHER ORDERED, that CVEC shall file compliance tariff pages within 15 days of this order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., DR 96-392, Order No. 22,469, 81 NH PUC 1055, Dec. 31, 1996.

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[Go to End of 97261]

82 NH PUC 298

Re Connecticut Valley Electric Company, Inc.

DR 96-362
Order No. 22,536

New Hampshire Public Utilities Commission

March 31, 1997

ORDER adopting stipulation as to an electric utility's 1997 conservation and load management programs and budget. The utility expects to retain most program features approved in previous years, but with provisions for ramping

Page 298

down all such measures, with an eye toward elimination of such programs by January 1, 1998.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Stipulation — 1997 budget — Continuation of most existing residential and commercial retrofit programs — But provisions for ramping down all measures — Elimination of C&LM efforts within a year — Factors — Industry restructuring and competition — Noncost-effectiveness of most programs. p. 300.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management (C&LM) programs —

Stipulation — 1997 budget — Continuation of most existing residential and commercial retrofit programs — But provisions for ramping down all measures — Elimination of C&LM efforts within a year — Factors — Industry restructuring and competition — Noncost-effectiveness of most programs. p. 300.

3. RATES, § 332

[N.H.] Electric rate design — Special charges — For conservation and load management (C&LM) programs — Nonrecovery of C&LM costs through base rates — Factors — Ramping down of all C&LM measures — Elimination of C&LM efforts within a year. p. 300.

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

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 6, 1996, Connecticut Valley Electric Company, Inc. (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) its Conservation and Load Management (C&LM) Program for the program year January 1, 1997 through December 31, 1997 along with supporting testimony and proposed C&LM Percentage Adjustment (C&LMPA) charges for its Residential and Commercial and Industrial (C&I) customers. CVEC proposes C&LM programs very similar to those approved by the Commission in Order No. 22,038 (March 4, 1996).

By an Order of Notice issued November 27, 1996, the Commission scheduled a prehearing conference for December 23, 1996, set deadlines for intervention requests and objections, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

On December 31, 1996, the Commission issued Order No. 22,468 suspending CVEC's tariff pages NHPUC No. 5 - Electricity, 9th Revised Page 20, 2nd Revised Page 53, 1st Revised Page 56, 1st Revised Page 58, 1st Revised Page 61, 1st Revised Page 63 and 1st Revised Page 65 which detail the rate schedule for CVEC's C&LMPA charges. CVEC was also ordered to continue to offer its C&LM programs and to bill the C&LMPA charges as approved in Commission Order No. 22,038 until the final order was issued in this docket.

Pursuant to the approved procedural schedule, CVEC and Staff engaged in formal discovery and technical sessions. On February 10, 1997, Staff filed its direct testimony in this docket. On March 10, 1997, CVEC and Staff participated in a settlement conference.

Subsequent to the settlement conference, CVEC and Staff entered into a Stipulation. The Stipulation resolves all of the issues in this proceeding and was signed and submitted to the Commission on March 14, 1997. A hearing was held on March 18, 1997 at which time

testimony supporting the Stipulation was presented to the Commission.

II. STIPULATION

CVEC and Staff agreed that the 1997 Conservation and Load Management Program proposal, as set forth in CVEC's November 6, 1996 filing, should be approved subject to the following modifications:

1. CVEC shall use the 1997 program year to ramp down all existing C&LM programs it now offers while completing installation of those measures to which it has already committed. The goal of ramping down the programs is to end program expenditures and funding as of January 1, 1998, or as soon thereafter as is practicable. CVEC and Staff agree that the C&LMPA charges should continue to recover net revenue loss for measures installed through 1997 and incentive share (as modified below) for measures installed during 1997.

2. The Base C&LM Charges for Residential and C&I customers are each set at $0.0000 per kilowatt-hour (kWh) effective October 1, 1996 as stipulated in CVEC's rate case Docket DR 96-170.

3. Net revenue loss allowed in rates shall reflect the effects of installations for the period January 1, 1991 through December 31, 1997 as appropriate for 1996 and 1997 as stipulated in CVEC's rate case Docket DR 96-170.

4. As part of the ramping down of the C&LM programs, CVEC will ramp down the Residential High Use, the Residential New Construction and the Industrial Retrofit programs that do not meet the minimum benefit-cost ratio threshold.

5. Incentive share recovered in 1997 from 1996 installations shall be calculated according to the formula previously employed. The maximizing component is calculated as three-and-a-half percent (3.5%) of the total social value created by C&LM measures. The efficiency component is calculated as ten percent (10%) of the difference between the net social value and the value of the maximizing component.

6. For incentive share recovered in 1998 from 1997 installations, if any, the maximizing component will be calculated as three-and-a-half percent (3.5%) of the total social value created by C&LM measures less the customer cost of C&LM measures. The efficiency component will continue to be calculated as ten percent (10%) of the

difference between the net social value and the value of the maximizing component. If this incentive share calculation results in a negative value for a program, then the incentive share for that program will be zero. This methodology shall continue to be used subsequent to 1998 in the event of installations beyond 1997.

7. Because of the ramping down of the C&LM programs, Staff's recommendations to have separate surcharges for C&I customers for the 1998 program year and to streamline reporting requirements will not be acted upon.

8. CVEC shall record C&LM revenues in Account 451 - Miscellaneous Service Revenues beginning January 1, 1997. As a result, CVEC shall not provide for recovery of New Hampshire Franchise Tax on C&LM revenues effective January 1, 1997.

9. The 1997 Residential C&LMPA charge shall be 0.82% and the C&I C&LMPA charge shall be 2.51%, effective April 1, 1997.

III. COMMISSION ANALYSIS

[1-3] After careful review of the Stipulation, supporting testimony at the March 18, 1997 hearing and the exhibits, we find that CVEC's proposed C&LM programs, as modified by the Stipulation, are reasonable and in the public good.

CVEC proposed no substantive modifications to its 1997 C&LM program as compared to the program that was approved by the Commission in Order No. 22,038 for the 1996 program year. However, Staff identified various areas of concern in its testimony that we believe are adequately addressed in the Stipulation.

This Stipulation is being approved

Page 300

concurrently with the order approving the stipulation in CVEC's rate case, Docket DR 96-170. Two specific issues were raised in both dockets which need to be addressed simultaneously in order for CVEC to be made whole or, in the alternative, to avoid double recovery. First, in both dockets Staff recommended the elimination of that portion of CVEC's base rates which represents Base C&LM Revenues. The Stipulations in both dockets represent that Base C&LM Revenues will be set at $0.0000/kWh for both Residential and C&I customers. Therefore, there will be no recovery of C&LM costs through base rates. Second, CVEC has been made whole because it will recover fixed non-power costs associated with C&LM programs by including net revenue loss in the C&LMPA charges. CVEC's rate case makes it necessary to coordinate the timing of the recovery of net revenue losses for C&LM installations which occurred prior to the test year. Again, both Stipulations have been written to ensure that CVEC is allowed recovery of these costs only through the C&LMPA charges.

CVEC and Staff agreed that CVEC will use the 1997 program year to begin phasing out its C&LM programs. Specifically, the Stipulation addresses three C&LM programs that do not meet

the minimum benefit-cost ratio threshold previously established for CVEC when overhead is factored into the analysis. We believe that this is consistent with our recent decision in DR 96-150 regarding the Final Plan for Restructuring of the Electric Utility Industry to ensure that only cost-effective C&LM programs are continued by CVEC. However, we put CVEC on notice that it should remain able to provide cost-effective C&LM programs if circumstances so warrant.

We believe that the Stipulation properly modifies the calculation of the maximizing component of CVEC's incentive to be consistent with our Order No. 19,905 (August 7, 1990) which states: "the Commission finds that financial incentives for utility implementation of C&LM are warranted where the utility can demonstrate that the C&LM program for which it seeks incentive payments offers extraordinary benefits to ratepayers over the long term ... ." We do not believe that it is appropriate for utilities to earn an incentive on a C&LM program where the customers' out-of-pocket expenses exceed the net present value of the program benefits. Therefore, we find the revised calculation of the maximizing component of the incentive, which nets the customers' out-of-pocket expenses against the net present value of program benefits, to be in the public interest because it ensures that CVEC earns an incentive only on those programs which provide net benefits to its customers.

Finally, consistent with treatment we have recently allowed for the New Hampshire Electric Cooperative in Docket DR 97-010 in Order No. 22,506 (February 19, 1997), we waive the application of N.H. Admin. Rules, Puc 1203.05(a), which requires generally that rate changes be implemented on a service rendered basis, and will allow CVEC to implement its C&LMPA charges on a bills rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED, that the proposed C&LM programs, as amended by the Stipulation, are hereby APPROVED; and it is

FURTHER ORDERED, that CVEC's C&LMPA charges be effective April 1, 1997 on a bills rendered basis; and it is

FURTHER ORDERED, that CVEC file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 95-307, Order No. 22,038, 81 NH PUC 162,

Mar. 4, 1996. [N.H.] Re Connecticut Valley Electric Co., Inc., DR

96-362, Order No. 22,468, 81 NH PUC 1053, Dec. 31, 1996. [N.H.] Re Incentives for Conservation and Load Management, DE 89-187, Order No. 19,905, 75 NH PUC 527, Aug. 7, 1990. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 97-010, Order No. 22,506, 82 NH PUC 75, Feb. 19, 1997.

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NH.PUC*03/31/97*[97262]*82 NH PUC 302*Connecticut Valley Electric Company

[Go to End of 97262]

82 NH PUC 302

Re Connecticut Valley Electric Company

DR 96-170
Order No. 22,537

New Hampshire Public Utilities Commission

March 31, 1997

ORDER adopting stipulation granting an electric utility a $1.11 million (6.4%) rate increase. The utility had sought a $1.59 million (8.8%) increase and had been previously authorized a 5.4% temporary rate increase. The utility is allowed to implement a 2.2% surcharge for an eight-month period for the recovery of the difference between interim and permanent rates.

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1. RATES, § 158

[N.H.] Factors affecting reasonableness — Past losses — Significant earnings erosion — Protracted period since last rate increase — Electric utility. p. 304.

2. RATES, § 321

[N.H.] Electric rate design — Factors affecting increase — Significant earnings erosion — Protracted period since last rate increase — Stipulation. p. 304.

3. VALUATION, § 234

[N.H.] Rate base treatment — Property not used in general service — Plant constructed for single customer — As still meeting criteria for used and useful status — Electric utility. p. 304.

4. RETURN, § 41

[N.H.] Factors affecting reasonableness — Intercorporate relations — Nonjurisdictional return penalties assessed parent company — As irrelevant to jurisdictional utility — Stipulated return on equity of 10.2% — Electric utility. p. 304.

5. EXPENSES, § 120

[N.H.] Electric utility — Costs associated with industry restructuring proceedings — As distinguished from lobbying expenses — Deferral of recovery — Stipulation. p. 304.

6. RATES, § 260

[N.H.] Surcharges — Temporary implementation — Purpose — Recovery of difference between interim and permanent rates — Electric utility. p. 305.

APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company; McLane, Graf and Raulerson by Steven V. Camerino, Esq. for the City of Claremont; Office of Consumer Advocate by Kenneth E. Traum 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 23, 1996, pursuant to RSA 378:28, Connecticut Valley Electric Company (CVEC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of rate schedules and supporting testimony and exhibits (Petition). The Petition

sought approval of an 8.8% permanent base rate increase to generate approximately $1,591,616 in annual revenues. CVEC also requested that 5.4% of the permanent rate increase be effective on a temporary basis, subject to refund, until permanent rates are approved and in effect.

The City of Claremont (Claremont), a CVEC customer, sought intervention, without objection. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

The Commission, in Order No. 22,338 (September 30, 1996), granted the 5.4% temporary rate request, effective October 1, 1996, to be applied uniformly over all rate classes.

On July 23, 1996, CVEC filed the direct testimony of William J. Deehan, C.J. Frankiewicz, Edmund F. Ryan, Gregory A. White, Jonathan W. Booraem, Jonathan C. Day and Scott R. Anderson in support of the permanent rate request. On November 18 and 21, 1996, Commission Staff (Staff) submitted prefiled testimony by Mark A. Naylor, Assistant Finance Director and James J. Cunningham, Jr. addressing financial issues, Patrick J. Moast addressing rate design, Tracy E. Brocks and Todd M. Bohan jointly addressing cost of capital, and James R. Thyng addressing engineering and reliability issues.

The Commission held an evening public hearing in the City of Claremont on December 12, 1996 to take comments of the public.

On March 14, 1997, Staff filed a Stipulation reached between CVEC and Staff settling all issues in the rate case docket, which was marked as Exhibit 3. OCA and Claremont were not signatories to the Stipulation. The Commission heard evidence on the Stipulation on March 18, 1997 at 10:00 a.m.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Stipulation between CVEC and Staff*

The full details of the Stipulation are found within Exhibit 3. Significant components include the following:

The Stipulation recounts CVEC's recent earned rate of return on common equity declining from 3.6% in 1993 to 0.8% in 1994 to a negative 8.3% in 1995. CVEC had proposed an 11.5% return on equity; Staff first proposed 9.65% and after certain adjustments to its sample of companies, revised its recommendation to 10.2%, which CVEC agreed to accept in the Stipulation.

CVEC's original filing sought an increase of $1,598,000 or 8.8%; Staff proposed an increase of $680,000 or 3.77%. The Stipulation made a number of adjustments to Staff's initial recommendation and agreed upon an overall increase of $1,110,395 or 6.4%. Because certain charges are in base rates and others in fuel, purchased power and other adjustment clauses, a 7.0% increase in base rates effectuates the 6.4% overall rate increase.

Rate base was adjusted to reflect both a portion of the plant and additions installed to serve Claremont Flock as well as plant in service in 1995, which was not fully accounted for on the books until 1996.

The depreciation expense on common assets charged through the service contract between CVEC and Central Vermont Public Service (CVPS) was adjusted to reflect CVPS's depreciation rate rather than CVEC's, as Staff had originally recommended.

CVEC agreed to remove an additional $9,000 in legal expenses beyond the adjustments Staff had already made. Staff agreed to allow CVEC to defer on its books expenses related to restructuring the electric industry. The Stipulation stated that authorization to defer these expenses did not constitute approval for recovery or agreement that such costs should be recoverable.

The Stipulation agrees to shift all conservation and load management (C&LM) related expenses and revenues into CVEC's C&LM percentage adjustment. The effect is revenue neutral.

The Stipulation agreed to allow $25,000 to reflect CVEC's declining customer count and to remove $102,000 in *pro formed* revenues that had been anticipated from Claremont Flock.

The Stipulation recommends a temporary surcharge of 2.2% for collection only from April 1 through November 30, 1997, CVEC's off-season period. The surcharge will recover incremental rate case expenses and recoupment

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of the difference between the temporary rate increase of 5.4% and the permanent rate increase of 6.33% from October 1, 1996 through March 31, 1997. CVEC waives its right to recoupment of the difference between 6.33% and 6.4%. Recoupment is without interest.

The Stipulation recommends approval of these terms concurrently with the C&LM stipulation filed in DR 96-362 and the Purchased Power Cost Adjustment Stipulation filed in DR 96-392, all for effect April 1, 1997.

B. *Claremont*

Claremont opposed the Stipulation and urged the Commission to reject it in its entirety. It argued that if the Commission were to approve the Stipulation, it should do so conditionally and reject certain terms. Claremont argued that CVEC should be penalized for CVPS's mismanagement of power supply arrangements with Hydro- Quebec. It argued that the Vermont Public Service Board's penalty to CVPS's authorized return be similarly imposed on CVEC's authorized return.

In addition, Claremont argued that a portion of the rate base additions attributable to Claremont Flock should be disallowed, in that the expansion of Claremont Flock's load has not yet materialized and, according to Claremont, the plant to serve Claremont Flock is not fully used and useful.

Finally, Claremont argued that the expenses identified as being related to restructuring, for which the Stipulation allows deferral on the books, should be disallowed completely, as non-recoverable lobbying expenses.

C. *OCA*

OCA concurred with Claremont that CVEC's rate of return should reflect a penalty similar to that imposed by the Vermont Public Service Board. OCA also concurred with Claremont's recommendation that restructuring expenses should be disallowed as lobbying expenses.

OCA argued that CVEC should have used different figures for its pro formed uncollectible rate. In addition, it argued that the temporary surcharge was being collected in too accelerated a fashion and should instead be amortized over a 2 to 3 year period.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony and exhibits in this case and find that the Stipulation is a fair resolution of the issues raised and will approve it as filed.

It is clear from the evidence that CVEC has justified an increase in rates, given the company's recent earnings history. The 6.4% rate increase (of which 5.4% is already in rates on a temporary basis as of October 1, 1996) is just and reasonable and will allow the company a fair opportunity to earn on its investment.

[3] We are satisfied that the additions to plant now included in rate base are used and useful in the provision of utility service and the investments were prudently incurred. We disagree with Claremont's argument that, because the expansion to serve a particular customer has not resulted in the degree of load growth hoped for, the additional plant should not be included in rate base. We are persuaded that the additional plant is used and useful, and that it enhances the reliability of the system overall.

[4] We also reject Claremont's argument that because the Vermont Public Service Board penalized CVEC's parent company in a prior case for its handling of the Hydro-Quebec power supply, this Commission should adjust CVEC's authorized return. We are prevented from arbitrarily adjusting the authorized return. *Appeal of Public Service of New Hampshire*, 130 N.H. 748 (1988). Although Claremont argued that the cost of capital should be reduced to Staff's original cost of equity of 9.65%, we do not believe Claremont provided a sound basis for connecting CVPS's Hydro-Quebec transactions with CVEC's rate of return. We will not alter the recommendation of our Staff or the terms of the Stipulation in response to an issue unrelated to CVEC's cost of capital.

[5] We are not persuaded that the restructuring expenses for which the Stipulation recommends deferral are impermissible lobbying expenses. There was no evidence as to the

purpose of these expenses other than that they were incurred by outside counsel in connection with restructuring efforts. Because there is no recovery of these amounts contained in

this Stipulation, we find it the wiser course to evaluate at some time in the future the actual expenses and consider whether they should be recovered.

[6] We will not adjust the uncollectibles rate as OCA urged, given CVEC's testimony regarding the basis for its calculations. We also will not change the term of recovery of the temporary surcharge. Although the collection time is shorter than we often see in a rate case, the bulk of the increase is already being collected in temporary rates, which allows for a more accelerated recovery period.

Of the 6.4% increase, 5.4% is already being collected in the form of temporary rates, as of October 1, 1996. The additional 1%, as well as the temporary surcharge of 2.2%, will go into effect on a bills-rendered basis on or after April 1, 1997. Concurrent with this increase will be the PPCA decrease approved in DR 96-392 and the Stipulation reached in CVEC's C&LM docket, DR 96-362.

Based upon the foregoing, it is hereby

ORDERED, that Stipulation reached between CVEC and Staff is APPROVED; and it is

FURTHER ORDERED, that the rate increase in the Stipulation shall be in effect on a bills-rendered basis on or after April 1, 1997; and it is

FURTHER ORDERED, that CVEC shall file tariffs in compliance with this order within 15 days.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., Inc., DR 96-170, Order No. 22,338, 81 NH PUC 724, Sept. 30, 1996.

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NH.PUC*04/01/97*[97263]*82 NH PUC 305*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97263]

82 NH PUC 305

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-274

Order No. 22,538

New Hampshire Public Utilities Commission

April 1, 1997

ORDER approving a local exchange telephone carrier's proposal for offering prepaid calling card service.

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1. RATES, § 553

[N.H.] Telephone rate design — Prepaid calling card service — Debit card device — Rates not necessarily equal to normal direct-dialed charges — Local exchange carrier. p. 306.

2. SERVICE, § 433

[N.H.] Telephone — Prepaid calling card service — Debit card devices — No immediate need for commission-initiated rules. p. 306.

APPEARANCES: Victor D. DelVecchio, Esq. for NYNEX, Devine, Millimet and Branch by Anu Mullikin, Esq. for Dixville Telephone Company, Bretton Woods Telephone Company, Northland Telephone Company, Granite State Telephone, Merrimack County Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Hollis Telephone Company, and Dunbarton Telephone Company; the Office of Consumer Advocate by Thomas S. Lyle for residential ratepayers; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

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ORDER

I. PROCEDURAL HISTORY

On August 27, 1996, New England Telephone & Telegraph (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) tariff pages proposing to introduce Prepaid Calling Service for effect September 26, 1996.[1](86) NYNEX states that Prepaid Calling Service would provide customers with an alternative method for paying for local, coin and toll

calls within New Hampshire. Customers could buy a printed card identifying the stated value, NYNEX's 800 access number, a customer authorization code, and dialing instructions to allow customers to place a call from any residence, business or pay telephone. As part of its filing, NYNEX included a Tariff Filing Support Package containing marketing and cost support materials.

On September 18, 1996, the Office of Consumer Advocate (OCA) filed a letter with the Commission requesting that the Commission approve NYNEX's proposal for Prepaid Calling Service only if the tariff rates reflect NYNEX's current time-of-day tariff rates. In the alternative, OCA requested a hearing on the petition. According to OCA, the NYNEX proposal raises concerns about unfair marketing practices by telephone debit care providers generally and requested that the Commission impose, if necessary, regulations on all providers of such cards. On December 23, 1996, by Order No. 22,459, the Commission granted OCA's request for a hearing, which was ultimately held on February 5, 1997.

The Commission granted the following independent telephone companies intervention: Dixville Telephone Company, Bretton Woods Telephone Company, Northland Telephone Company, Granite State Telephone, Merrimack County Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Hollis Telephone Company, and Dunbarton Telephone Company The OCA is a statutorily authorized intervenor.

On January 29, 1997, NYNEX filed direct testimony of Ralph J. Silvestri. OCA responded on February 3, 1997 stating that NYNEX's testimony had addressed OCA's concerns, with one exception. Because it would not be cross-examining NYNEX at the hearing, it suggested that a hearing may not be necessary. OCA's remaining issue involved NYNEX's plan to lower its intraLATA toll rates and whether the reduction would apply to prepaid calling services. OCA also suggested it may be appropriate, as some states have done, to develop new administrative rules in response to the proliferation of prepaid calling services. OCA stated it would file a petition to initiate such a rulemaking.

A Hearing Examiner heard evidence in support of NYNEX's prepaid calling service on February 5, 1997. There was no opposition to NYNEX's petition. The Hearing Examiner recommended Commission approval of the Prepaid Calling Service petition.

II. COMMISSION ANALYSIS

[1, 2] We have reviewed the filing and Hearing Examiner's report and find that approval of NYNEX's Prepaid Calling Service is in the public interest. Use of these debit cards has proliferated in recent years and we see no basis to prohibit regulated utilities from providing them to customers.

Users of any telephone debit card should ascertain the rates they will be charged and not assume they are the same as the underlying carrier's charge for direct dialed service. As noted in our Secretarial letter of March 6, 1997, we do not see a need to develop rules governing these cards at this time. In the event we are presented with evidence of utilities engaged in unfair business practices in marketing or honoring these cards, we will reconsider this decision.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Prepaid Calling Service is APPROVED; and it is

FURTHER ORDERED, that NYNEX 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).

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By order of the Public Utilities Commission of New Hampshire this first day of April, 1997.

FOOTNOTES

[1]Prepaid calling service is more colloquially known as a telephone debit card. A number of competitive toll providers offer debit cards, as do countless non-utility businesses, such as supermarkets and gasoline stations.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-274, Order No. 22,459, 81 NH PUC 1031, Dec. 23, 1996.

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NH.PUC*04/01/97*[97264]*82 NH PUC 307*Freedom Ring, L.L.C.

[Go to End of 97264]

82 NH PUC 307

Re Freedom Ring, L.L.C.

DR 96-420
Order No. 22,539

New Hampshire Public Utilities Commission

April 1, 1997

ORDER adopting procedural schedule with respect to an interexchange telephone carrier's proposal that incumbent local exchange carriers be required to give all of their special contract customers an opportunity to reassess such contracts and terminate them without penalty, given the introduction of competition within local exchange markets.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Interconnection agreements — Effect of local exchange competition — Opportunity to reassess such contracts — Procedural schedule for considering. p. 307.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Effect of local exchange competition — On interconnection agreements — Opportunity to reassess such contracts — Procedural schedule for considering. p. 307.

BY THE COMMISSION:

ORDER

[1, 2] On November 13, 1996, as part of Docket No. DE 96-165, Freedom Ring, L.L.C. (Freedom Ring) filed with the New Hampshire Public Utilities Commission (Commission) a Petition Requesting that Incumbent Local Exchange Companies (ILECs) provide special contract customers a "fresh look" opportunity. Freedom Ring requests the Commission grant ILEC special contract customers a one year opportunity to determine if they wish to terminate the contract without penalty in order to take advantage of a competitive alternative. Freedom Ring supported its request on the basis of the newly competitive environment in the New Hampshire telecommunications market.

The Commission set a prehearing conference for March 18, 1997, set a deadline for intervention requests, and required publication of notice.

At the duly noticed prehearing conference, New England Telephone and Telegraph Company (NYNEX), MCI Telecommunications Corporation (MCI) and Bretton Woods Telephone Company (Bretton Woods), sought intervention, without objection. The Office of Consumer Advocate (OCA), a statutorily recognized intervenor, also participated. The parties and Staff agreed that the issues raised in this docket can be addressed by a modified schedule, without hearing. The parties and Staff agreed to the following procedural schedule:

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

First Round of Data Requests from Freedom Ring to NYNEX	March 27
Data Requests from MCI, Bretton Woods, Staff and OCA to NYNEX	April 16
Data Responses from NYNEX to all requests	May 14
Second Round of Data Requests from Freedom Ring to NYNEX	May 28
Data Responses from NYNEX	June 18
Technical Session	July 11
Brief due from Freedom Ring	July 30
Brief due from other parties and Staff	August 28
Reply Brief from Freedom Ring (optional)	September 12
Commission Order anticipated	October 6

Also at the prehearing conference, in accordance with the Order of Notice, parties and Staff stated their initial positions. Freedom Ring stated that it seeks a statement of policy that long term special contracts are not in the public interest in light of the Telecommunications Act of 1996 and the New Hampshire statutory support for competition. MCI, Staff, and the OCA generally supported this as appropriate in the changing telecommunications market. However, Staff pointed out that RSA 378:18-b must be carefully considered as it is a later enacted statute which specifies Commission treatment of telecommunications special contracts. Bretton Woods expressed its concern and opposition relating to its recently negotiated long term contract. NYNEX expressed its opposition to the petition on the basis of factual, legal and public policy reasons. NYNEX stated that special contracts were approved by the Commission because of the competitive evolution.

We will grant the requests for intervention by MCI and Bretton Woods and find that NYNEX is a necessary party to the docket. We find the proposed procedural schedule to be reasonable and will approve it. However, we will retain authority to expand the procedural schedule if necessary to address the breadth of the issues with regard to effects on competition.

Based upon the foregoing, it is hereby

ORDERED, that MCI, Bretton Woods, and NYNEX 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 first day of April, 1997.

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NH.PUC*04/01/97*[97265]*82 NH PUC 308*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97265]

82 NH PUC 308

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-028
Order No. 22,540

New Hampshire Public Utilities Commission

April 1, 1997

ORDER granting protective treatment of certain usage and cost information contained in a local exchange telephone carrier's filing in which it proposes to detariff local coin rates for customer-dialed calls made from public access smart line phones.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay stations — Proposed detariffing of local sent-paid calling rates — Protective treatment of associated filing data — Local exchange carrier. p. 309.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain usage and cost data included in a filing — Proposed detariffing of local sent-paid calling rates — Coin or pay station service — Local exchange telephone carrier. p. 309.

Page 308

BY THE COMMISSION:

ORDER

On January 24, 1997, New England Telephone & Telegraph Company, Inc. d/b/a NYNEX (NYNEX) filed revisions to NHPUC - NO. 77, Part M Section 1, Page 29. The revisions eliminate from the tariff the local coin rate for customer-dialed local calls made from Public Access Smart Line phones, in essence de-tariffing the local coin rate. In addition, NYNEX states

that it intends to institute a 25-cent rate for these calls.

On February 7, 1997, NYNEX submitted a Motion for Protective Order (Motion) which seeks to prohibit disclosure of NYNEX's commercially and competitively sensitive information.

NYNEX states that the filing contains payphone usage characteristics, commission expenses, service revenues and cost data of this competitive service, within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)(a)(2).

[1, 2] The Commission recognizes that the information identified above is critical to the review of the payphone rate filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is granted to allow Staff and the OCA to fully review the payphone rate filing; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this first day of April, 1997.

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NH.PUC*04/01/97*[97266]*82 NH PUC 309*IntraLATA Presubscription

[Go to End of 97266]

82 NH PUC 309

Re IntraLATA Presubscription

DE 96-090
Order No. 22,541

New Hampshire Public Utilities Commission

April 1, 1997

ORDER modifying Order No. 22,281 (81 NH PUC 624) in which the commission had directed local exchange telephone carriers to implement intraLATA presubscription (ILP).

Where the original order had mandated that interexchange carriers offer customers municipal calling service (MCS) in the pursuit of ILP, the commission now finds that MCS should be discretionary. However, it declines to eliminate MCS in its entirety, deeming such unnecessary in order to achieve a level playing field among toll services.

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1. SERVICE, § 468

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Municipal calling service as an element — Discretionary rather than mandatory offering. p. 311.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll

Page 309

services — IntraLATA presubscription — Municipal calling service (MCS) as an element — Discretionary rather than mandatory offering — Formal elimination of MCS as unnecessary for assuring level, competitive playing field. p. 311.

3. RATES, § 582

[N.H.] Telecommunications rate design — Toll services — IntraLATA presubscription — Municipal calling service (MCS) as an element — Elimination of mandatory MCS — Concomitant elimination of mandatory credits to customers selecting non-MCS carrier — Discretionary rather than mandatory MCS offerings. p. 312.

4. SERVICE, § 171

[N.H.] Resale of service — Telecommunications — Toll services — IntraLATA presubscription — Municipal calling service (MCS) as an element — Infeasibility of MCS resale. p. 312.

APPEARANCES: Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph; Palmer & Dodge LLP by Jay Gruber, Esq., and Carol Friar for AT&T; Gerald Cleary for Atlantic Long Distance; James A. Sanborn for Union Telephone Company; Devine, Millimet & Branch by Frederick J. Coolbroth, Esq., for Granite State Telephone Company, Merrimack County Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone

Company, Hollis Telephone Company, Dunbarton Telephone Company, Northland Telephone Company of Maine, Bretton Woods Telephone Company, and Dixville Telephone Company; Glass, Seigle & Liston by Robert A. Glass, Esq. for MCI; the Office of the Consumer Advocate by James R. Anderson, Esq. 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 January 30, 1997, MCI Telecommunications Corporation (MCI) filed with the New Hampshire Public Utilities Commission (Commission) a Motion for Modification of Order No. 22,281 (Order). The Order mandates that implementation of intraLATA presubscription (ILP) preserve for New Hampshire customers the benefits of Municipal Calling Service (MCS). The Order states:

> "Municipal calling is currently resolved through billing, rather than technically, and the Commission finds that the customer benefits of municipal calling shall not be compromised. Some of the LECs and IXCs have offered to develop a method by which to maintain municipal calling through billing systems. We will order the companies to complete their efforts to resolve this issue and to file a plan within 90 days to accomplish ILP while retaining customers' ability to receive municipal calling."

In compliance with the Order, the Parties and Staff participated in three technical sessions designed to develop a method to maintain MCS through billing systems. As a result of the technical sessions, MCI filed its Motion for Modification. In its motion, MCI argued that the dollar value of the MCS benefit to New Hampshire subscribers is heavily outweighed by the administrative cost to each competitive provider for developing and maintaining an appropriate billing system. MCI therefore seeks modification of the Order to permit competitive providers to choose among several options. The options suggested include:

1. Automatically giving every MCI-eligible subscriber a standard monthly credit of $0.50, the estimated average monthly value of MCS per customer;

2. Advising customers in advance of subscription that MCS is unavailable, thus permitting the customer to weigh the benefit of MCS and to pick a carrier on the basis of

complete information;

3. Providing MCS by reselling NYNEX toll;

4. Providing MCS by a billing approach, as NYNEX does currently.

By letter, dated February 10, 1997, NYNEX informed the Commission that, except with regard to a resale option it asserted was not technically feasible, NYNEX would not oppose MCI's motion. At the duly noticed hearing on March 3, 1997, the Commission heard oral argument regarding the four suggested MCS options.

II. POSITIONS OF THE PARTIES AND STAFF

MCI, AT&T, the Independent Telephone Companies (ICOs), and Union agreed that providing MCS as a billing function will require an extremely large capital investment. The investment necessary might be large enough to deter entry into the New Hampshire market. MCI, AT&T, the ICOs, and Union all agreed that providing MCS as a switching/routing function would be a better solution but is not technologically possible at this time. MCI argued that flexibility in providing MCS is necessary in order to allow implementation of ILP by June 2, 1997, as date mandated in Commission Order No. 22,281.

AT&T supported MCI's request for relief from the obligation to provide MCS as a billing function. AT&T emphasized that customer dissatisfaction would result from inevitable billing errors occurring during the start-up phase of a billing-driven MCS service, which would impair competitors' entry into the intraLATA toll market. AT&T's technical expert furnished details regarding the extraordinarily large database which each carrier would have to maintain and further stated that the costs of maintaining such a data base would be prohibitive.

Although it supported MCI's motion for flexibility, AT&T pointed out that NYNEX would enjoy a marketing advantage as the result of its competitors' inability to provide MCS. AT&T indicated that it had no objection to NYNEX exercising its marketing advantage as long as competitors were not constrained as to what discount they could offer to offset the advantage.

NYNEX opposed the resale option (#3 above) because the Telecommunications Act of 1996 (TAct) limits resale to services which are offered to end-users. NYNEX pointed out that inasmuch as the toll component of MCS is offered as part of basic exchange service, and is not offered as a separate service to end users, NYNEX need not make such "naked toll" available for resale under the TAct.

NYNEX sought guidance from the Commission in reconciling the potential conflicting obligations for safeguards against anti- competitive marketing practices, required in Section III, 5 of the Order, and for accepting and changing customers' presubscribed intraLATA carrier (PIC) choice, required in Section III, 4 of the Order. The marketing prohibition forbids NYNEX from using as marketing opportunities those interactions with customers where the customer is requesting an ILP change. If the Commission were to approve MCI's proposed modification of the Order, NYNEX would be required to discuss MCS availability without appearing to be marketing its own MCS capability.

The ICOs forcefully echoed AT&T's concern for customer dissatisfaction, pointing out the preponderance of MCS eligible customers in their service territories. Union also supported MCI's motion.

The Office of Consumer Advocate argued that more investigation is required to understand the potentially significant impact of the MCI motion. Although Staff supported MCI's options approach to MCS, Staff suggested that the provision of MCS could be viewed as a benefit to particular customers. If MCS were eliminated, a level playing field for the intraLATA toll market could be promoted. However, the service might reappear as an optional service provided by NYNEX.

III. COMMISSION ANALYSIS

[1, 2] As we stated in the Order, presubscription of intraLATA toll calls is an important step toward full competition and serves the

Page 311

public interest of New Hampshire. The customer benefits of MCS are also important; we intend, as we stated in the Order, that implementation of ILP should not compromise those benefits. Hence, we will not eliminate MCS to achieve a level playing field. In light of the evidence presented, however, we will modify the Order to permit Interexchange Carriers (IXCs) the option to offer MCS if they wish to do so, but we will remove the mandate. Each individual competitor will have to make the business decision to offer MCS.

[3] Because we are no longer mandating provision of MCS for all competitors, we also decline to *require* IXCs to offer a credit to a customer who elects to select a carrier which does not offer MCS. Although IXCs may choose to offer a credit, the decision is a business decision best made by each individual IXC. Therefore, option 1 of MCI's proposed modification remains an option and does not rise to the level of a mandate.

As we stressed in Section III, 6 of our Order, we consider customer education to be a crucial element in implementing ILP. Therefore, in line with option 2 of MCI's proposed modification of our Order, we will require ICXs to advise MCS-eligible customers, clearly and unambiguously, that the particular IXC is unable to provide MCS, if such is the case. Identification of MCS-eligible customers will be accomplished using a database provided by NYNEX.

[4] With respect to option 3 of MCI's proposed modification, we accept NYNEX's evidence that resale of MCS is not technically feasible at this time and therefore we will not approve that option.

With regard to marketing safeguards and PIC changes, we affirm our decision to require NYNEX to accept PIC changes directly from customers. In the course of a call during which a PIC change is requested, NYNEX should ask customers whether they have been advised that MCS may not be provided by the alternate PIC. The discussion regarding MCS should cease if

the customer has been so advised. If not, NYNEX should provide the information concerning MCS objectively, pursuant to a scripted MCS advice dialogue. The scripted MCS advice dialogue will insure that the call has not been used as a marketing tool for NYNEX. We direct NYNEX, our Staff and other interested parties to work together to develop that language. Based upon the foregoing, it is hereby

ORDERED, that Order No. 22,281 is modified to remove the mandatory provision of MCS by IXCs; and it is

FURTHER ORDERED, that IXCs shall clearly and unambiguously advise MCS-eligible customers of the effect of presubscribing that carrier, on the customers' receipt of MCS; and it is

FURTHER ORDERED, that Staff and NYNEX, along with other interested parties, shall develop, prior to May 16, 1997, a scripted MCS advice dialogue for NYNEX employees to use.

By order of the Public Utilities Commission of New Hampshire this first day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996.

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NH.PUC*04/01/97*[97267]*82 NH PUC 312*Tioga River Water Company

[Go to End of 97267]

82 NH PUC 312

Re Tioga River Water Company

DR 96-300
Order No. 22,542

New Hampshire Public Utilities Commission

April 1, 1997

ORDER adopting settlement providing for an increase in water rates of $3,867 (57%). The utility had sought an increase of $3,964 (58%).

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1. RATES, § 595

[N.H.] Water rate design — Factors

Page 312

affecting approval of 57% rate increase — 15-year period since last rate increase — Necessity of system improvements — Flat rates and quarterly billings — Settlement. p. 313.

2. RETURN, § 115

[N.H.] Water utility — Cost of capital of 9.85% — Capital structure of 100% equity as a factor — Settlement. p. 313.

3. SERVICE, § 310

[N.H.] Meters and metering — Necessity of — Water utility — Pursuant to rate case settlement. p. 313.

4. WATER, § 12

[N.H.] Construction and equipment — Necessity of system improvements — Installation of meters — Replacement of pump station — Settlement. p. 313.

APPEARANCES: Stephen P. St. Cyr for Tioga River Water Company; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 13, 1996, Tioga River Water Company, (Petitioner or Tioga) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an increase in annual revenue of $3,964.00. This annual increase would result in an increase in permanent rates of approximately 58% to the 22 customers served by Tioga in the Town of Belmont, New Hampshire. Tioga submitted testimony and supporting documentation for the permanent rate increase.

On December 11, 1996 the Commission by Order No. 22,453 suspended the proposed increase in rates from taking effect and ordered a prehearing conference be held to address procedural matters and to seek intervention by interested parties in the permanent rate proceeding. A duly noticed prehearing conference was held at the Commission offices in Concord on January 24, 1997. The Commission received no request for intervention prior to or at the prehearing conference. Staff and the petitioner submitted a proposed procedural schedule governing the remainder of the proceeding. Commission Staff prefiled testimony of Thomas M. Scully, Douglas W. Brogan, Tracy Brocks and James L. Lenihan on February 25, 1997. On March 20, 1997 Staff and Tioga filed a Settlement Agreement (Settlement) resolving all issues in the permanent rate proceeding. A Hearings Examiner heard testimony on the settlement on March 26, 1997.

II. SETTLEMENT AGREEMENT

The Settlement details all terms agreed to between Tioga and Staff, which are summarized herein.

[1-4] Tioga and Staff agreed to: 1) cost of capital of 9.85% (for a company that is 100% equity); 2) revenue increase of $3,867; 3) rate base of $18,975; 4) rates set on a flat fee basis, issued quarterly in the arrears commencing on October 1, 1997 since the petitioner is currently on a semi-annual billing in advance schedule covering January through June and July through December; 5) an effective date of the new permanent rates on April 1, 1997 and a one time bill to be issued on July 1, 1997 for the difference between the current rates and the new permanent rate for April, May and June. The new permanent rate will increase the current annual rate of $309.00 to $484.77. The new quarterly rate will be $121.19. The bill issued on July 1, 1997 for the difference between current rates and the permanent rate for April, May and June 1997 will be $43.94; 6) Three improvements being made to the water system: (i) meters shall be installed on or before June 30, 1998, (ii) one or more-blow off valves shall be installed on or before June 30, 1998, (iii) the

existing pump station will be replaced with an above ground station before June 30, 1999; 7) mitigate rate shock to the 22 customers by recovering the Commission approved costs of the above improvements in two steps. After approval of expenses submitted by the petitioner and installation of meters and blow- offs, step 1 shall occur on October 1, 1998. A metered rate shall be submitted for approval concurrent with implementation of Step 1. After Commission approval of expenses incurred for replacement of the pumphouse, Step 2 shall occur on October 1, 1999. Revenue adjustments resulting from the step increases shall be limited to capital costs, annual depreciation and tax effect with no adjustment to O&M expenses. Tioga agrees to provide at least three months advance notice to the customers before conversion to a metered rate; 8) rate case expenses of $2,000.00 surcharged over a period of three years and will appear on the

quarterly bill in the form of a surcharge of $7.58 beginning with the October 1, 1997 billing.

III. COMMISSION ANALYSIS

We have reviewed the Hearings Examiner's report and we find that the terms and conditions in the Settlement will result in just and reasonable rates while providing Tioga an opportunity to earn a reasonable return on its investment. Although the 57% increase in annual rates is a significant amount, we do note that the current rates have been in effect since December of 1983. The Settlement also addresses future improvements to the system which we agree will promote adequate and reliable service in the future. The Settlement therefore, is in the public interest and will be approved, pursuant to RSA 378:7. The record reveals that the plant included in rate base is used and useful and the investment in that plant has been reasonably and prudently incurred.

Pursuant to the Hearings Examiner's recommendation, we will approve the Stipulation *NISI* in order to cure the problem posed by the Company's failure to properly notify customers of all of the terms and conditions of the Settlement Agreement.

Based upon the foregoing, it is hereby

ORDERED, *NISI* that the Settlement entered into between Tioga and Staff is APPROVED; and it is

FURTHER ORDERED, that Tioga notify its customers by individual letter of its intention to adjust its revenue to reflect the costs incurred in completing the system improvements at the time the petitioner files for the Step Adjustments with the Commission; and it is

FURTHER ORDERED, that Tioga submit a properly annotated tariff with the Commission within 14 days of the date of this order in accordance with N.H. Admin. Rules, Puc 1601.01(b); and it is

FURTHER ORDERED, that Tioga provide a copy of this order and the entire Settlement Agreement to all of its customers by April 8, 1997. Tioga shall cause a copy of the Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than April 8, 1997 and to be documented by affidavit filed with this office on or before April 15, 1997.

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 22, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 29, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 1, 1997, 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tioga River Water Co., DR 96-300, Order No. 22,453, 81 NH PUC 1022, Dec. 11, 1996.

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NH.PUC*04/02/97*[97268]*82 NH PUC 315*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97268]

82 NH PUC 315

Re New England Telephone and Telegraph Company dba NYNEX

DR 95-211
Order No. 22,543

New Hampshire Public Utilities Commission

April 2, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract for the provision of foreign exchange service and foreign-served integrated services digital network (ISDN) service to Quest Technologies, Inc.

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1. RATES, § 584

[N.H.] Telephone rate design — Foreign exchange service — Foreign-served integrated services digital network (ISDN) service — ISDN-specific monthly rates — As provided for by special contract — Conditional approval — Local exchange carrier. p. 315.

2. SERVICE, § 449.1

[N.H.] Telephone — Foreign exchange service — Foreign-served integrated services digital network (ISDN) service — ISDN special access — As provided for by special rate contract — Conditional approval — Local exchange carrier. p. 315.

3. RATES, § 584

[N.H.] Telephone rate design — Foreign exchange service — Foreign-served integrated

services digital network (ISDN) service — ISDN-specific monthly rates — As provided for by special contract — Propriety of unconditional approval — Separate opinion. p. 316.

4. SERVICE, § 449.1

[N.H.] Telephone — Foreign exchange service — Foreign-served integrated services digital network (ISDN) service — ISDN special access — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 316.

BY THE COMMISSION:

ORDER

On August 2, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) redacted and unredacted copies of Special Contract No. 95-07 for a New Hampshire Statewide Realtor Network with Quest Technologies, Inc. (Quest) consisting of Foreign Exchange Service and Foreign Served Integrated Services Digital Network (ISDN) Service. In support of its filing, NYNEX filed an overview of the contract, revenue/cost support and the actual contract with Quest.

The special contract was accompanied by a Motion for Proprietary Treatment to exempt the special contract and supporting materials from public disclosure. On October 3, 1995, the Commission issued Order No. 21,845 granting in part and denying in part NYNEX's motion. Except for the name of the service itself, the information redacted by NYNEX remained confidential.

In its filing, NYNEX stated that Quest received alternative network proposals from other telecommunications providers and chose the NYNEX design due to the availability of ISDN which provides Quest's end-users a higher speed of service.

[1, 2] This contract introduces a monthly and non-recurring rate for Foreign Served ISDN Service, a monthly rate for the Interoffice Channel Mileage associated with Foreign Served ISDN Service and a new monthly rate associated with the Interoffice Channel Mileage portion of Foreign Exchange Service. In addition to the contribution provided by this backbone network, additional contribution will be realized

through the sale of additional ISDN lines to end-users throughout New Hampshire and the associated data usage over these lines at filed tariff rates.

NYNEX has provided cost study details that demonstrate that the proposed rates for this service, when aggregated, exceed the relevant costs. NYNEX believes that the proposed special

contract provides benefits to the general body of ratepayers in New Hampshire by providing contribution to fixed costs. Staff reviewed the filing and identified generic issues of concern in a memo filed with the Commission on March 21, 1997. In its memo, Staff recommended that the Commission approve Special Contract No. 95-07.

We have reviewed the petition and Staff's recommendation. We find approval of the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420. Any aggrieved party should file for reconsideration pursuant to RSA 541:3.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 95-07 with Quest Technologies, 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 any revision to the commitment amounts and/or rates requires prior Commission approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed during the life of Special Contract No. 95-07, 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 Quest in Special Contract No. 95-07.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that

rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be

subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 2, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-211, Order No. 21,845, 80 NH PUC 611, Oct. 3, 1995.

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NH.PUC*04/02/97*[97269]*82 NH PUC 317*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97269]

82 NH PUC 317

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-028
Order No. 22,544

New Hampshire Public Utilities Commission

April 2, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special Centrex service contract with Sun Microsystems, Inc., inclusive of components for foreign exchange and integrated services digital network (ISDN) services provided via the Centrex system as well.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Provisions for foreign exchange and integrated services digital network services as well — Inclusion of residential Centrex service for telecommuters — Local exchange carrier — Conditional approval. p. 317.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Terms for foreign exchange and integrated services digital network services as well — Inclusion of residential Centrex service for telecommuters — Local exchange carrier — Conditional approval. p. 317.

3. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Provisions for foreign exchange and integrated services digital network services as well — Inclusion of residential Centrex service for telecommuters — Local exchange carrier — Propriety of unconditional approval — Separate opinion. p. 318.

4. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Terms for foreign exchange and integrated services digital network services as well — Inclusion of residential Centrex service for telecommuters — Local exchange carrier — Propriety of unconditional approval — Separate opinion. p. 318.

BY THE COMMISSION:

ORDER

[1, 2] On January 24, 1996, New England Telephone and Telegraph Company (Company or NYNEX), filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with Sun Microsystems, Inc. (Sun Microsystems) for Centrex Service. In support of its petition, NYNEX filed a cost study associated with the special contract. The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the contract from public disclosure. On January 23, 1996, the Commission issued Order No.

Page 317

22,015 granting NYNEX's motion for proprietary treatment.

Sun Microsystems requested NYNEX to provide integrated services digital network (ISDN) via Centrex Service in combination with Foreign Exchange Service. This service arrangement will provide Sun Microsystems' employees the ability to have local area network (LAN) connectivity while working at home. Since this service arrangement is not offered under tariff, NYNEX developed a special contract to respond to the customer's service request. NYNEX has not had any other requests, either prior to nor since Sun Microsystems' request, for residential Centrex service. NYNEX believes that a special contract is more economically efficient than filing new tariff pages for this unique service. If, in the future, demand for this service becomes more common NYNEX will file tariff pages for residential Centrex Service.

Commission Staff (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 rate provides revenue which exceeds the capital investment and expected maintenance costs. Consequently, Staff has recommended that the Commission approve Special Contract No. 96-2.

Having reviewed the petition and Staff's recommendation, the Commission finds the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of Docket 96-420. Any aggrieved party should file for reconsideration pursuant to RSA 541:3. We will also direct NYNEX to track the number of requests it receives in the future for this service.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 96-2 with Sun Microsystems 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 any revision to the commitment amounts and/or rates requires

prior Commission approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed during the life of Special Contract No. 96-2, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Sun Microsystems in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 2, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 96-028, Order No. 22,015, 81 NH PUC 91, Feb. 13, 1996.

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NH.PUC*04/02/97*[97270]*82 NH PUC 319*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97270]

82 NH PUC 319

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-035
Order No. 22,545

New Hampshire Public Utilities Commission

April 2, 1997

ORDER approving both a recently executed special rate contract and an amendment thereto as between a local exchange telephone carrier and Optima Health, Inc., for fiber distributed data interface service.

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1. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Special rate

contract and contemporaneous amendment — Coverage of shared and common costs — Conditional approval. p. 319.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Interconnection of multiple local area networks — Special rate contract and contemporaneous amendment — Conditional approval. p. 319.

3. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Special rate contract and contemporaneous amendment — Propriety of unconditional approval — Separate opinion. p. 320.

4. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Special rate contract and contemporaneous amendment — Propriety of unconditional approval — Separate opinion. p. 320.

BY THE COMMISSION:

ORDER

[1, 2] On March 4, 1997, New England Telephone, d/b/a NYNEX, filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract and amendment with Optima Health, Inc. for FDDI Service. This contract has not been previously filed, thus the contract and amendment constitute a single filing. In support of its petition, NYNEX filed the signed contract and amendment as well as a cost analysis of the proposal.

The Special Contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc 204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

FDDI is employed to link together geographically disparate high- capacity network users, such as the interconnection of multiple Local Area Networks (LAN) at various locations.

Permitting a special contract enables NYNEX to obtain revenues which contribute to shared and common costs.

The contract currently before the Commission also includes an amendment to add another Optima Health, Inc. location to the FDDI network. The costs and revenues for this location are included in the NYNEX Cost Study. Staff inquiries regarding the cost data have been appropriately answered by NYNEX. Staff agrees that Specialized Central Office Equipment is properly amortized during the life of the contract and that Outside Plant which would be reusable is correctly amortized at 63% of full cost. Maintenance Costs are properly estimated for both Central Office and Outside Plant facilities.

The Cost Study details demonstrate that the proposed rates for the FDDI service exceed the relevant costs, thus, Staff has recommended that the Commission approve this special contract.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420.

RSA 378:18-b requires that telephone special contracts become effective within 30 days of filing if certain standards are met and the public interest is served pursuant to RSA 378:18. This order, therefore, is being issued without use of our *nisi* process which would extend the effective date beyond the 30 days. Any aggrieved party should file for reconsideration pursuant to RSA 541:3.

For future filings of special contracts subject to RSA 378:18-b, NYNEX and other telephone utilities are required, contemporaneous with the filing of the special contract, to publish notice of its filing and notify the public that comment on the special contract must be submitted to the Commission within 14 days. Prior to the first special contract to be filed subject to this regulation, the telephone utility shall submit to the Executive Director a draft notice for review and approval.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with Optima Health, 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Optima Health, Inc. in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself

to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 2, 1997

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NH.PUC*04/02/97*[97271]*82 NH PUC 321*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97271]

82 NH PUC 321

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-036
Order No. 22,546

New Hampshire Public Utilities Commission

April 2, 1997

ORDER conditionally approving a proposed special rate contract as between a local exchange telephone carrier and Digital Equipment Corporation for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Factors affecting conditional approval — Modified term of contract — Customer options for early termination — Simplification of Centrex arrangement at issue — Competitive alternatives to Centrex — Local exchange carrier. p. 322.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Factors affecting conditional approval — Modified term of contract — Customer options for early termination — Simplification of Centrex arrangement at issue — Competitive alternatives to Centrex — Local exchange carrier. p. 322.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Negotiated modification of terms — Propriety of unconditional approval — Separate opinion. p. 323.

4. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Negotiated

modification of terms — Propriety of unconditional approval — Separate opinion. p. 323.

BY THE COMMISSION:

ORDER

[1, 2] On March 6, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, an amended special contract with Digital Equipment Corporation (Digital) for Centrex services (Special Contract No. 97-05). In support of its petition, NYNEX filed a brief contract overview and a cost study associated with the special contract.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the contract from public disclosure. The Motion for Confidentiality will be addressed in a separate order. The Commission will protect the information from public disclosure pending review of the request for confidential treatment.

This filing is a re-filing; amended to cure the defects of special contract (No. 97-01) between NYNEX and Digital which was denied in Order No. 22,507 (February 19, 1997). A description of the agreement is contained in that Order.

The amendment contained in this filing removes the Contoocook location and revises termination liability. NYNEX and Digital amended the contract in a manner which allows Digital to terminate the contract on 90 day notice for convenience. Should Digital exercise its option to terminate the contract, Digital shall pay NYNEX the present value of the remaining Commitment amount. The total amount paid by Digital shall be adjusted downward to reflect the re-use of NYNEX facilities placed in service for the benefit of Digital by a Competitive Local Exchange Carrier or reseller. Determination of the amounts paid by Digital will be subject to Commission approval.

The contract contains provisions for certain prices to be developed on an individual case basis if, among other things, the customer requests enhancements that become available as a result of new technology or the customer provides specialized terminal equipment. The Commission expects that NYNEX will seek approval of any change in price including a price that is developed to accommodate future customer requests due to technological advances.

The contract contemplates the treatment of End User Common Line (EUCL) charges in the event the Federal Communications Commission makes modifications to the EUCL mechanism. According to NYNEX, customers do not make a distinction between EUCL charges and monthly service charges per line. In the event EUCL charges are increased by the FCC, NYNEX has stated it will forego the additional revenue in order to maintain the contract price.

As a large purchaser of Centrex service, Digital 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 Digital under special contract allows NYNEX to respond to

competitive pressures.

Based on the information provided by NYNEX in support of this filing, Staff has recommended that the Commission approve special contract No. 97-05.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. This filing provides additional cost support to demonstrate that the revenue produced by this special contract exceeds the costs and provides contribution to NYNEX. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of Docket DR 96-420.

RSA 378:18-b requires that telephone special contracts become effective within 30 days of filing if certain standards are met and the public interest is served pursuant to RSA 378:18. This order, therefore, is being issued without use of our *nisi* process which would extend the effective date beyond the 30 days.

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Any aggrieved party should file for reconsideration pursuant to RSA 541:3.

For future filings of special contracts subject to RSA 378:18-b, NYNEX and other telephone utilities are required, contemporaneous with the filing of the special contract, to publish notice of its filing and notify the public that comment on the special contract must be submitted to the Commission within 14 days. Prior to the first special contract to be filed subject to this regulation, the telephone utility shall submit to the Executive Director a draft notice for review and approval.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 97-05, including the First Amendment to Centrex Service, with Digital Equipment Corporation 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. 97-05, 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 Digital in Special Contract No. 97-05; and it is

FURTHER ORDERED, that any price developed on an individual case basis under this contract is subject to Commission review and approval pursuant to RSA 378:18.

By order of the Public Utilities Commission of New Hampshire this second day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 2, 1997

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-019, Order No. 22,507, 82 NH PUC 77, Feb. 19, 1997.

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NH.PUC*04/07/97*[97272]*82 NH PUC 324*IntraLATA Presubscription

[Go to End of 97272]

82 NH PUC 324

Re IntraLATA Presubscription

DE 96-090
Order No. 22,547

New Hampshire Public Utilities Commission

April 7, 1997

ORDER clarifying those parts of Order No. 22,281 (81 NH PUC 624) that refer to NYNEX as being the sole designated toll carrier in the state. Commission explains that such references do not preclude other carriers from being declared a designated toll provider within their respective service areas prior to the implementation of intraLATA presubscription, the matter at issue in the underlying decision.

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1. SERVICE, § 468

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Designated toll carrier — Opportunity for more than one single such carrier — Prior to implementation of intraLATA presubscription. p. 324.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Designated toll carrier — Opportunity for more than one single such carrier — Prior to implementation of intraLATA presubscription. p. 324.

BY THE COMMISSION:

ORDER

Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission) on March 17, 1997, a Motion for Clarification of Commission Order No. 22,281 (August 16, 1996). In Order No. 22,281, the Commission established guidelines for statewide implementation intraLATA presubscription by June 2, 1997.

Union asked the Commission to clarify that when it referred to NYNEX as the designated toll carrier, it did not preclude Union from being the designated toll carrier in its service territory, as is its right under the terms of the final resolution of Docket DE 90-002. Union also asks that its amended plan for implementation of ILP and an accompanying bill insert be approved as well. There have been no objections or responses filed to Union's motion.

Union intends, prior to June 2, 1997, to become the designated toll carrier for its service territory. *See*, Docket DS 97- 056. If Union's petition to become the designated toll provider in its territory is approved, the obligations imposed on NYNEX as the designated carrier in Order No. 22,281 would apply equally to Union.

[1, 2] We concur with Union's request that the references in Order No. 22,281 to NYNEX as the designated toll provider were not meant to preclude other carriers which might be designated prior to the implementation of intraLATA presubscription. If there are other carriers serving as the designated toll provider, the Order's provisions relating to NYNEX as a designated toll provider would apply to them as well. Rather than reissue the Order, however, we will simply note in this order that one should read the references to NYNEX in its role as designated toll provider (as opposed to local exchange carrier) to apply equally to whoever is the designated toll provider at the time that intraLATA presubscription is implemented.

We will not at this time rule on Union's plan for intraLATA presubscription implementation or the accompanying bill insert as these issues will be addressed as part of DS 97-056.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996.

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NH.PUC*04/07/97*[97273]*82 NH PUC 325*Statewide Electric Utility Restructuring Plan

[Go to End of 97273]

82 NH PUC 325

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,548

New Hampshire Public Utilities Commission

April 7, 1997

ORDER staying and suspending those portions of Order No. 22,512 (82 NH PUC 101, *supra*) which have been the subject of requests for rehearing and/or clarification. Because that decision addressed proper treatment of stranded costs associated with an adopted electric industry restructuring plan, the commission finds that certain subsequent utility-specific orders must be stayed as well. Accordingly, Order No. 22,509 (82 NH PUC 80, *supra*) for Connecticut Valley Electric Company is suspended, as are Order No. 22,510 (82 NH PUC 87, *supra*) for UNITIL and Order No. 22,511 (82 NH PUC 93, *supra*) for Granite State Electric Company.

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1. PROCEDURE, § 42

[N.H.] Stay and suspension — When appropriate — As to matters that have been the subject of rehearing requests — Duration of stay — Scope of stay — Electric restructuring proceeding — Treatment of associated stranded costs. p. 326.

2. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs associated with industry restructuring — Recovery via interim charges — Stay and suspension — As to matters subject to rehearing — Further discovery limited to two particular issues. p. 326.

3. ELECTRICITY, § 1

[N.H.] Industry restructuring — Stranded cost recovery via interim charges — Stay and suspension — As to matters subject to rehearing — Further discovery limited to two particular

issues. p. 326.

4. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring — Stranded cost recovery via interim charges — Stay and suspension — As to matters subject to rehearing — Further discovery limited to two particular issues. p. 326.

BY THE COMMISSION:

ORDER

On February 28, 1997, the New Hampshire Public Utilities Commission (Commission) issued its Statewide Electric Utility Restructuring Plan (the Final Plan) (Order No. 22,514) as well as utility-specific interim stranded cost orders pursuant to the requirements of RSA 374-F. This order addresses certain threshold procedural matters raised in the motions for rehearing and/or clarification filed by various parties relative to the Final Plan and interim stranded cost orders.

The following parties filed motions for clarification or rehearing with respect to the Final Plan or interim stranded cost orders:

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Enron Capital and Trade Resources, Inc. (Enron),[1(87)]

Concord Regional Solid Waste/ Resource Recovery Cooperative, Wood-Fired QFs, New Hampshire Electric Cooperative (NHEC), the Unitil Companies (Unitil), Cabletron Systems Inc. (Cabletron), Retail Merchants Association (RMA), Public Service Company of New Hampshire (PSNH), Granite State Energy, Inc., AllEnergy Marketing Company, Granite State Hydropower Association, Connecticut Valley Electric Company (CVEC), Conservation Law Foundation (CLF), Office of Consumer Advocate (OCA), Granite State Electric Company (GSEC),[2(88)] Campaign for Ratepayer Rights (CRR) and the Governor's Office of Energy and Community.

[1-4] Consistent with the authority granted to the Commission by RSA 541:5, we hereby suspend and stay those aspects of the Final Plan (Order No. 22,514) that are the subject of the above-referenced rehearing or clarification requests so that we may thoroughly review and evaluate the issues raised in such motions. We wish to note that with regard to PSNH, we view this action as affording protections that are at least as extensive as those contained in the temporary restraining order issued by the federal court in *PSNH v. Patch, et al.*, N.H. Civil Action No. 97-97-JD, R.I. Action CA 97-121L. For the above-stated reason, we also suspend and stay the interim stranded cost orders relating to PSNH (Order No. 22,512), Unitil (Order No.

22,510), GSEC (Order No. 22,511) and CVEC (Order No. 22,509). The suspension and stay of these orders will remain in effect until two weeks following the issuance of any order concerning outstanding requests for rehearing and clarification. We emphasize that the Final Plan and interim stranded cost orders are suspended and stayed in scope only to the extent necessary to further consider the requests for clarification and/or rehearing filed in this proceeding. By so doing, we have not suspended or stayed those aspects of the Final Plan that have not been questioned or challenged, most notably the efforts of the working groups identified in Appendix B of the Final Plan.

At this time, until we have considered the motions for rehearing filed on March 31 and the responses thereto, we have identified only two issues raised by PSNH and other parties which warrant additional discovery and hearings. Those two issues are as follows:

> Whether the methodology utilized by the Commission in the Final Plan to establish PSNH's interim stranded costs charges requires PSNH, or any affiliated company, to write off any FAS 71 regulatory asset, and in turn, whether such accounting adjustment(s) violate(s) debt covenants in PSNH's credit facilities or those of any affiliate; and
>
> Whether our decision relative to the Rate Agreement in Order 22,514 repudiates an enforceable obligation of the State, which in turn may cause violations of PSNH debt covenants or those of any affiliate.

Both of the foregoing issues require us to examine the debt covenants which PSNH and its parent company claim will lead to such results. PSNH has already furnished the Commission with copies of the credit facilities which it claims will be jeopardized as a result of the Final Plan and Order No. 22,512. We request that PSNH confirm that the documents filed with the Commission on or about March 27, 1997 are complete copies of all credit facilities which are potentially implicated by the Commission's orders in this proceeding in the manner just described. *See*, RSA 365:19 and RSA 374:18. We also direct PSNH to identify the specific covenants within such documents which it claims will be violated as a result of Commission Orders 22,512 and 22,514. Finally, we direct PSNH to identify the specific assets that it will be required to write off if the Commission does not modify Order Nos. 22,512 and 22,514. PSNH is directed to make this supplemental filing by the close of business on April 14, 1997.

The following procedural schedule is hereby established to address the two issues discussed above:

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

PSNH testimony April 14,1997

Intervenor data requests	April 21, 1997
PSNH's responses	April 28, 1997
Intervenor testimony	May 5, 1997
PSNH data requests	May 12, 1997
Intervenor responses	May 19, 1997
Hearings	May 21-22, 1997

At this time, we deny Cabletron's broad request to allow the use of depositions as part of the discovery process. Parties are free to submit specific requests that detail why such discovery is justified and we will address such requests on a case by case basis. We do not intend to issue subpoenas to compel deposition testimony unless a party can establish that the Commission's standard discovery procedures are inadequate.

Based upon the foregoing, it is hereby

ORDERED, that Order Nos. 22,509, 22,510, 22,511, 22,512 and 22,514 are suspended and stayed as set forth herein; and it is

FURTHER ORDERED, that PSNH shall file with the Commission the information described in this order no later than April 14, 1997.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1997.

FOOTNOTES

[1]Enron also requested a stay of Order No. 22,512 pending the Commission's consideration of its motion. In Order 22,526 (March 19, 1997) the Commission granted Enron's rehearing request and stayed Orders No. 22,512 and 22,514 to the extent that such orders required Public Service Company of New Hampshire (PSNH) to write off FAS 71 regulatory assets. The Commission conducted a prehearing conference on March 24, 1997 in order to establish a procedural schedule and to define the scope of the Commission's inquiry relative to the issues raised by Enron.

[2]GSEC, along with CRR, CLF and the Northeast Energy Council, filed a motion for "limited suspension" of Order Nos. 22,511 and 22,514 pending the Commission's review of a "Memorandum of Understanding" entered into by those parties.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,509, 82 NH PUC 80, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,510, 82 NH PUC 87, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,511, 82 NH PUC 93, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,512, 82 NH PUC 101, 175 PUR4th 331, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, 175 PUR4th 193, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,526, 82 NH PUC 280, Mar. 19, 1997.

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NH.PUC*04/07/97*[97274]*82 NH PUC 327*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97274]

82 NH PUC 327

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-073
Order No. 22,549

New Hampshire Public Utilities Commission

April 7, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special Centrex service contract with a municipality, City of Manchester.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements —

Page 327

Between local telephone carrier and municipality — Mix of analog and integrated services digital network lines — Conditional approval. p. 328.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and municipality — Pricing concessions to meet competitive pressures — For limited usage only — Unlimited usage available only through tariffed rates — Conditional approval. p. 328.

3. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and municipality — Mix of analog and integrated services digital network lines — Propriety of unconditional approval — Separate opinion. p. 329.

4. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and municipality — Pricing concessions to meet competitive pressures — Limited versus unlimited usage — Propriety of unconditional approval — Separate opinion. p. 329.

BY THE COMMISSION:

ORDER

On March 14, 1996, the Petitioner, New England Telephone and Telegraph Company d/b/a NYNEX (NYNEX) filed a request for approval of a special contract between NYNEX and the City of Manchester for Centrex Service, to take effect from the date of execution or of Commission approval, whichever is later. The proposed contract would replace NYNEX's current contract with the City of Manchester for Centrex Service which expires in 1997. In support of its petition, NYNEX included cost analysis and billing collection details in its filing. Concurrent with its filing, NYNEX filed a Motion for Proprietary Treatment to exempt certain data in the cost study and various information in the contract from public disclosure. On June 4, 1996, the Commission issued Order No. 22,182 granting NYNEX's Motion for Confidential Treatment for the cost section of the contract's supporting material.

[1, 2] The special contract reflects a price concession necessary to compete against local access providers. Under this contract, NYNEX will provide 421 analog and ISDN lines. A two element price structure includes a Commitment Amount and Monthly Service Rate which provide exchange access and system features. Unlimited usage is not included but is available at Tariff rates.

Commission Staff (Staff) has reviewed this special contract and the material filed in support of the petition. NYNEX has provided an analysis of the costs, revenues, and opportunity cost associated with this contract which demonstrates that the proposed rates provide revenue which exceeds the capital investment and expected maintenance costs. Staff recommends that the

Commission approve NYNEX's Special Contract No. 96-5 based upon analysis of the filing and numerous discussions with NYNEX.

Having reviewed the petition and Staff's recommendation, the Commission finds the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of Docket DE 96-420. Any aggrieved party should file for reconsideration pursuant to RSA 541:3. Finally, NYNEX should also be aware that the Commission, because of certain provisions in the 1996 Telecommunications Act, may revisit the pending confidentiality order.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 96-5 with the City of Manchester 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 any revision to the commitment amounts and/or rates, including the development of rates and charges for additional lines in the case of insufficient existing facilities, requires prior Commission approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed during the life of Special Contract No. 96-5, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded the City of Manchester in the special contract.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market

and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 7, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 96-073, Order No. 22,182, 81 NH PUC 438, June 4, 1996.

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NH.PUC*04/07/97*[97275]*82 NH PUC 330*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97275]

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-037
Order No. 22,550

New Hampshire Public Utilities Commission

April 7, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract for the provision of integrated services digital network (ISDN) primary service to Cabletron Systems Inc.

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1. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special contract — Conditional approval — Local exchange carrier. p. 330.

2. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Conditional approval — Local exchange carrier. p. 330.

3. RATES, § 649

[N.H.] Procedure — Publication and notice — Special rate contract proposals — Local exchange carrier. p. 331.

4. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 331.

5. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors —

As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 331.

BY THE COMMISSION:

ORDER

[1, 2] On March 7, 1997, New England Telephone and Telegraph d/b/a NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a Special Contract (Contract) with Cabletron Systems Inc. for ISDN Primary Service. In support of its petition, NYNEX filed a cost analysis of the proposal. The five year contract currently before the Commission proposes to utilize all rates and charges for ISDN Primary Service as per NHPUC-77 Part M, Section 3, with the exception of the monthly recurring rate for the port.

The port charges for all service provided under the Special Contract will be dependent on the number of months the port remains in service as follows:

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

 0 to 35 months  =  Full Tariff Rate
36 to 59 months  =  90% of Tariff Rate
      60 months  =  80% of Tariff Rate
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Termination liability is simply reflected in the higher per month rate for less than 5 year service as shown above.

The cost of providing the ISDN primary port is below the 80% of tariff level rate

provided for by this Contract and is supported in the original tariff filing docket number DR 93-209.

The Cost Data demonstrates that the proposed rates for the ISDN service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

RSA 378:18-b requires that telephone special contracts become effective within 30 days of filing if certain standards are met and the public interest is served pursuant to RSA 378:18. This order, therefore, is being issued without use of our *nisi* process which would extend the effective date beyond the 30 days. Any aggrieved party should file for reconsideration pursuant to RSA 541:3.

[3] For future filings of special contracts subject to RSA 378:18-b, NYNEX and other telephone utilities are required, contemporaneous with the filing of the special contract, to publish notice of its filing and notify the public that comment on the special contract must be submitted to the Commission within 14 days. Prior to the first special contract to be filed subject to this regulation, the telephone utility shall submit to the Executive Director a draft notice for review and approval.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with Cabletron System's 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Cabletron Systems Inc. in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[4, 5] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that

rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad

issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 7, 1997

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NH.PUC*04/08/97*[97276]*82 NH PUC 332*Hampstead Area Water Company, Inc.

[Go to End of 97276]

82 NH PUC 332

Re Hampstead Area Water Company, Inc.

DE 96-201
Order No. 22,551

New Hampshire Public Utilities Commission

April 8, 1997

ORDER authorizing a water utility to extend service into a previously unfranchised area of the Town of Sandown, so as to provide service to a new residential development being constructed

by the utility's parent company.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Into township — Factors affecting approval — Municipal consent — Previously unfranchised and unserved area. p. 333.

2. FRANCHISES, § 53

[N.H.] Amendment — Expansion of franchise area — Into previously unfranchised and unserved area — New residential development — Water utility. p. 333.

3. RATES, § 595

[N.H.] Water rate design — Quarterly fixed charge — Separate usage charge — For customers in newly expanded franchise area — Publication and notice requirements. p. 333.

BY THE COMMISSION:

ORDER

The Petitioner, Hampstead Area Water Company, Inc. (Hampstead), on June 20, 1996, filed a petition to expand its franchise area for the purpose of providing water service to a limited area in the Town of Sandown, New Hampshire and implicitly to establish rates therefor pursuant to RSA Chapter 378. The area in question is a residential development called "Stoneford," and consists of seventy-five single family homes. This development is restricted from further expansion.

RSA 374:22 and RSA 374:26 provide that the Commission shall not issue a franchise unless it would be for the public good. The public good standard requires the petitioning utility to demonstrate, *inter alia*, the legal, technical, managerial and financial expertise to operate a public water utility. *See e.g., Re Pennichuck Water Works, Inc.*, 73 NH PUC 279 (1988).

The parent company of Hampstead, Lewis Builders Development, Inc. (Lewis), currently operates four water utilities in addition to Hampstead. Prior audits and detailed reviews of the annual reports of these companies have revealed no major problems. There is no reason to believe that the Stoneford division will not be operated in a similar manner.

The Town of Sandown has submitted a letter to this Commission stating that it had been notified of Hampstead's intent to franchise the Stoneford development. Consumers New Hampshire Water Company "sees no adverse impact from this expansion in the operation of our Beaver Hollow system located near the proposed expansion site in Sandown"[1(89)] and would in fact encourage the granting of this expansion.

In addition, RSA 374:22, III specifically requires the approval of the Department of Environmental Services (DES) concerning the suitability and availability of water. DES has attested that the water supply meets statutory standards for quantity and quality. The Department also stated, in its sanitary survey dated December 15, 1995 that there were "no significant deficiencies"[2(90)] and made special note of the operational proficiency demonstrated at Stoneford.

Hampstead originally proposed the following rates: a quarterly charge of $12.84 and a usage charge of $3.74 per hundred cubic feet. This was based on a rate base of $90,087, O&M expenses of $13,116, and a rate of return of 8.5%. If approved, the customers would be charged a fixed quarterly charge of $13.15 and a usage charge of $3.78 per hundred cubic feet. Assuming an average consumption of 1,850 cubic feet per quarter, the typical customer's quarterly bill would be approximately $83.08.

[1-3] Based on our review of the facts as set forth above, we find that the granting of authority to operate in the proposed franchise area is in the public good. In light of the support by the Town of Sandown, Consumers New Hampshire Water Company and DES, we shall approve the franchise expansion without a hearing. *See*, RSA 374:26. However, inasmuch as the petition seeks authority to charge rates to customers who have heretofore not paid for water service, we believe it is appropriate to notify them and to schedule a rate hearing. *See*, RSAs 374:27 and 374:28.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Hampstead is granted permission pursuant to RSA 374:22 and 26 to extend its franchise area in a portion of the Town of Sandown described as follows: Beginning at a point 100' westerly from the intersection of Route 121A (North Main St.) and Fremont Road in the Town of Sandown, NH. Thence: Northerly, parallel to and 100´ westerly of NH Route 121A to a point 100´ westerly of the intersection of Sargeant Road and Route 121A. Thence: Easterly, parallel to and 100´ northerly of Sargeant Road to a point 100´ northerly of the intersection of Phillips Road and Sargeant Road. Thence: Southerly parallel to and 100´ easterly of Phillips Road to a point 100´ easterly of the intersection of Phillips Road and Fremont Road. Thence: Southerly, parallel to and 100´ easterly of Fremont Road to the point of beginning; and it is

FURTHER ORDERED, that the Petitioner shall serve a copy of this Order *Nisi* on the Sandown Town Clerk and the customers of Stoneford by first class mail, and 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 April 15, 1997 and to be documented by affidavit filed with this office on or before April 22, 1997; 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 the franchise issue no later than April 29, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 6, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 8, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that a Hearing on rates be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on May 7, 1997 at 10:00 a.m.; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the rate proceeding shall submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to Hampstead and the Office of the Consumer Advocate on or before May 2, 1997, 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 make said Objection on or before May 7, 1997.

By order of the Public Utilities

Commission of New Hampshire this eighth day of April, 1997.

FOOTNOTES

[1]Per letter dated January 24, 1996 from Marco P. Philippon, Consumers New Hampshire Water Company's Engineering Coordinator, to Lewis Builders Development, Inc.

[2]The DES letter did point out two minor deficiencies which were to be corrected by January 1, 1997. These were a capped filler pipe to accommodate water delivery by tank truck and permanently installed air tubes or other provisions for determining the static and draw down water levels. Since Staff's site visit in January, DES has extended the date for compliance to January 1, 2007 for all water companies.

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NH.PUC*04/14/97*[97277]*82 NH PUC 334*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97277]

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-022
Order No. 22,552

New Hampshire Public Utilities Commission

April 14, 1997

ORDER granting protective treatment of certain customer-specific usage and cost information contained in an approved special rate contract between a local exchange telephone carrier and Citizen's Trust Company for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Service via special rate contract — Protective treatment of customer-specific usage data contained therein — Local exchange carrier. p. 335.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific usage and cost data — As cited in a special rate contract — Benefits of nondisclosure as outweighing those of disclosure — Centrex service — Local exchange telephone carrier. p. 335.

BY THE COMMISSION:

ORDER

On February 14, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (d/b/a NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract between NYNEX and Citizen's Trust Company (Citizen's Trust). Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Citizen's Trust as well as information NYNEX asserts is commercially and competitively sensitive. The Commission approved the special contract in Order No. 22,521 (March 18, 1997).

NYNEX states that portions of the special contract contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and § 222 of

the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs and contract terms, including the term of years. Relevant rates and charges are not, however, protected from disclosure.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)a.2.

[1, 2] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, the Commission recognizes the need for NYNEX to maintain protection over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure in all but one instance.

We do not find it appropriate to maintain the confidentiality of the term of years of the special contract. This decision is consistent with our treatment of electric special contracts, our interpretation of RSA 91-A and the purposes of the Telecommunications Act of 1996. Notably, section 251(c)(4)(A) creates a duty on incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In order to facilitate that resale requirement and promote a competitive market for telecommunications services overall, we believe the term of years should no longer be protected. We will, therefore, exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 the information requested by NYNEX with the exception of the term of years and direct NYNEX to submit a redacted version that makes the term of years public.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-022, Order No. 22,521, 82 NH PUC 274, Mar. 18, 1997.

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NH.PUC*04/14/97*[97278]*82 NH PUC 335*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97278]

82 NH PUC 335

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-023
Order No. 22,553

New Hampshire Public Utilities Commission

April 14, 1997

ORDER granting protective treatment of certain customer-specific usage and cost information contained in an approved special rate contract between a local exchange telephone carrier and Bank of New Hampshire for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Service via special rate contract — Protective treatment of customer-specific usage data contained therein — Local exchange carrier. p. 336.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific usage and cost data — As cited in a special rate contract — Benefits of

nondisclosure as outweighing those of disclosure — Centrex service — Local exchange telephone carrier. p. 336.

BY THE COMMISSION:

ORDER

On February 14, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (d/b/a NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract between NYNEX and Bank of New Hampshire (BNH). Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving BNH as well as information NYNEX asserts is commercially and competitively sensitive. The Commission approved the special contract in Order No. 22,522 (March 18, 1997).

NYNEX states that portions of the special contract contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and § 222 of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs and contract terms, including the term of years. Relevant rates and charges are not, however, protected from disclosure.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)a.2.

[1, 2] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, the Commission recognizes the need for NYNEX to maintain protection over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure in all but one instance.

We do not find it appropriate to maintain the confidentiality of the term of years of the special contract. This decision is consistent with our treatment of electric special contracts, our

interpretation of RSA 91-A and the purposes of the Telecommunications Act of 1996. Notably, section 251(c)(4)(A) creates a duty on incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In order to facilitate that resale requirement and promote a competitive market for telecommunications services overall, we believe the term of years should no longer be protected. We will, therefore, exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 the information requested by NYNEX with the exception of the term of years and direct NYNEX to submit a redacted version that makes the term of years public.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-023, Order No. 22,522, 82 NH PUC 275, Mar. 18, 1997.

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NH.PUC*04/14/97*[97279]*82 NH PUC 337*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97279]

82 NH PUC 337

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-035
Order No. 22,554

New Hampshire Public Utilities Commission

April 14, 1997

ORDER granting protective treatment of certain customer-specific usage and cost information contained in an approved special rate contract between a local exchange telephone carrier and Optima Health, Inc., for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Service via special rate contract — Protective treatment of customer- specific usage data contained therein — Local exchange carrier. p. 337.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific usage and cost data — As cited in a special rate contract — Benefits of nondisclosure as outweighing those of disclosure — Centrex service — Local exchange telephone carrier. p. 337.

BY THE COMMISSION:

ORDER

On March 4, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (d/b/a NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract between NYNEX and Optima Health, Inc. (Optima). Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Optima as well as information NYNEX asserts is commercially and competitively sensitive. The Commission approved the special contract in Order No. 22,545 (April 2, 1997).

NYNEX states that portions of the special contract contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and § 222 of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the

exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs and contract terms, including the term of years. Relevant rates and charges are not, however, protected from disclosure.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)a.2.

[1, 2] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission

Page 337

approval for similar contracts, the Commission recognizes the need for NYNEX to maintain protection over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure in all but one instance.

We do not find it appropriate to maintain the confidentiality of the term of years of the special contract. This decision is consistent with our treatment of electric special contracts, our interpretation of RSA 91-A and the purposes of the Telecommunications Act of 1996. Notably, section 251(c)(4)(A) creates a duty on incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In order to facilitate that resale requirement and promote a competitive market for telecommunications services overall, we believe the term of years should no longer be protected. We will, therefore, exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 the information requested by NYNEX with the exception of the term of years and direct NYNEX to submit a redacted version that makes the term of years public.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*04/15/97*[97280]*82 NH PUC 338*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97280]

82 NH PUC 338

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-036
Order No. 22,555

New Hampshire Public Utilities Commission

April 15, 1997

ORDER granting protective treatment of certain customer-specific usage and cost information contained in an approved special rate contract between a local exchange telephone carrier and Digital Equipment Corporation for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Service via special rate contract — Protective treatment of customer- specific usage data contained therein — Local exchange carrier. p. 339.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific usage and cost data — As cited in a special rate contract — Benefits of nondisclosure as outweighing those of disclosure — Centrex service — Local exchange telephone carrier. p. 339.

BY THE COMMISSION:

ORDER

On March 6, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (d/b/a NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract between NYNEX and Digital Equipment Corp. (Digital). Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Digital as well as information NYNEX asserts is commercially and competitively sensitive. The Commission approved the special contract in Order No. 22,546 (April 2, 1997).

NYNEX states that portions of the special contract contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and § 222 of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs and contract terms, including the term of years. Relevant rates and charges are not, however, protected from disclosure.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)a.2.

[1, 2] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, the Commission recognizes the need for NYNEX to maintain protection over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure in all but one instance.

We do not find it appropriate to maintain the confidentiality of the term of years of the special contract. This decision is consistent with our treatment of electric special contracts, our interpretation of RSA 91-A and the purposes of the Telecommunications Act of 1996. Notably, section 251(c)(4)(A) creates a duty on incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In order to facilitate that resale requirement and

promote a competitive market for telecommunications services overall, we believe the term of years should no longer be protected. We will, therefore, exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 the information requested by NYNEX with the exception of the term of years and direct NYNEX to submit a redacted version that makes the term of years public.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co., DR

Page 339

97-036, Order No. 22,546, 82 NH PUC 321, Apr. 2, 1997.

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NH.PUC*04/15/97*[97281]*82 NH PUC 340*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97281]

82 NH PUC 340

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-055
Order No. 22,556

New Hampshire Public Utilities Commission

April 15, 1997

ORDER granting protective treatment of certain customer-specific usage and cost information contained in an approved special rate contract between a local exchange telephone carrier and CFX Bank for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Service via special rate contract — Protective treatment of customer-specific usage data contained therein — Local exchange carrier. p. 340.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer-specific usage and cost data — As cited in a special rate contract — Benefits of nondisclosure as outweighing those of disclosure — Centrex service — Local exchange telephone carrier. p. 340.

BY THE COMMISSION:

ORDER

On March 20, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (d/b/a NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a request for approval of a special contract between NYNEX and CFX Bank. Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving CFX Bank as well as information NYNEX asserts is commercially and competitively sensitive. The Commission is approving the special contract on this date.

NYNEX states that portions of the special contract contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and § 222 of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs and contract terms, including the term of years. Relevant rates and charges are not, however, protected from disclosure.

NYNEX also states that it regularly seeks to prevent dissemination of confidential

information, as required by Puc 204.08(b)(4)a.2.

[1, 2] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, the Commission recognizes the need for NYNEX to maintain protection over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case

outweigh the benefits to the public of disclosure in all but one instance.

We do not find it appropriate to maintain the confidentiality of the term of years of the special contract. This decision is consistent with our treatment of electric special contracts, our interpretation of RSA 91-A and the purposes of the Telecommunications Act of 1996. Notably, section 251(c)(4)(A) creates a duty on incumbent local exchange carriers to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In order to facilitate that resale requirement and promote a competitive market for telecommunications services overall, we believe the term of years should no longer be protected. We will, therefore, exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 the information requested by NYNEX with the exception of the term of years and direct NYNEX to submit a redacted version that makes the term of years public.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1997.

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NH.PUC*04/15/97*[97282]*82 NH PUC 341*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97282]

82 NH PUC 341

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-055
Order No. 22,557

New Hampshire Public Utilities Commission

April 15, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special Centrex service contract with a bank, CFX Bank.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and bank — Mix of analog and integrated services digital network lines — Conditional approval. p. 341.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and bank — Pricing terms for additional lines at other locations — Conditional approval. p. 341.

3. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and bank — Mix of analog and integrated services digital network lines — Propriety of unconditional approval — Separate opinion. p. 342.

4. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and bank — Pricing terms for additional lines at other locations — Propriety of unconditional approval — Separate opinion. p. 342.

BY THE COMMISSION:

ORDER

[1, 2] On March 20, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA

378:18, a Special Contract (Contract) with CFX Bank for Centrex Services. In support of its petition, NYNEX filed a contract overview and a cost study associated with the Special Contract.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the contract from public disclosure. The Motion for Confidentiality will be addressed in a separate order. The Commission, pursuant to Puc 204.07(b), will protect the information from public disclosure pending review of the request for confidential treatment.

The initial Centrex Service provides a mix of analog and ISDN (Integrated Services Digital Network) lines to five CFX locations in Keene, New Hampshire. Provisions in the Special Contract provide for additional services to be added at other CFX locations in New Hampshire on a price-per-line basis. Termination of the Contract by CFX, prior to the end of the term, requires it to pay the present value of any outstanding payments.

The Centrex Service provided by this Special Contract was a competitive alternative to Private Branch Exchange (PBX) Service and approval of this contract would allow NYNEX to respond to the competitive market. The Cost Data demonstrates also that the proposed rates for Centrex Service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

RSA 378:18-b requires that telephone special contracts become effective within 30 days of filing if certain standards are met and the public interest is served pursuant to RSA 378:18. This order, therefore, is being issued without use of our *nisi* process which would extend the effective date beyond the 30 days. Any aggrieved party should file for reconsideration pursuant to RSA 541:3.

For future filings of special contracts subject to RSA 378:18-b, NYNEX and other telephone utilities are required, contemporaneous with the filing of the special contract, to publish notice of its filing and notify the public that comment on the special contract must be submitted to the Commission within 14 days. Prior to the first special contract to be filed subject to this regulation, the telephone utility shall submit to the Executive Director a draft notice for review and approval.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with CFX Bank 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded CFX Bank in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may

arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would

not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

April 15, 1997

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NH.PUC*04/15/97*[97283]*82 NH PUC 343*Hampton Water Works Company

[Go to End of 97283]

82 NH PUC 343

Re Hampton Water Works Company

DE 95-238
Order No. 22,558

New Hampshire Public Utilities Commission

April 15, 1997

ORDER determining that the commission has authority to exempt a water utility from municipally enacted groundwater protection ordinances. Accordingly, a procedural schedule is adopted for proceeding with consideration of a water utility's proposal for development of a new well facility, which otherwise would have been prohibited under the terms of an ordinance passed by the Town of Stratham.

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1. WATER, § 7

[N.H.] Commission jurisdiction — As to groundwater protection ordinances — Power to grant exemptions from — Public convenience and necessity as being of overriding interest. p. 345.

2. ORDINANCES, § 2

[N.H.] Jurisdiction and powers — Commission versus local authorities — As to groundwater protection ordinances — Commission power to grant exemptions from municipally enacted ordinances. p. 345.

3. MUNICIPALITIES, § 12

[N.H.] Powers and duties — Ordinances — Basis for promulgating authority — Statutory limits — Commission power to grant exemptions from municipally enacted ordinances — As to groundwater protection ordinances. p. 345.

4. ZONING

[N.H.] Planning and zoning activities —

Page 343

Associated ordinances — Jurisdiction — Commission versus local authorities — Commission power to grant exemptions from municipally enacted ordinances — As to groundwater protection ordinances. p. 345.

5. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Proposal for new well construction — Procedural schedule for considering — Issues to be addressed — Groundwater protection ordinances. p. 347.

APPEARANCES: Ransmeier and Spellman by Timothy E. Britain, Esq. and John T. Alexander, Esq. for Hampton Water Works Company; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for the Town of Stratham; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

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 pursuant to RSA 374:22 and 26. The facilities in dispute are in a gravel packed production well with customary appurtenances and transmission mains. Pursuant to RSA 674:30, Hampton also requested an order from the Commission exempting it from any municipal zoning ordinances that might prohibit the development of the well.

On August 31, 1995, the Town of Stratham (Stratham or the Town) filed a motion to intervene and opposed the petition because Hampton had neither submitted to site plan approval nor requested a special exception pursuant to Stratham's Site Plan Review Regulations and Zoning Ordinance. Subsequently, Stratham challenged the Commission's authority under RSA 674:30 to grant Hampton an exemption from this ordinance, which was developed to protect Hampton's aquifer.

The Office of Consumer Advocate is a statutorily authorized intervenor but did not participate. There were no other intervenors.

A prehearing conference was held on October 4, 1995. On October 17, 1995, the Commission issued Order No. 21,869 establishing a procedural schedule that directed the filing of legal memoranda on the issue of Commission authority under RSA 674:30 in this proceeding.

As ordered by the Commission, on October 25, 1995 Hampton and Stratham filed briefs on the issue of Commission jurisdiction to exempt Hampton from the zoning ordinance. On November 9, 1995, Hampton and Stratham filed rebuttal briefs. Before ruling on the issue of jurisdiction, the Commission requested that Hampton and the Town pursue alternative dispute resolution. The parties consented and the first mediation session was held on December 1, 1995, with numerous sessions thereafter.

In May of 1996, the parties informed the mediator that an understanding had been reached and that further sessions were unnecessary. On January 10, 1997, Hampton notified the Commission that pursuant to mediation it had submitted an application for site plan review of the production well to the Stratham Planning Board but that the Board had attached certain conditions that Hampton found unacceptable. Consequently, Hampton seeks authority to continue development of the well in Stratham and asks the Commission to "exercise its authority pursuant to RSA 674:30 to exempt Hampton from any local zoning regulations which may delay or prohibit development of the well." A prehearing conference was held on March 12, 1997 to hear argument on the issue of Commission jurisdiction, and to establish a new procedural schedule should the Commission find it had jurisdiction. At that hearing, we ruled that the Commission had jurisdiction under RSA 674:30 to exempt Hampton from

any zoning ordinance enacted by Stratham to protect an aquifer located within its municipal boundaries. This order memorializes that decision.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Town of Stratham*

Stratham contends that RSA 674:30 does not apply to its groundwater protection ordinance. Therefore, Stratham concludes that the Commission lacks jurisdiction to exempt Hampton from the provisions of the ordinance.

Stratham argues that its aquifer or groundwater protection ordinance was adopted pursuant to RSA Chapter 485-C and RSA 4- C:19-23. It further argues that these statutory provisions express the General Court's intent to place the role of groundwater protection in the hands of the State's municipalities.

Thus, according to Stratham, because RSA 674:30 only provides the Commission with the authority to exempt utility structures from municipal ordinances adopted pursuant to Title LXIV, entitled Planning and Zoning, and because neither RSA Chapters 485-C nor 4-C are found in Title LXIV, the Commission does not have the authority to override local ground water protection ordinances.

B. *Hampton Water Works*

Hampton contends that the Commission has jurisdiction to exempt it from Stratham's groundwater protection ordinance pursuant to RSA 674:30. Hampton argues that Stratham's groundwater protection ordinance was not, and could not be, enacted pursuant to RSA Chapter 485-C and RSA 4-C:19-23 because these statutory provisions do not contain independent enabling language providing for the adoption of municipal ordinances. Rather, Hampton maintains that the ordinance was adopted pursuant to RSA chapter 674.

In support of this position, Hampton points to the ordinance itself which states that it is adopted pursuant to RSA 674:16-21. Citing RSA 4-C:20 and 22, Hampton further notes that any municipal authority to protect groundwater contained in RSA 4-C must be implemented pursuant to RSA 674:2. Thus, because Chapter 674 is found in Title LXIV, Hampton concludes that RSA 674:30 is applicable to the Town's zoning ordinance.

C. *Staff*

Staff concurred with Hampton that Stratham's groundwater protection ordinance was adopted pursuant to RSA Chapter 674 and, therefore, the Commission has the authority under 674:30 to exempt Hampton from the provisions of the ordinance.

III. COMMISSION ANALYSIS

[1-4] The threshold issue for our consideration is whether the Commission has authority to exempt Hampton from the provisions of Stratham's groundwater protection ordinance. Thus, we do not reach the merits of Hampton's request for an exemption from the provisions of that

ordinance at this juncture.

Based on an analysis of the applicable law, set forth below, we conclude that the groundwater protection ordinance at issue was adopted pursuant to RSA Chapter 674 and a utility structure may be exempted from its provisions if we find such an exemption to be necessary for the convenience and welfare of the public.

As noted by Stratham, the Commission's authority or jurisdiction is limited to that which has been delegated to it by the Legislature. *See e.g. Appeal of Public Service Company of New Hampshire*, 130 N.H. 285, 291 (1988). Thus, the Commission's authority to exempt Hampton from the provisions of Stratham's groundwater protection ordinance is limited to that authority expressly granted or fairly implied from the provisions of RSA 674:30.

RSA 674:30 provides, in pertinent part, that

> [l]ocal ordinances, codes, and regulations enacted pursuant to this title shall apply to public utility structures, provided, however, that: ... [a] public utility which uses or proposes to use a structure ... and has been

> denied a waiver [from enforcement of a local ordinance], or has been granted a waiver with conditions unacceptable to the utility ... may petition the public utilities commission to be exempted from this title ... .

Thus, the Commission's authority to exempt utilities from local ordinances is limited to those municipal ordinances enacted under the "title" in which RSA 674:30 is found. As we noted above, RSA 674:30 is found in Title LXIV, Planning and Zoning, which includes RSA Chapters 672-677. Therefore, the Commission's decision in this matter turns on the statutory authority that enabled Stratham to enact its groundwater protection ordinance.

As noted by Hampton, municipalities in this State have only those powers granted to them by the Legislature. *See e.g. Public Service Co. v. Town of Hampton*, 120 N.H. 68, 71 (1980). Although Stratham contends that its groundwater protection ordinance was promulgated pursuant to RSA Chapter 485-C and RSA 4-C:19-23, we cannot agree with this contention. Neither of these statutory provisions provides the Town with the authority to enact local legislation. In fact, RSA 4-C:20 and RSA 4-C:22 specifically rely on the statutory authority contained in RSA Chapter 674 to enact local zoning ordinances to effectuate their legislative purposes.

We find RSA Chapter 485-C inapplicable to the structure at issue herein and, assuming *arguendo* that it was applicable to this well, we find the Chapter contains no independent legislative authority for the enactment of municipal ordinances.

RSA 485-C, entitled the Groundwater Protection Act, was adopted by the General Court to identify and ensure "the careful management of operations or activities which may cause

contamination of groundwater if not properly conducted." RSA 485- C:1, II. To effectuate this goal the Legislature required the Department of Environmental Services' Water Supply and Pollution Control Division (Division) to, *inter alia*, "assist local ... entities in the development and administration of local wellhead protection programs, including delineation of wellhead protection areas and the inventory and management of activities which have a potential effect on groundwater quality." RSA 485- C:3, II.

The Chapter provides that local wellhead protection programs may be created under RSA 4-C:19. See, RSA 485-C:3, III. RSA 4-C:19 provides for the use of municipal "land use regulations" to develop programs for water protection. Thus, RSA 485-C does not provide independent statutory authority to adopt municipal ordinances for groundwater protection but instead relies on the authority contained in RSA 4-C:19.

This analysis is further supported by the fact that RSA 485-C:16 (Supp. 1996) gives local health officers and the Department of Environmental Services concurrent jurisdiction to issue cease and desist orders in the event of "any violation of this chapter or rule adopted under this chapter ... " RSA 485-C:16, I. The failure of the Legislature to provide for similar enforcement for municipal ordinances leads us to conclude there is no independent authorization for municipal ordinances under Chapter 485-C.

Furthermore, it is a fundamental tenet of statutory construction that statutory provisions must be read in the context of the entire statutory scheme and not in isolation, *See, e.g., Roberts v. General Motors Corporation*, 138 N.H. 532, 536, (1994), and that statutory provisions are not to be interpreted in such a manner as to yield an illogical or absurd result. *See, e.g., Rix v. Kinderworks Corporation*, 136 N.H. 548, 551 (1992).

RSA 485-C was adopted by the Legislature to preserve the integrity of groundwater "in order that groundwater may be used for drinking water supply." 485-C:1, I (Supp. 1996). If we were to accept the reasoning of the Town, we would be obliged to conclude that the installation of a production well would violate these legislative goals. We cannot reach such a conclusion because it would render the statutory scheme illogical leading to the absurd result that accessing an aquifer for drinking water would threaten its value as a source of drinking water.

Having reached the conclusion that Stratham's aquifer or groundwater protection ordinance was by necessity adopted pursuant to

RSA Chapter 674, a conclusion supported by Stratham's own language used in adopting its ordinance, we find that the Commission has the authority to exempt Hampton from the provisions of the ordinance.

[5] This conclusion does not, however, mean that we will disregard the concerns of the local municipality, should Hampton establish that the well is necessary for the convenience and welfare of the public. We are aware of the substantial concerns of the Town of Stratham relative to the construction of this well and note our authority to attach conditions to any exemption

granted under RSA 674:30. *See Appeal of Milford Water Works,* 126 N.H. 127 (1985). We further note that the conditions placed upon construction of the well by the Commission in the *Milford* decision are consistent with the conditions placed on the construction of this well by Stratham's planning board.

We will approve the procedural schedule developed by the parties and Staff to govern the remainder of the proceeding. That schedule provides as follows:

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

Testimony of Hampton	April 7, 1997
Data Requests to Hampton	April 14, 1997
Data Responses from Hampton	April 28, 1997
Stratham and Staff Testimony	May 12, 1997
Data Requests to Stratham and Staff	May 19, 1997
Data Responses from Stratham and Staff	June 2, 1997
Rebuttal Testimony	June 6, 1997
Hearing on the Merits	June 10-11, 1997

Given the inability of the parties to resolve their differences, we are not confident that a settlement can be reached prior to the hearing. We encourage the parties and Staff, however, after review of the testimony, to consider areas for settlement. If agreement can be reached on some or all issues, it should be filed with the Commission no later than 12 noon on Monday, June 9, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the New Hampshire Public Utilities Commission has jurisdiction under RSA 674:30 to exempt Hampton Water Works from the provisions of Section XIII of the Town of Stratham's zoning ordinance entitled "Aquifer Protection District"; and it is

FURTHER ORDERED, that the "Water Resource Management and Protection Plan" contained in the Master Plan of the Town of Stratham is effectuated through Section XIII of the Town of Stratham's zoning ordinances and, therefore, a specific exemption from the provisions of the Master Plan is unnecessary.

FURTHER ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampton Water Works Co., DE 95-238, Order No. 21,869, 80 NH PUC 655, Oct. 17, 1995.

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NH.PUC*04/15/97*[97284]*82 NH PUC 347*Pennichuck Water Works, Inc.

[Go to End of 97284]

82 NH PUC 347

Re Pennichuck Water Works, Inc.

DF 97-051
Order No. 22,559

New Hampshire Public Utilities Commission

April 15, 1997

ORDER authorizing a water utility to issue and sell up to $4 million in unsecured debt, so as to finance construction of several capital projects.

Page 347

1. SECURITY ISSUES, § 58

[N.H.] Purposes of capitalization — Additions and betterments — Construction of water storage facility — Replacement of distribution mains — Water utility. p. 348.

BY THE COMMISSION:

ORDER

[1] On March 17, 1997, Pennichuck Water Works, Inc. (Pennichuck or the Company) filed a petition seeking authorization to issue debt securities in the amount of $4,000,000. The Company subsequently updated its filing on April 4 with the final terms and conditions of the proposed issuance.

The Company engaged Dorfman Securities, Inc. to assist it with private placement of an unsecured, tax-exempt bond (the Bond). A tax-exempt bond issue would incur a lower interest rate than would normally be incurred with a taxable issue. This Bond is to be issued through the New Hampshire Business Finance Authority (the Authority), which provided its approval for an issuance of up to $4,500,000. Final approval to issue the Bond through the Authority was received by Pennichuck upon action of the Governor and Executive Council on April 2, 1997.

The Company intends to use the proceeds of the Bond for a number of planned capital expenditures in 1997 and 1998. The most significant of these projects, scheduled for this year, is the construction of a 6.6 million gallon water storage facility in the southern area of Nashua, expected to cost approximately $2,200,000. This tank will supplement an existing 5 million gallon tank and will provide for the minimum on-line storage capacity needed for the low pressure system in Nashua as recommended by American Water Works Association engineering standards. The next largest project, also scheduled for 1997, is replacement of approximately 7,000 feet of pre-1900 distribution mains in Nashua at an estimated cost of $800,000. The Company has also recently begun construction of a 150,000 gallon water storage facility at its Powder Hill franchise in Bedford, in order to meet the heavy watering demands and fire protection requirements at this 80 unit residential development. This project is expected to cost $275,000. Additional funds of approximately $200,000 are also needed to fund the relocation of approximately 2,100 feet of 8" to 16" mains in south Nashua to accommodate the construction of a second bridge crossing over the Merrimack River. The largest 1998 projects, totalling $600,000, include two varidrive/synchronous pumps for the Company's water treatment facility, the dredging of Holt Pond and the reconstruction of Holt Pond dam.

The Company has a commitment to purchase the Bond from Van Kampen American Capital Group, a municipal bond mutual fund. The Bond will have a term of 25 years with annual principal payments of $200,000 beginning in the 11th year and a balloon payment at maturity of $1,200,000. The interest rate will be 6.3% per year, fixed for the entire term of the bond. The Company estimates its issuance costs to be $180,000, resulting in an "all in" rate, or a rate reflective of the amortization of these issuance costs, of 6.49%.

According to the Company's petition, the remaining conditions and covenants of this Bond are consistent with those contained in the Company's existing bond and note agreements. In addition, the Company has been notified by AMBAC Indemnity Corporation that it would provide third party insurance for the total debt service related to this Bond, resulting in a Standard & Poor's debt rating of AAA. Accordingly, the Bond would qualify for a greater number of institutional investment portfolios from which competitive bids could be solicited.

The Company's petition indicates that its embedded cost of debt as a result of this financing

will be reduced to 7.41%, compared with a cost of 8.61% at the time of its last rate proceeding in DR 92-220. Such a reduction in the cost of debt should directly benefit the Company's ratepayers in any Company rate case filing.

We have reviewed Pennichuck's petition in support of its request for authorization of the issuance of additional debt in the amount of $4,000,000. Given the terms of the loan agreement, the purpose of the financing and potential

Page 348

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 of Pennichuck Water Works, Inc. for authority to issue and sell $4,000,000 of unsecured debt in the form of a tax-exempt bond is hereby APPROVED; and it is

FURTHER ORDERED, that Pennichuck shall file with this Commission a detailed statement of the actual issuance cost; and it is

FURTHER ORDERED, that Pennichuck shall file copies of the conditions and covenants of the Bond when they are finalized; and it is

FURTHER ORDERED, that on January first and July first of each year Pennichuck shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of the note until the accounting is complete.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of April, 1997.

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NH.PUC*04/15/97*[97285]*82 NH PUC 349*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97285]

82 NH PUC 349

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Vanguard Cellular Financial Corporation

DE 97-033
Order No. 22,560

New Hampshire Public Utilities Commission

April 15, 1997

ORDER approving an interconnection agreement negotiated by a cellular telecommunications carrier and a local exchange telephone carrier, which arrangement provides for reciprocal compensation to the cellular carrier in accord with the Telecommunications Act of 1996.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Transmission and routing of exchange service traffic and exchange access traffic — Joint network configurations — Local exchange and cellular carriers. p. 349.

2. TELEPHONES, § 14

[N.H.] Connecting carriers — Interconnection agreement — Compensation terms — Requirements under the Telecommunications Act of 1996 — Reciprocal compensation for cellular carriers — For calls terminated on wireless networks. p. 349.

BY THE COMMISSION:

ORDER

[1, 2] On February 28, 1997, New England Telephone and Telegraph Company (NYNEX) and Vanguard Cellular Financial Corporation (Vanguard) jointly filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

Vanguard filed written testimony supporting the Agreement and the intent of full compliance with Section 252 of the TAct. The TAct has mandated a major change in compensation in that cellular providers now receive "reciprocal compensation" for calls that terminate on the

wireless network. This interconnection agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff has recommended approval of the Cellular Interconnection Agreement between NYNEX and Vanguard based on a review of the testimony, summary, actual agreement and verbal clarification provided by NYNEX. Staff also points out that the Agreement is substantially consistent with the Interconnection Agreement approved for Freedom Ring in Order No. 22,475 (January 13, 1997). Furthermore, Staff notes that this cellular arrangement is very similar to those previously employed by Independent Local Exchange Companies and wireless carriers, which were not required to be filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and it is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and Vanguard is approved; 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 April 22, 1997 and to be documented by affidavit filed with this office on or before April 29, 1997; 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 6, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 13, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 15, 1997, 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-336, Order No. 22,475, 82 NH PUC 9, Jan. 13, 1997.

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NH.PUC*04/15/97*[97286]*82 NH PUC 350*Central Water Company, Inc.

[Go to End of 97286]

82 NH PUC 350

Re Central Water Company, Inc.

DR 96-399
Order No. 22,561

New Hampshire Public Utilities Commission

April 15, 1997

APPLICATION by water utility for authority to increase rates by $34,478 (15.4%); granted as modified in the amount of $33,709 (15.1%). The utility is allowed to implement a surcharge for a three-month period through which to recoup its associated procedural and regulatory costs.

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1. RATES, § 595

[N.H.] Water rate design — Factors affecting need for rate increase — Capital expenditures pursuant to state environmental mandates. p. 352.

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2. RATES, § 260

[N.H.] Surcharges — As part of water rate design — For limited three-month period — Purpose — Recovery of rate case- related procedural expenses. p. 352.

3. EXPENSES, § 89

[N.H.] Rate case expense — Procedural costs — Recovery via surcharge — Water utility. p. 352.

BY THE COMMISSION:

ORDER

The Petitioner, Central Water Company, Inc. (Central or Company) filed with the New Hampshire Public Utilities Commission (Commission), on December 4, 1996, a petition for a rate increase for its Locke Lake franchise area pursuant to N.H. Admin. Rules PART Puc 610 (formerly Puc 611). The increase in revenue requested was $34,478, an increase of 15.4% over existing revenue. The Company's petition would, if approved, increase an annual residential water bill for a year-round customer using 4,500 gallons or 600 cubic feet per month from $466 to $527.

The Company indicated that its rate of return for 1995, as reported in its Annual Report to the Commission, was a negative 13.06%, reflecting a net water utility operating loss of $59,173. The Company submitted evidence of capital investments and increases in operating expenses which provided the basis for the requested increase in revenues. The Company's filing indicated that it expended a total of $206,232 for land, the installation of two wells, a pumphouse, mains, and the cost of engineering studies which led to the selection of the new well location. These expenditures were made in order to expand Central's water supply to its franchise area in accordance with the requirements of the N.H. Department of Environmental Services (DES).

Based on a generic rate of return of 10.29% as developed by the Commission's Economics Department in accordance with Puc 610.03, the Company requested a return of $21,416 on its plant investment. Depreciation expense of $8,914, operation and maintenance costs of $3,360, property tax of $764, and miscellaneous expense of $24, produces the Company's total additional revenues of $34,478.

On February 18, 1997, the Staff of the Commission (Staff), pursuant to Puc 610.06, submitted its recommendation to the Commission for a modified rate increase for Central. Staff recommended that the Company be authorized to increase its water revenues by $33,709, or 15.1% over existing levels. Staff noted in its recommendation that the primary reason for the minor difference between its recommended revenue increase and that requested by Central is in the area of reclassification of certain assets and the resulting effect on depreciation expense.

At the same time that the Staff submitted its recommendation to the Commission, it also served the Company, the Office of Consumer Advocate, the Town of Barnstead, and the Company's customers, pursuant to the provisions of Puc 610.06. Subsequently, letters were received from two individual customers, as well as a petition signed by a number of residents, raising questions and concerns with respect to the proposed rate increase as well as other service and water quality issues. In response to these concerns and in accordance with Puc 610.07, Staff and a representative of Central met, on April 3, 1997, with a number of customers to discuss the Staff's recommendation.

As a result of this meeting, Staff forwarded a memorandum to the Commission indicating that the meeting had been held and that the concerns of the customers, which focused on service

and quality issues, were responded to by the Company. Staff further indicated that its recommendation of February 18 should now be considered by the Commission, as the requirements of Puc 610.07, *Right to Challenge Recommendation*, had been met. In addition, Staff indicated that it had reviewed the Company's request for recovery of its procedural expenses, and recommends that $2,240 be approved for

recovery through a surcharge to the Locke Lake customers, such surcharge to be $1.20 per month for a period of 3 months beginning in October of 1997.

[1-3] We have reviewed the Staff's recommendation and we believe it to be a reasonable solution to the issues raised by Central's filing. We will therefore approve it, and will authorize the Company to increase its water rates accordingly for bills rendered subsequent to the date of this order. Based on the Staff's recommendation, we find the investment in plant to be prudently incurred and the plant to be used and useful in the provision of service to its customers. We will also approve the Company's request for recovery of $2,240 in procedural expenses, pursuant to Puc 610.10, in a surcharge of $1.20 per month to its customers over a 3 month period, beginning October 1997. Delaying the recovery of this surcharge until October of this year will provide enough time for existing surcharges, relating to the Company's general rate case in DR 94-094, to expire.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Central Water Company, Inc. is authorized to increase its rates for water service on a bills rendered basis after expiration of the *nisi* period, in order to recover additional revenues of $33,709; and it is

FURTHER ORDERED, that Central is authorized to recover $2,240 in procedural expenses through a surcharge to its customers of $1.20 per month for a 3 month period beginning October 1997; 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 April 22, 1997 and to be documented by affidavit filed with this office on or before April 29, 1997; 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 6, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 13, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 15, 1997, 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 May 15, 1997, 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 April, 1997.

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NH.PUC*04/18/97*[97287]*82 NH PUC 352*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97287]

82 NH PUC 352

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,562

New Hampshire Public Utilities Commission

April 18, 1997

ORDER authorizing a local exchange telephone carrier to increase rates for local sent-paid calls placed from pay telephone stations, from 10 cents to 25 cents, contingent upon the carrier also implementing reductions in its intrastate local exchange and exchange access service rates. Commission concludes that the new 25-cent payphone rate is appropriately cost-based.

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1. RATES, § 565

[N.H.] Telephone rate design — Pay stations — Local sent-paid calling rates — Increase from 10 to 25 cents — Contingent upon concomitant reductions in local exchange and exchange access service rates — Cost-based charges as a factor — Local exchange carrier. p. 355.

Page 352

2. RATES, § 584

[N.H.] Telephone rate design — Message telecommunications service rates — Voluntary reduction in — As offset for increase in local pay station charges — As not affecting federal requirements for new payphone compensation plans — Local exchange carrier. p. 356.

APPEARANCES: Victor D. DelVecchio, Esq. for NYNEX; Partridge, Snow and Hahn by Scott A. Sawyer, Esq. for MCI Telecommunications, Inc.; Alan Linder, Esq. for New Hampshire Legal Assistance for low income ratepayers; George Nyden for New England Public Communications Council; James A. Sanborn and Karon L. Doughty for Union Telephone Company; Office of Consumer Advocate by James R. Anderson, 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 January 24, 1997, New England Telephone & Telegraph Company, Inc. d/b/a NYNEX (NYNEX) filed revisions to NHPUC - No. 77, Part M Section 1, Page 29. The revisions eliminate from the tariff the local coin rate for customer-dialed local calls made from Public Access Smart Line phones, in essence de-tariffing the local coin rate. In addition, NYNEX states that it intends to institute a 25-cent rate for these calls.

This filing constitutes part of NYNEX's efforts to comply with the orders issued by the Federal Communications Commission (FCC) in CC Docket 96-128 and the Telecommunications Act of 1996 (TAct). The FCC Orders, consisting of Order 96-388 dated September 20, 1996, and the Reconsideration Order 96-439 dated November 8, 1996, establish a plan to insure fair compensation for all calls made using a payphone, concurrently eliminating both intrastate and interstate payphone subsidies from basic exchange services.

The FCC Orders require NYNEX to have "effective interstate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies" no later than April 15, 1997. Reconsideration Order 96-439 at Paragraph 131.

The FCC's plan, which was required by Section 276(b)(1)(A) and (B) of the TAct, deregulates the payphone market by a two-phase process. The first phase is a transition period of limited regulation to eliminate barriers to full competition.

During the first phase, states are responsible for "fair compensation to payphone service providers and also for protecting consumers from excessive rates." FCC Order 96-388 at Paragraph 60 and Reconsideration Order 96-439 at Paragraph 9. Also during the first phase, "states may continue to set the local coin rate in the same manner as they currently do." FCC Order 96-388 at Paragraph 50 and Reconsideration Order 96-439 at Paragraphs 5 and 9.

By Order No. 22,508, we suspended the filed tariff revisions and set a prehearing conference for March 12, 1997. The New England Public Communications Council (NEPPC), represented by George Nyden; Union Telephone Company (Union), represented by James A. Sanborn; and Save Our Homes Organization, represented by Alan Linder of New Hampshire Legal Assistance Association on behalf of low income ratepayers (Legal Assistance), all sought intervention

without objection. The Office of the Consumer Advocate, a statutorily recognized intervenor, was represented by James R. Anderson.

On February 7, 1997, NYNEX submitted a Motion for Protective Order (Motion) which sought to prohibit disclosure of NYNEX's commercially and competitively sensitive information contained within the cost of service study filed the same date. The Commission granted NYNEX's Motion for Protective Order in Order No. 22,540 (April 1, 1997).

At the prehearing conference, Staff agreed with NYNEX that this docket should proceed

on written filings as to whether NYNEX's filing meets the requirements of the orders issued by the Payphone Orders and the TAct. In addition, Staff and all the parties, with the exception of Legal Assistance, agreed that the cost studies submitted by NYNEX adequately support NYNEX's proposed 25-cent rate; the Office of Consumer Advocate took no position on the adequacy of the cost studies. Legal Assistance argued that an evidentiary hearing would be necessary to determine that NYNEX's proposed rate will not jeopardize universal service and is supported by valid cost studies.

The Commission granted the intervention requests of Union, NEPCC and Legal Assistance in Order No. 22,519 (March 17, 1997) and on April 2, 1997 orally granted the late intervention request of MCI Telecommunications, Inc. filed on March 28, 1997.

The Commission also scheduled an evidentiary hearing on April 2, 1997 to consider the sole issue of whether the 25-cent rate is cost-based and stated that an order would be issued on or before April 15, 1997. The Commission also recognized that during the period from April 15, 1997 through October 7, 1997, while the Commission continues to have jurisdiction over payphone rates, parties may raise policy issues regarding universal service and public interest payphones.

Legal Assistance filed on March 27, 1997 a Motion for Rehearing and For Extension of Time and Motion for Official/Administrative Notice regarding certain documents and testimony in DR 89-010, NYNEX's last full rate case. At the start of the hearings on this docket, Legal Assistance agreed to further refine its request for administrative notice and agreed to proceed with evidence, even though its witness Fred Kelsey was not available.

The Commission heard evidence on April 2 and 3 and agreed to a late submission by Legal Assistance's witness Mr. Kelsey on April 9, with responsive filings and briefs by April 11, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *NYNEX*

NYNEX presented its cost study, arguing that it demonstrated that the payphone cost per call

was 20.8 cents. In response to queries, particularly from Staff, NYNEX ran a series of alternate calculations to demonstrate that even with certain requested changes in methodology, the cost per call was still approximately 20.8 cents and, using some calculations, actually higher. If approved and once all FCC requirements are met, NYNEX would be entitled to an interim flat rate compensation of $45.85 per month per payphone, to be paid by interexchange carriers (IXCs) whose customers make a long distance call, in addition to the 25 cents per call for local service. This interim flat rate compensation would cease on October 7, 1997 when a per-call rate of 35 cents would be paid by the IXCs.

NYNEX committed in the evidentiary hearings to a reduction in its Message Telecommunications Service (MTS) rates, from 24 to 22 cents, as a means of offsetting the revenue to be obtained through the increased payphone rate.

NYNEX argued that the Commission had an obligation to act by April 15, 1997, pursuant to the TAct and two FCC orders.

B. *MCI*

MCI argued that in addition to determining whether the cost study is adequate to justify the proposed 25-cent rate, the Commission should identify the source of the subsidy and reduce that rate or rates at the same time. Because the Commission had previously ruled that this hearing would involve only the adequacy of the cost study, MCI did not further challenge NYNEX's filing.

Regarding the Commission's obligation to act by April 15, 1997, MCI asserted that the Commission was under no obligation to act on NYNEX's filing by April 15, 1997 or, in fact, at any point until October 7, 1997, at which time state commissions lose jurisdiction over payphone pricing. If the Commission did not act by April 15, 1997, according to MCI, one of the FCC's requirements would not be met and NYNEX could not take advantage of the flat

rate compensation plan. MCI argues, however, that even if the Commission were to act, NYNEX has still not satisfied the FCC's requirements because it has not removed subsidies from its intrastate rates.

C. *Legal Assistance*

Legal Assistance argued that the 25-cent rate was not cost-based. It challenged the adequacy of the cost study, arguing among other things that it contained costs associated with both interstate and intrastate payphone service but did not reflect interstate payphone revenues. Legal Assistance recommended instead that the rate be set at 15 cents based on a cost study prepared by its witness Mr. Kelsey. Legal Assistance argued that if the Commission were to accept

NYNEX's cost study, the rate should be set at 20 cents rather than 25 cents per call. Because there is on average an additional overtime revenue of 84 cents per call, local payphone revenues of 20.84 cents will be collected using a 20 cent per call rate, which covers the 20.8 cent cost asserted by NYNEX.

Legal Assistance also asserts that the Commission has an obligation to protect the public to assure that rates are just and reasonable until October 7, 1997. Finally, Legal Assistance asks the Commission to initiate investigations pursuant to Sections 254 and 276 of the TAct to ensure that universal service is available at rates that are just, reasonable and affordable and which are consistent with the interests of public health, safety and welfare.

D. *OCA*

OCA also challenged the adequacy of the cost study, noting, among other things, the failure to differentiate between costs for "smart" versus "dumb" sets, failure to take into account relative revenues of local versus non-local calls, and use of one month's usage in many cases rather than an average. If the Commission were to accept the cost study, the rate should be set at 20 cents. Further, OCA recommended that if the 25-cent rate were approved, resulting in approximately $1 million per year in increased revenues, that amount should be earmarked for public interest payphones that would continue to charge 10 cents.

OCA argued that the Commission is not obligated to act on NYNEX's petition by April 15, 1997 and need not take any action prior to October 7, 1997. Finally, OCA argued that the payphone rate petition had not been adequately noticed pursuant to RSA 378:3.

E. *Staff*

Staff challenged the adequacy of the cost study, particularly the methodology used, which did not sufficiently allocate interstate and intrastate costs among the various services available at a payphone. In its post hearing written comments, however, Staff stated it would no longer challenge the cost study though it continued to have reservations about its methodology and would not want future cost studies to be performed in this way. Staff recommended that if the Commission were to find the cost study to be adequate, it should not allow the payphone increase to take effect until a reduction in MTS toll or other source of subsidy had been put in place.

Staff argued that it was uncertain reading the two FCC orders if in fact the Commission was under an obligation to make a ruling by April 15, 1997 but that in the interests of promoting competition in the payphone industry, it would be wise for the Commission to act by that date if possible.

III. COMMISSION ANALYSIS

[1] We have reviewed the testimony and exhibits and conclude that the cost study is adequate

to support a 25-cent payphone rate. It is clear that the current rate of 10 cents no longer covers the costs of a payphone call and that a 25-cent rate would result in fair compensation to NYNEX. Ideally a payphone would be able to make change between the costs so as to avoid any overpayment for a call, but given the technological limitations of the phones, which work in 5-cent increments, a 25-cent rate appears to be cost-based. It also is just and reasonable in view of the fact that the payphone rates charged by NYNEX and its predecessor,

New England Telephone Company, have not been raised in over 40 years.

Although we are approving the higher payphone rate, we will not allow NYNEX to implement it until it has filed and obtained Commission approval of a reduction in "Intrastate local exchange service and exchange access service rates" as required by the FCC's most recent order clarifying the various steps necessary in the transition to a competitive payphone market. FCC Order No. 97-678 issued April 4, 1997, makes clear that not only should the payphone rate be cost-based and not contain any subsidies from other services but subsidies present in "intrastate local exchange service and exchange access service rates" should be removed by April 15, 1997. FCC Order No. 97-678 at Paragraphs 30 and 35. NYNEX has made no request for reduction in its local exchange service or exchange access service rates. NYNEX did file, on April 11, 1997, a petition for reduction in its MTS rate, that is, its rate for intrastate toll. Based on our interpretation of Order No. 97-678, an MTS reduction, if approved, would not satisfy the FCC's requirements for the new payphone compensation plan.

We will suspend, therefore, any implementation of the 25-cent payphone rate pending approval of a reduction of local exchange service and exchange access service rates to remove subsidies that have been used to offset the undercollection in the current 10-cent payphone rate.

[2] We should note that we may have been incorrect in our prehearing conference Order No. 22,519 (March 17, 1997) which limited this proceeding to whether the cost study was adequate. Upon review of the FCC's clarification order No. 97-678, we now realize that the argument advanced by MCI to broaden the analysis to include the source of the subsidy was perhaps correct. We regret that we did not discern the requirement that reduction in local exchange service and exchange access service rates was necessary. We note, however, that NYNEX had offered the reduction in MTS as an offset since as early as January, 1997 and had suggested it was in compliance with the FCC's mandate to remove subsidies. NYNEX should have made clear that its proposed MTS reduction, although welcome to customers, had no bearing on the FCC requirements for a carrier to avail itself of the new compensation plan. This has been known since the passage of the TAct and the issuance of the September 20, 1996 FCC Order No. 96-388 but was not brought to our attention prior to our March 17, 1997 order. See paragraphs 182 and 363 of FCC Order No. 96-388 and 47 U.S.C. § 276(b)(1)(B).

We await a filing by NYNEX to reduce its local exchange service and exchange access service rates in conformance with FCC Order No. 97-678.

We will grant Legal Assistance's request that we take administrative notice of certain

specified portions of Docket DR 89-010. We will deny the request for further extension of time, having provided Mr. Kelsey an opportunity to submit his cost study and analysis after the close of the hearings. We see no basis to further extend the schedule or reconsider our earlier order on the issues raised by Legal Assistance.

Regarding Legal Assistance's request that we initiate investigations into universal service and public interest payphones, we note that the request is consistent with Order No. 22,519 in which we stated that parties and Staff are free to raise these issues in the future, though they would not be addressed in this particular docket. We agree with Legal Assistance that these issues should be addressed prior to October 7, 1997 and will open a new docket and direct our Staff to commence such an investigation.

Regarding OCA's request that the increased revenue associated with the 25-cent rate be allocated to fund 50% of a lifeline rate, we do not feel an adequate record has been developed to make such a determination. We direct our Staff to consider the OCA proposal and make a recommendation as to whether further proceedings on this issue are appropriate.

Finally, we reject OCA's assertion that the coin rate has not been adequately noticed. For a change in a tariffed rate, RSA 378:3 requires 30 days notice to the Commission and "such notice to the public as the commission shall direct" unless the Commission shall order otherwise. In this case NYNEX filed its proposal January 24,

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1997 and published the Order of Notice in a statewide newspaper on February 26, 1997. We find no infirmity under RSA 378:3 and reject OCA's assertion of inadequate notice.

Based upon the foregoing, it is hereby

ORDERED, that the requested increase in payphone rates from 10 to 25 cents is APPROVED but suspended; and it is

FURTHER ORDERED, that NYNEX shall not implement the 25-cent payphone rate until the Commission approves a reduction to "Intrastate local exchange service and exchange access service rates" in conformance with FCC Order No. 97-678; and it is

FURTHER ORDERED, that Legal Assistance's Motion for Rehearing and Extension of Time is DENIED; and it is

FURTHER ORDERED, that Legal Assistance's Motion for Official/Administrative Notice, as amended on May 2, 1997, is GRANTED; and it is

FURTHER ORDERED, that Legal Assistance's request that the Commission initiate investigations into the issues of universal service and public interest payphones is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,508, 82 NH PUC 79, Feb. 21, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,519, 82 NH PUC 269, Mar. 17, 1997. [N.H.] Re New England Teleph. & Teleg. Co. v. NYNEX, DR 97-028, Order No. 22,540, 82 NH PUC 308, Apr. 1, 1997.

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NH.PUC*04/21/97*[97288]*82 NH PUC 357*IntraLATA Presubscription

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82 NH PUC 357

Re IntraLATA Presubscription

DE 96-090
Order No. 22,563

New Hampshire Public Utilities Commission

April 21, 1997

ORDER accepting cost studies submitted by NYNEX, Union Telephone Company, and other smaller local exchange telephone carriers as to the projected costs of implementing intraLATA presubscription (ILP), as had been required by Order No. 22,281 (81 NH PUC 624). Although the studies are deemed reasonable, commission provides for future accounting audits and a reconciliation process, upon actual implementation of ILP.

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1. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Recovery of associated implementation costs — Equal charge per originating minute of use — Affirmation — Acceptance of associated cost studies. p. 359.

2. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation arrangements — Relative to intraLATA presubscription — Basis for recovery of implementation costs — Equal charge per originating

minute of use — Affirmation — Acceptance of associated cost studies. p. 359.

3. EXPENSES, § 140

[N.H.] Telephone carriers — IntraLATA presubscription — Implementation costs — Means of recovery — Equal charge per originating minute of use — Affirmation — Acceptance of associated cost studies. p. 359.

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4. RATES, § 588

[N.H.] Telecommunications rate design — Toll services — IntraLATA presubscription — Basis for recovery of associated implementation costs — Equal charge per originating minute of use — Affirmation — Acceptance of associated cost studies. p. 359.

5. RATES, § 144

[N.H.] Factors affecting reasonableness — Cost of service — Particular costs — Telecommunications-related expenses — Costs of implementing intraLATA presubscription — Acceptance of associated cost studies — Provision for subsequent audits and true-up. p. 359.

BY THE COMMISSION:

ORDER

On April 15, 1996, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice commencing this intraLATA presubscription (ILP) docket to establish dialing parity for intraLATA toll customers.[1(91)] The Order of Notice required all local exchange companies (LECs) to submit proposals to implement ILP by October 1, 1996. By Order No. 22,281, the October 1, 1996 implementation date was extended until June 2, 1997. In the Order of Notice, the Commission cited its determination in Order No. 22,107 that increased competition in the intrastate toll market is an appropriate solution to specific customer concerns regarding short distance toll.

Proposals for ILP implementation were filed by Chichester Telephone Company, Kearsarge Telephone Company and Meriden Telephone Company (collectively, TDS), Union, Granite State Telephone Company, Merrimack County Telephone Company, Contoocook Valley Telephone Company, Wilton Telephone Company, Hollis Telephone Company, Northland Telephone Company of Maine, Bretton Woods Telephone Company, and Dunbarton Telephone Company (Collectively, Independents) and NYNEX. Timely responses to the proposals were received from AT&T, Sprint Communications Inc., MCI, the Telephone Reseller Association

(TRA), Atlantic Connections, LTD., Atlantic Cellular d/b/a/Atlantic Long Distance (Atlantic Long Distance), and the Office of the Consumer Advocate (OCA).

Based upon the plans submitted and comments received, Staff identified 10 major issues needing resolution in order to implement ILP. This Order addresses the issue of cost recovery.

NYNEX disbursed an ILP implementation cost study in January, 1997. Union and the Independents filed cost studies in February, 1997. In addition, NYNEX, Union and the Independents have submitted compliance filings in accordance with Commission requirements. The TDS companies have not yet filed cost studies or compliance filings indicating the amount of the customer charges to recover the costs of ILP implementation.

Upon receiving the NYNEX ILP implementation cost study ("study"), the Commission staff ("Staff") held two technical sessions in order to assess the veracity of the study and its supporting documentation. AT&T, MCI, Union, NYNEX, the Independents, and the OCA participated in technical sessions.

AT&T contends that the NYNEX study was unsubstantiated. AT&T expressed concern over the lack of supporting cost data, especially with regard to switching costs. According to the study, switching costs in the State of New Hampshire amount to $1,312,179 over the two year cost recovery period. Although AT&T argued this amount was excessive, it did not propose an alternative implementation cost. Moreover, AT&T requested that NYNEX be subjected to an audit in order to determine the actual implementation costs at the end of the two year recovery period.

NYNEX contends the costs reported in its study are accurate and based upon the best available information at the time of the study. As the total costs of implementation will be subject to a "true-up" at the end of the two year cost recovery period, NYNEX suggested that the parties will be held harmless in the event the forecasted implementation expenditures were

wrong. Staff has reviewed the cost studies submitted by NYNEX, Union and the Independents. Based upon its review, Staff has recommended approval of the cost studies submitted. Staff found that the costs did not appear to be unreasonable or excessive. Staff recommended that the LECs re-submit implementation cost studies on June 2, 1998 and June 2, 1999, the end of the cost recovery period, indicating the actual implementation costs incurred juxtaposed to forecasted costs submitted in January and February, 1997.

[1-4] In Order No. 22,281, the Commission determined that cost recovery of ILP implementation shall be charged as an equal charge per originating Minute of Use (MOU) over a two year period unless paid off sooner. Each cost study and compliance filing submitted by the parties conforms to the Commission's requirements.

Due to AT&T assertions regarding the NYNEX ILP implementation costs, Staff recommends that LECs be subject to an accounting audit. An audit could be performed by either Staff or a mutually agreed upon accounting firm. Staff has also recommended that each of the companies

should be required to report its costs and revenues associated with ILP on a quarterly basis.

Staff recommended that the TDS companies submit cost studies no later than May 1, 1997. Should TDS fail to make a timely submission, Staff recommended the Commission issue a "show cause" order and require TDS to demonstrate why it should not be subject to penalties.

[5] We have reviewed Staff's recommendations concerning the cost studies submitted by the LECs. We find the cost studies reflect a reasonable level of anticipated capital expenditures and expenses associated with the implementation of ILP. As presubscription will benefit all intrastate toll customers, cost recovery shall be shared by all intrastate toll carriers, including NYNEX. Having determined presubscription will result in a benefit to all intrastate toll customers, we find that the cost recovery rates proposed by the local exchange companies are in the public interest.

We will accept the specific recommendations of Staff with regard to accounting audits, reporting requirements and TDS. LECs shall be subject to an accounting audit of the ILP implementation costs. Such an audit will assist the parties and Staff to determine the actual ILP implementation costs at the end of the two year cost recovery period in the absence of a mutually agreed upon "true-up" value. Quarterly reports will also assist us in monitoring the companies' ILP costs and revenues.

TDS has been aware of Commission requirements to file ILP cost studies and compliance tariffs indicating ILP related customer charges. Therefore, we order TDS to comply with the Commission requirements no later than May 1, 1997. Failure to make a timely submission will result in the issuance of a "show cause" order requiring TDS to demonstrate why it should not be subject to penalties.

Based on the foregoing,it is hereby

ORDERED, that the cost studies and compliance tariff filings submitted by the LECs in support of the Intrastate Equal Access Cost Recovery Rates are approved; and it is

FURTHER ORDERED, that each local exchange company shall submit a cost study on June 2, 1998 and June 2, 1999 indicating the actual implementation cost incurred compared to the forecasted costs of implementation; and it is

FURTHER ORDERED, that the implementation programs of ILP for each LEC shall be subject to a "true-up" at the end of the two year recovery period; and it is

FURTHER ORDERED, that each LEC shall be the subject of an accounting audit to verify actual implementation costs; and it is

FURTHER ORDERED, that each company shall file a report of ILP costs and revenues on a quarterly basis beginning June 30, 1997; and it is

FURTHER ORDERED, that TDS shall file its cost recovery study and compliance filing no later than May 1, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1997.

FOOTNOTES

[1]Without intraLATA presubscription, customers must dial a five digit code in order to access an intraLATA toll carrier other than NYNEX.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996. [N.H.] Re Preliminary Investigation into Local Calling Areas (Extended Area Service), DRM 94-001, Order No. 22,107, 81 NH PUC 288, Apr. 15, 1996.

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NH.PUC*04/21/97*[97289]*82 NH PUC 360*Tilton-Northfield Aqueduct Company

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82 NH PUC 360

Re Tilton-Northfield Aqueduct Company

DF 96-210
Order No. 22,564

New Hampshire Public Utilities Commission

April 21, 1997

APPLICATION by water utility for authority to borrow an additional $317,923 for certain well pumping and water main improvement projects designed to assure compliance with the Safe Drinking Water Act; granted.

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1. SECURITY ISSUES, § 58

[N.H.] Mortgage transaction — Purposes of proceeds — Additions and betterments — Well pumping and water main projects — As necessitated by the Safe Drinking Water Act — Water utility. p. 360.

2. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Well pumping and water main projects — As necessitated by the Safe Drinking Water Act — Additional financing for. p. 360.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Tilton-Northfield Aqueduct Company (TNA or the Company), on April 15, 1997, filed a request with the New Hampshire Public Utilities Commission (Commission) to increase the authority to issue additional securities for the financing of its compliance efforts with the Safe Drinking Water Act. The Company had previously received authorization for financing up to $3,841,965 by Order No. 21,876 in DF 96-210. TNA states that the increase is due to the fact that the lowest bids for the project require the additional amount of $317,923. TNA requests that the Commission raise the borrowing authority to $4,159,889.

TNA proposes to secure the borrowing in the form of a mortgage of the Company's real estate and security agreement on its personal property, from the Bank of New Hampshire. TNA attests that the increase is caused by the lapse in time since its original estimates in 1995. The bids for the well pumping station and the water main improvement projects were the cause of the increase. The Company has submitted water quality and quantity test results from its new wells and completed extensive engineering work on the layout and design of the new system, and obtained Department of Environmental Services approval for the wells and distribution system.

TNA has requested that an Emergency Order *Nisi* be issued authorizing the Company to borrow the sum of up to $4,159,889 to complete its construction plans. The Company alleges that the borrowing is in the public good and will permit it to comply with federal and state requirements in a manner best suited to the needs of the area in accord with a plan considered appropriate by the Commission staff. TNA further states that any delay will cause serious problems with the construction schedules and compliance deadlines.

Staff has reviewed the filing and finds that the additional financing authority is necessary to meet the estimated costs of the projects. The terms and conditions are the same as those previously proposed.

Based upon Staff's review, we find the proposed use of the funds to be prudent and in the public interest.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Tilton-Northfield Aqueduct Company is authorized to borrow up to a total of $4,159,889 under the terms and conditions set forth in Order No. 21,876; and it is

FURTHER ORDERED, that the use of these funds for compliance with SDWA is in the public interest; 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 April 23, 1997 and to be documented by affidavit filed with this office on or before May 1, 1997; 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 28, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 30, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 1, 1997, 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 an accounting with this Commission, duly sworn to by its Treasurer, showing the disposition of the proceeds of this financing.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Tilton-Northfield Aqueduct Co., Inc., DF 95-185, Order No. 21,876, 80 NH PUC 673, Oct. 24, 1995.

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NH.PUC*04/21/97*[97290]*82 NH PUC 361*Exeter and Hampton Electric Company

[Go to End of 97290]

82 NH PUC 361

Re Exeter and Hampton Electric Company

Additional parties: Hall Farm Realty Trust;
Public Service Company of New Hampshire

DE 96-363
Order No. 22,565

New Hampshire Public Utilities Commission

April 21, 1997

ORDER adopting procedural schedule to address the issue of the proper utility to provide service to a residential area in the Town of Atkinson. Commission notes that although the area in question presently is being served by Exeter and Hampton Electric Company, the area actually is located within the franchised service territory of Public Service Company of New Hampshire.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Changes in existing boundary lines — Transfer of area from franchised supplier to existing service provider — Procedural schedule for considering — Electric service. p. 362.

2. FRANCHISES, § 53

[N.H.] Amendment — Changes in existing service area boundary lines — Transfer of area from franchised supplier to existing service pro-

Page 361

vider — Procedural schedule for considering — Electric service. p. 362.

BY THE COMMISSION:

ORDER

[1, 2] Exeter & Hampton Electric Company (Exeter and Hampton) and Hall Farm Realty Trust (Hall Farm), filed with the New Hampshire Public Utilities Commission (Commission) on November 7, 1996, a joint petition to authorize E&H to provide electric service in the town of

Atkinson on a parcel of land now being served by E&H at the border of E&H's service territory and located in the service territory of Public Service Company of New Hampshire (PSNH).

On March 14, 1997 the Commission issued an order of notice scheduling a prehearing conference for April 10, 1997. At the April 10, 1997 prehearing conference PSNH, which had filed a motion to intervene on March 24, 1997, was recognized as a necessary party to the proceeding.

Each Party and Staff set forth their initial positions on the record. PSNH noted that the parcel of land proposed to be served by Exeter and Hampton was within PSNH's franchise boundaries and that it had not given its consent to Exeter and Hampton to serve the parcel. PSNH also noted that a change in the location of State Route 111 also raised questions concerning the existing customers being served by Exeter and Hampton in the area of this parcel.

Both Exeter and Hampton and Hall Farm represented that service was provided to the parcel in question by Exeter and Hampton in 1988 with the consent of PSNH although no such agreement was forwarded to the Commission and neither party could find any record of an agreement. Hall Farm noted that it was prepared to begin construction on over 50 condominium units and requested that the Commis-
sion provide some type of interim relief that would bring electric service to the property while it considered the dispute for final resolution. PSNH and Exeter and Hampton agreed that Exeter and Hampton would provide temporary service to the parcel until final resolution of the dispute.

Staff noted that it had visited the site of the parcel in question, and based on that inspection had concluded that Exeter and Hampton was the logical utility to serve the parcel based on the infrastructure of the two utilities in place at this time.

The parties agreed to the following procedural schedule to govern the Commission's investigation into this matter:

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

Testimony of PSNH	April 18, 1997
Data Requests to PSNH	April 21, 1997
Responses to Data Requests	April 30, 1997
Hearing on the Merits	May 2, 1997

Based upon the foregoing, it is hereby

ORDERED, that Exeter & Hampton Electric Company shall provide temporary service to the parcel until the issues in this proceeding are finally resolved; and it is

FURTHER ORDERED, that the procedural schedule set forth above is in the public interest and is adopted to govern our investigation into this matter.

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

April, 1997.

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NH.PUC*04/21/97*[97291]*82 NH PUC 363*Rosebrook Water Company, Inc.

[Go to End of 97291]

82 NH PUC 363

Re Rosebrook Water Company, Inc.

DR 97-017
Order No. 22,566

New Hampshire Public Utilities Commission

April 21, 1997

ORDER approving a new special rate contract between a water utility and a large resort hotel, the Mount Washington Hotel, for a one-year period.

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1. RATES, § 611

[N.H.] Water rate design — Service to hotel structures — Large resort hotel — Approval of new special rate contract — Terms — Fixed annual charge — Consumption charges for usage beyond base amount — Quarterly charge covering rate case expenses. p. 363.

2. EXPENSES, § 92

[N.H.] Rate case expense — Special recoupment provisions as to large hotel customer — Quarterly rate case charge — Water utility. p. 363.

BY THE COMMISSION:

ORDER

[1, 2] On February 11, 1997, Rosebrook Water Company, Inc. (Rosebrook) filed with the

New Hampshire Public Utilities Commission (Commission) pursuant to RSA 378:18 a special contract with MWH Preservation Limited Partnership (MWH), owners of the Mount Washington Hotel, and related properties (Hotel). The contract, executed on February 6, 1997, is effective for a one year period commencing on May 1, 1997 and terminating April 30, 1998.

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. During the term of the contract MWH shall pay a fixed amount of $30,000, and an additional charge of $.18 per 100 gallons for MWH consumption in excess of 25,000,000 gallons. Additionally, pursuant to Order No. 22,120 (April 30, 1996), the Hotel shall pay $251.56 per quarter to reimburse Rosebrook for its approved rate case expenses.

With the exception of the rate case expense, the rates as well as the terms and conditions contained in the proposed special contract are the same as those contained in the contract currently in effect between Rosebrook and the Hotel as approved in Order No. 22,120. The current contract expires on April 30, 1997. The proposed 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 it be approved as submitted. Staff believes the statement of special circumstances as submitted with the proposed contract, including the fact that Rosebrook's projected revenue from the proceeds will cover the incremental operating expenses to serve MWH, justify approval for the one year period.

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, that the special contract between Rosebrook Water Company, Inc. and MWH Preservation Limited Partnership commencing on May 1, 1997 and ending on April 30, 1998 is APPROVED. By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Rosebrook Water Co., Inc., DR 95-304, DR 96-069, Order No. 22,120, 81 NH PUC 324, Apr. 30, 1996.

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NH.PUC*04/21/97*[97292]*82 NH PUC 364*Union Telephone Company

[Go to End of 97292]

82 NH PUC 364

Re Union Telephone Company

DS 97-056
Order No. 22,567

New Hampshire Public Utilities Commission

April 21, 1997

ORDER adopting an expedited procedural schedule for considering a local exchange telephone carrier's proposal for renewed authority to provide toll service and become the designated toll provider in its service area.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — As provided by local exchange carrier — Proposal for renewed authority — Procedural schedule for considering. p. 364.

2. RATES, § 588

[N.H.] Telephone rate design — Toll service — Access charges — Potential anticompetitive impact of higher access rates — Proposal by local exchange carrier for renewed toll authority — Procedural schedule for considering. p. 364.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone — Toll service — Potential anticompetitive impact of high access rates — Proposal by local exchange carrier for renewed toll authority — Procedural schedule for considering. p. 364.

BY THE COMMISSION:

ORDER

[1-3] On March 26, 1997, Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission) a Revision to Tariff No. 7 to Reintroduce the Provision of Toll Service, Introduce Charges for Directory Assistance and Eliminate the End

User Toll Credit and supporting testimony and exhibits. If approved, Union would become the designated toll provider in its service territory. Union asks that the petition be approved in time for the 30 day notice to customers prior to the implementation of intraLATA presubscription (ILP) on June 2, 1997. NYNEX is currently the toll provider in Union's service territory.

On April 1, 1997, Union filed a Motion for Protective treatment of certain usage and revenue data regarding NYNEX's intrastate toll services in Union's service territory.

The Commission issued an Order of Notice April 2, 1997, setting a prehearing conference for April 11, 1997, set a deadline for intervention requests of April 8, 1997, ordered New England Telephone and Telegraph Company (NYNEX) to be a full party to the proceeding, proposed a procedural schedule and called for initial positions of the Parties and Commission Staff (Staff).

At the prehearing conference Union, NET, 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.]

Testimony by Union	April 2, 1997
Prehearing Conference and Technical Session	April 11, 1997
Testimony by NYNEX	April 9, 1997
Final Term Sheets filed on Service Arrangements	April 21, 1997
Technical Session	April 22, 1997
Testimony by Staff and Intervenors	April 25, 1997
Hearing on Merits	April 29, 1997

Also at the prehearing conference, in accordance with the Order of Notice, Union outlined its proposal to become the designated toll provider in its service territory by the implementation date of ILP. Union stated that negotiations are continuing with NYNEX on all of the ancillary agreements necessary to effectuate the transition to becoming the designated toll provider.

NYNEX supported Union's efforts to become the designated toll provider and is working to finalize terms for the ancillary agreements needed.

OCA stated that it was particularly exploring the revenue effect on Union and the rate impact on customers if the petition were approved.

Staff stated that, in addition to the revenue and rate impacts noted by OCA, it intended to review the impact on competition. Staff was particularly concerned about potential anti-competitive effects of Union as designated toll provider with significantly higher access rates than NYNEX, which could discourage other competitors from entering that market. Staff also expressed concern at the pace of the schedule although committed to abide by it.

Staff raised questions regarding the information for which Union requested protective

treatment. Union stated that the information was NYNEX material which it felt obliged to protect and, therefore, was requesting protective treatment on NYNEX's behalf. Because NYNEX had not seen a copy of the Motion for Protective Treatment, it was not able at the hearing to determine if all the information in fact needed protection, but agreed to report back to the Staff and Parties after review.

We have reviewed the proposed procedural schedule and find it acceptable, although extremely accelerated. We will make an effort to meet the deadlines and direct all parties to work towards that end. If it is not possible to meet the deadlines, however, there simply will be no change in the designated toll provider prior to the ILP date. Whether Union would want to pursue its petition after the implementation of ILP, we leave to Union.

Because we have not yet received further information from NYNEX or Staff regarding NYNEX's review of the Motion for Protective Treatment, we will defer ruling on the Motion.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1997.

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NH.PUC*04/21/97*[97293]*82 NH PUC 365*Consumers New Hampshire Water Company

[Go to End of 97293]

82 NH PUC 365

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,568

New Hampshire Public Utilities Commission

April 21, 1997

ORDER declining to compel a municipality to divulge in the discovery phase of an eminent domain proceeding the legal theory behind its eminent domain action, finding such to be a privileged work product.

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1. EVIDENCE, § 33

[N.H.] Privileged communications — Legal work product — Legal theories behind action in

eminent domain — As not open to discovery or disclosure. p. 366.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Limits — Matters of fact versus development of legal theories — Nondisclosure of privileged work products — Proceeding in eminent domain. p. 366.

BY THE COMMISSION:

ORDER

On July 11, 1996, the Town of Hudson (Hudson) filed with the New Hampshire Public Utilities Commission (Commission) a Declaration of Taking against Consumers New Hampshire Water Company (Consumers). Intervenors are the towns of Litchfield, Windham, Derry and Londonderry, the New Hampshire Municipal Association, and Hudson resident Leonard Smith. The Office of Consumer Advocate (OCA) is a statutorily recognized intervenor.

Discovery is ongoing, pursuant to a procedural schedule approved by the Commission, with data requests and responses exchanged between Consumers and Hudson (as well as with other Parties and Staff).

On April 3, 1997, Consumers filed a Motion to Compel asking that the Commission order Hudson to respond to 25 data requests concerning Hudson's legal theory and authority for some of its positions. In support of its Motion, Consumers asserted that it would be unable to adequately protect its interest in the hearings without this information. Consumers cites *Riddle Spring Realty Co. v. State*, 107 N.H. 271 (1966) as support for its request for production of legal citations and theories in pre-trial discovery.

Hudson objected on April 10, 1997, arguing that such information is privileged work product that need not be divulged.

[1, 2] After review of Consumers' Motion to Compel and the objection from Hudson, we agree with Hudson that its legal theory and supporting documentation is privileged work product that need not be divulged to Consumers at this time. *See* Puc 203.09(b) (The Commission shall give effect to the rules of privilege recognized by law.) The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position. To grant Consumers the relief it requests in this case would be a misuse of the discovery process.

A review of *Riddle Spring*, cited by Consumers in support of its Motion to Compel, makes clear that the case is inapplicable and in fact is consistent with denial of the Motion to Compel.

In *Riddle Spring*, the Supreme Court found that during pre-trial discovery, one could compel "relevant facts" that were not otherwise available. *Riddle Spring*, 107 N.H. at 275. In this case Consumers has not asked for discovery of facts but for legal theories and citations.

Consumers and Hudson will have an opportunity to brief legal issues at the conclusion of these hearings and presumably at that point Hudson will have made clear its legal theory of the case. If not, we would consider a request for clarification of Hudson's legal theory at that time. However, at this juncture, we find that Consumers' request for discovery of Hudson's theories/work product is inappropriate.

Based upon the foregoing, it is hereby

ORDERED, that Consumers' Motion to Compel is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 1997.

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NH.PUC*04/22/97*[97294]*82 NH PUC 366*Northern Utilities, Inc.

[Go to End of 97294]

82 NH PUC 366

Re Northern Utilities, Inc.

DR 97-008
Order No. 22,569

New Hampshire Public Utilities Commission

April 22, 1997

ORDER adopting procedural schedule for consideration of a complaint as to a natural gas local distribution company's failure to extend natural gas service into an area of the Town of Salem so as to replace existing propane service.

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1. SERVICE, § 199

[N.H.] Extensions — By gas utility — Of natural gas service to replace propane service — Complaint as to failure to provide such —

Procedural schedule. p. 367.

APPEARANCES: Leboeuf, Lamb, Greene and MacRae by Paul B. Dexter, Esq. for Northern Utilities; Devine, Millimet and Branch by Anu R. Mullikin, Esq. for the Copper Beech Homeowners Association; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1] On January 15, 1997 the Copper Beech Homeowners Association (Copper Beech) filed with the New Hampshire Public Utilities Commission (Commission), a complaint alleging that Northern Utilities, Inc. (Northern) had failed to fulfill a promise to provide natural gas service to the subdivision in the town of Salem in which the members of Copper Beech are residents. Copper Beech also sought a rate adjustment, together with reparations, to reflect natural gas service rather than the propane service its members currently receive. Northern provides propane gas service in the Copper Beech subdivision through a distribution system fed by a number of propane tanks located without an easement on the property of one of the homeowners.

On February 13, 1997 the Commission issued an order of notice scheduling a prehearing conference for April 3, 1997 in order to entertain motions to intervene, hear the initial positions of the parties and establish a procedural schedule to govern the Commission's investigation into the complaint. There were no motions to intervene.

Copper Beech repeated the allegations contained in its complaint. Northern denied the allegations; Staff took no position. The parties agreed to the following procedural schedule:

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

Testimony by Copper Beech	April 17, 1997
Data Requests by the Company	April 24, 1997
Data Responses by Copper Beech	May 1, 1997
Testimony by the Company	May 9, 1997
Data Requests by Copper Beech	May 16, 1997
Data Responses by the Company	May 23, 1997

Settlement Conference	May 29, 1997
Filing of Settlement Agreement, if any	June 5, 1997
Hearing	June 12, 1997

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth above shall govern our investigation into this matter.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 1997.

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NH.PUC*04/22/97*[97295]*82 NH PUC 367*MCI Communications Corporation

[Go to End of 97295]

82 NH PUC 367

Re MCI Communications Corporation

Additional applicant: British Telecommunications plc

DF 97-001
Order No. 22,570

New Hampshire Public Utilities Commission

April 22, 1997

ORDER approving, to the extent necessary, the merger and transfer of an interexchange telephone carrier, MCI Communications Corporation, with and into a foreign carrier, British Telecommunications plc, through a series of corporate restructurings.

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1. CONSOLIDATION, MERGER, AND SALE, § 12

[N.H.] Commission jurisdiction — As to foreign corporations — Merger of domestic and foreign entities — Approval to the extent necessary — Telecommunications carriers. p. 368.

2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for merger approval — Standard of no net harm — Telecommunications carriers. p. 368.

BY THE COMMISSION:

ORDER

On January 2, 1997, MCI Communications Corporation (MCI) and British Telecommunications plc (BT) (the Petitioners) jointly filed with the New Hampshire Public Utilities Commission (Commission) a petition for "any approval required" of a proposed merger between MCI and BT, which will result in a new company called Concert plc.

MCI, a Delaware corporation, is authorized through its subsidiaries, MCI Telecommunications Corporation (MCIT) and MCImetro Access Transmission Services, Inc. (MCImetro) to provide certain telecommunications services within New Hampshire. MCIT is authorized, pursuant to Order No. 20,041 (January 21, 1991) to provide interexchange telecommunications services within the State of New Hampshire. MCImetro was granted authority by Order 21,470 (December 20, 1994) to be a competitive access provider within New Hampshire. In addition to its operations in New Hampshire, MCI operating subsidiaries provide telecommunications services in all fifty states, and are authorized by the Federal Communications Commission (FCC) to provide interstate and international long distance services throughout the United States.

BT, a public limited company incorporated under the laws of England and Wales provides telecommunication services in the United Kingdom and internationally. In 1994, BT acquired a twenty percent interest in MCI as a result of a joint venture entered into by BT and MCI. Concert Communications Services was organized to provide interstate and international long distance service throughout the United States.

The Petitioners, to the extent required, seek Commission approval for a merger between MCI and BT and the related transactions associated with the merger.

The Petitioners' merger transactions require MCI to be merged into Tadworth Corporation, a U.S. Subsidiary of BT, formed specifically for the merger. Tadworth Corporation will be renamed MCI Communications Corporation upon completion of the merger. BT will be renamed Concert plc (Concert) and the BT United Kingdom operations will become a subsidiary of Concert.

The Petitioners' business plans call for consummation of the merger by October 31, 1997. Accordingly, Petitioners request approval of the petition before that date.

Terms of the agreement provide that MCI and BT will continue to market and service customers, under their own names in their respective home countries. The transfer will be undertaken in a seamless fashion that will not affect the provision of intrastate telecommunications services and will have no adverse effect on the operations and services provided in New Hampshire.

[1, 2] The Petitioners assert that the combination of MCI's and BT's extensive expertise and presence in the telecommunications marketplace will benefit the public. The Petitioners evidenced that they are financially qualified to consummate the transaction, in addition MCI and BT are managed by personnel with extensive backgrounds in telecommunications. As a result of the merger, the Petitioners anticipate that with their combined financial resources, management and technological expertise they will achieve economic and marketing efficiencies.

We find the proposed merger of MCI and BT will result in no net harm, which is the standard by which we evaluate merger petitions.

Page 368

See, *Re Eastern Utility Associates*, 76 NH PUC 236 (1991). We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, NISI that to the extent it is required, the petition for approval of the proposed merger of MCI Communications Corporation and British Telecommunications plc is GRANTED.

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order to be published once in a statewide newspaper of general circulation, such publication to be no later than April 29, 1997 and to be documented by affidavit filed with this office on or before May 6, 1997; 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 13, 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 May 20, 1996; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 22, 1997, unless the Commission provided 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Access Transmission Services, Inc., DE 94-151, Order No. 21,470, 79 NH PUC 698, Dec. 20, 1994. [N.H.] Re MCI Telecommunications Corp., DE 90-108, Order No. 20,041, 76 NH PUC 59, Jan. 21, 1991.

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NH.PUC*04/22/97*[97296]*82 NH PUC 369*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97296]

82 NH PUC 369

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: AT&T Wireless Services Inc.

DE 97-063
Order No. 22,571

New Hampshire Public Utilities Commission

April 22, 1997

ORDER approving an interconnection agreement negotiated by a cellular telecommunications carrier and a local exchange telephone carrier, which arrangement provides for reciprocal compensation to the cellular carrier in accord with the Telecommunications Act of 1996.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Transmission and routing of exchange service traffic and exchange access traffic — Joint network configurations — Local exchange and cellular carriers. p. 370.

2. TELEPHONES, § 14

[N.H.] Connecting carriers — Interconnection agreement — Compensation terms — Requirements under the Telecommunications Act of 1996 — Reciprocal compensation for

cellular carriers — For calls terminated on wireless networks. p. 370.

BY THE COMMISSION:

ORDER

Page 369

[1, 2] On April 7, 1997, New England Telephone and Telegraph NYNEX (NYNEX) and AT&T Wireless Services Inc. (AWS) jointly filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic and transmission/termination of other types of traffic and joint network configuration. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

NYNEX and AWS state that the Agreement is in full compliance with Section 252 of the TAct. The TAct has mandated a major change in compensation in that cellular providers now receive "reciprocal compensation" for calls that terminate on the wireless network. This interconnection agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff has recommended approval of the Cellular Interconnection Agreement between NYNEX and AWS based on a review of the summary, actual agreement and verbal clarification provided by NYNEX. Staff also points out that the Agreement is substantially consistent with the Interconnection Agreement approved for Freedom Ring in Order No. 22,475 (January 13, 1997) and the recently approved agreement between NYNEX and Vanguard Cellular (DE 97-033). Furthermore, Staff notes that this cellular arrangement is very similar to those previously employed by Local Exchange Carriers and wireless carriers, which were not filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) of the TAct for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and it is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI* that the Interconnection Agreement negotiated between NYNEX and AWS is approved; and it is

FURTHERED 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 April 29, 1997 and to be documented by affidavit filed with this office on or before May 6, 1997; and it is

FURTHERED 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 13, 1997; and it is

FURTHERED ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 20, 1997; and it is

FURTHERED ORDERED, that this Order *Nisi* shall be effective May 22, 1997, 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-336, Order No. 22,475, 82 NH PUC 9, Jan. 13, 1997.

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NH.PUC*04/22/97*[97297]*82 NH PUC 371*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97297]

82 NH PUC 371

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: C-TEC Services, Inc.

DE 97-053
Order No. 22,572

New Hampshire Public Utilities Commission

April 22, 1997

ORDER approving an interconnection agreement negotiated by an interexchange telephone carrier and a local exchange telephone carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Availability of dialing parity, collocation number portability, directory assistance, and unbundled access — Local exchange and interexchange carriers. p. 371.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Issues remaining to be resolved — Meet-point billing — Termination and delivery of information data services — Local exchange and interexchange carriers. p. 371.

BY THE COMMISSION:

ORDER

[1, 2] On March 19, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Interconnection Agreement (Agreement) with C-TEC Services, Inc. (C-TEC).

The Agreement was filed for approval pursuant to 47 U.S.C., Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic, transmission/termination of other types of traffic and joint network configuration. It further provides for unbundled access, resale, collocation number portability, dialing parity, access to rights of way, access to data bases, and directory assistance service. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This agreement is virtually the same as the Freedom Ring Interconnection Agreement in Order No. 22,475 that was approved on January 13th of this year. The differences are summarized as follows:

1. No detailed process for termination and delivery of information (data) services if and when they become available in New Hampshire.

2. Meet-point billing arrangement is not finalized but the parties are continuing to develop.

3. This agreement provides for a dispute resolution process which will be overseen by the Commission.

All prices in this filing are the same as those approved in the Freedom Ring Agreement as well as another interconnection filing that was recently received in DE 97-054 between NYNEX and KMC Telecom, Inc.

The Staff has recommended approval of this Interconnection Agreement between NYNEX and C-TEC based on a review of the summary, actual agreement and verbal clarification provided by NYNEX.

We have reviewed the Filing and find it meets the standards of §252(e)(2)(A) of the TAct for approval of a negotiated Agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the

negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *Nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and C-TEC is approved; 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 April 29, 1997 and to be documented by affidavit filed with this office on or before May 6, 1997; 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 13, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 20, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 22, 1997, 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-336, Order No. 22,475, 82 NH PUC 9, Jan. 13, 1997.

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NH.PUC*04/22/97*[97298]*82 NH PUC 372*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97298]

82 NH PUC 372

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: KMC Telecom., Inc.

DE 97-054
Order No. 22,573

New Hampshire Public Utilities Commission

April 22, 1997

ORDER approving an interconnection agreement negotiated by a local exchange telephone carrier and an interexchange carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Availability of dialing parity, collocation number portability, directory assistance, and unbundled access — Local exchange and interexchange carriers. p. 372.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As

conducive to competitive local exchange market — Issues remaining to be resolved — Meet-point billing — Termination and delivery of information data services — Local exchange and interexchange carriers. p. 372.

BY THE COMMISSION:

ORDER

[1, 2] On March 19, 1997, New England Telephone and Telegraph Company (NYNEX) and KMC Telecom., Inc. (KMC) jointly filed with the New Hampshire Public Utilities

Commission (Commission) a negotiated Interconnection Agreement (Agreement).

The Agreement was filed for approval pursuant to 47 U.S.C., Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic, transmission/termination of other types of traffic and joint network configuration. It further provides for unbundled access, resale, collocation number portability, dialing parity, access to rights of way, access to data bases, and directory assistance service. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This agreement is virtually the same as the Freedom Ring Interconnection Agreement in Order No. 22,475 that was approved on January 13th of this year. The differences are summarized as follows:

1. No detailed process for termination and delivery of information (data) services if and when they become available in New Hampshire.

2. Meet-point billing arrangement is not finalized but the parties are continuing to develop.

3. This agreement provides for a dispute resolution process which will be overseen by the Commission.

All prices in this filing are the same as those approved in the Freedom Ring Agreement as well as another interconnection filing that was recently received in DE 97-053 between NYNEX and C-TEC Services, Inc.

The Staff has recommended approval of this Interconnection Agreement between NYNEX

and KMC based on a review of the summary, actual agreement and verbal clarification provided by NYNEX.

We have reviewed the Filing and find it meets the standards of §252(e)(2)(A) of the TAct for approval of a negotiated Agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *Nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and KMC is approved; 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 April 29, 1997 and to be documented by affidavit filed with this office on or before May 6, 1997; 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 13, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 20, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 22, 1997, 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 96-336, Order No. 22,475, 82 NH PUC 9, Jan. 13, 1997.

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NH.PUC*04/23/97*[97299]*82 NH PUC 374*Union Telephone Company

[Go to End of 97299]

82 NH PUC 374

Re Union Telephone Company

DS 97-056
Order No. 22,574

New Hampshire Public Utilities Commission

April 23, 1997

ORDER revising the procedural schedule previously approved for considering a local exchange telephone carrier's proposal for renewed authority to provide toll service and become the designated toll provider in its service area.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — As provided by local exchange carrier — Proposal for renewed authority — Revised procedural schedule for considering — Extension of associated suspension period. p. 374.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension period — Extension of — Concomitant revision to associated procedural schedule — To allow for adequate investigatory period — As to proposal by local exchange carrier for renewed toll authority. p. 374.

BY THE COMMISSION:

ORDER

On March 25, 1997, Union Telephone Company (UTC) filed tariff pages and supporting materials reintroducing the provision of Toll Services ("Toll plan") by UTC and introducing charges for directory assistance.

[1, 2] Staff has conducted a review of the filing, but requests more time in which to make a recommendation. Staff's request for more time is based primarily upon the effective date of the tariff and the date of the hearing. Order No. 22,567 scheduled a hearing date on April 29, 1997, but the effective date of the tariff filing is April 26, 1997. Staff believes it would not be an effective use of Commission resources to hold a hearing on the merits of a docket after the proposed rates have gone into effect. In addition, Staff and the parties need additional time beyond the April 26, 1997 date in order to finalize the terms and condition of a proposed stipulation agreement.

We will grant Staff's request for more time based upon the reasons noted above and suspend UTC's tariff filing for 30 days from the date of this order.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Union Telephone Company are hereby *suspended* pending further Commission review:

Check Sheet, page 1 Check Sheet, page 2 Check Sheet 3, page 3 Table of Contents, page 1 Table of Contents, page 2 Table of Contents, page 3 Index, page 3 Part III, Section 2, page 1, Third Revision Part III, Section 2, page 2, Third Revision Part III, Section 2, page 3, Third Revision Part V, Toll, Section 1, page 1, Fourth Revision Part V, Toll, Section 1, page 2, Original Part V, Toll, Section 1, page 3, Original Part V, Toll, Section 1, page 4, Original

By order of the Public Utilities Commission of New Hampshire this twenty-third day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Union Teleph. Co., DS 97-056, Order No. 22,567, 82 NH PUC 364, Apr. 21, 1997.

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NH.PUC*04/30/97*[97300]*82 NH PUC 375*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97300]

82 NH PUC 375

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,575

New Hampshire Public Utilities Commission

April 30, 1997

ORDER suspending and scheduling a hearing on a local exchange telephone carrier's proposal

for temporary rates designed to comply with directives that it revise its local exchange and exchange access service rates as a condition for implementing an increase in its local sent-paid pay station rates.

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1. RATES, § 649

[N.H.] Procedure — Hearings and notice — Necessity of — As to temporary rates — Relative to revisions in existing rates — Local exchange telephone carrier. p. 376.

2. RATES, § 630

[N.H.] Temporary rates — Filing of to comply with other rate orders — Necessity of hearings on — As within commission's discretion — Local exchange telephone carrier. p. 376.

3. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed temporary rates — To allow for adequate investigation and hearing — Local exchange telephone carrier. p. 376.

4. RATES, § 532

[N.H.] Telephone rate design — Mandate for reductions in local exchange and exchange access service rates — As condition for payphone rate increase — Effect of filing temporary rates — Necessity of suspension and hearing — Local exchange carrier. p. 376.

BY THE COMMISSION:

ORDER

In Docket No. DS 97-028, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) revisions to its Message Telecommunications Service to offset the anticipated revenue increase associated with a proposed increase in the local coin rate. On April 18, 1997, the Commission approved the local coin rate increase but suspended implementation of the increase "until the Commission approves a reduction to `Intrastate local exchange service and exchange access service rates' in conformance with FCC Order No. 97-678."

On April 22, 1997, NYNEX filed with the Commission revised tariff pages to reduce the monthly service rates for residential and business Basic Exchange and Centrex services and

usage rates for intrastate Access service, effective April 22, 1997. Concurrently, NYNEX filed with the Commission a Motion for Establishment of Temporary Rates, effective April 22, 1997, and for Waiver of the 30 Day Notice Requirement contained in Puc 1601.05(a). In addition, NYNEX requested temporary rates be established at current rate levels for the respective services, effective immediately and without hearing.

NYNEX intends the result of these filings, if approved by the Commission, will be that the effective date of the proposed tariff changes will be coincident with the effective date of the proposed temporary rates. NYNEX also asserts that the filing of its Motion for temporary rates "bookmarks" the rate decreases effective the date of the filing and thereby allows implementation of the payphone rate increase as permitted by the Commission in Order No. 22,562 (April 18, 1997).

The Commission Staff (Staff) has reviewed the proposed permanent tariff

revisions and recommends they be suspended, pursuant to RSA 378:6 I(b), pending further investigation. We will so order.

[1-4] For several reasons, we find that the public interest requires that a public hearing be held on temporary rates. First, the plain meaning of the language in RSA 378:27 requires notice and hearing before imposing temporary rates. Second, both the level and the timing of temporary rates are pivotal with regard to the implementation of our Order No. 22,562; the date on which NYNEX is authorized to increase its payphone rate to 25 cents is the date that payphone subsidies are removed from basic exchange and access rates. NYNEX requests that temporary rates be effective on the date of filing. This raises the question of whether imposition of temporary rates at the current level constitutes compliance with Order No. 22,562 so as to activate the 25-cent payphone rate. We believe this question as well as the question of whether the proposed tariffs are in the public interest should be addressed in a hearing. RSA 378:27 has been interpreted to authorize temporary rates to take effect on or after the date the utility filed its new rate schedules with the Commission for revised permanent rates, *Appeal of Pennichuck Water Works*, 120 NH 562, 567 (1980), but that is not necessarily reasonable in every case.

Puc 16001.05(1) allows a tariff change to become effective only after 30 days notice to the Commission. NYNEX seeks a waiver of this rule for the purpose of permitting temporary and permanent rates to reflect the same effective date. Pursuant to Puc 201.05, we will grant this waiver consistent with the results of the hearing on temporary rates.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held on the issue of temporary rates pursuant to RSA 378:27, before the Public Utilities Commission at 8 Old Suncook Road, Concord, New Hampshire, on Thursday, May 8, 1997, at 10:00 a.m.; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rules, Puc 203.01, NYNEX shall notify all persons desiring to be heard at this hearing by publishing an attested copy of this order

no later than May 2, 1997, in a newspaper of statewide circulation, publication shall be documented by affidavit filed with the Commission on or before May 8, 1997; and it is

FURTHER ORDERED, that NYNEX shall send, by first class mail, a copy of this order to all parties to DR 97-028 by May 2, 1997; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rules Puc 201.05, Puc 1605.01(a)(1), restricting the effective date for tariff changes to 30 days after notice to the Commission, is waived; and it is

FURTHER ORDERED, that the following tariff pages are suspended:

NHPUC — No. 77:

Part M, Section 1, pages 14-20, 29

Part M, Section 3, pages 58-60,66,84-86

NHPUC — No. 79:

Access Service, Section 30, page 6

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,562, 82 NH PUC 352, Apr. 18, 1997.

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NH.PUC*04/30/97*[97301]*82 NH PUC 376*Statewide Electric Utility Restructuring Plan

[Go to End of 97301]

82 NH PUC 376

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,576

New Hampshire Public Utilities Commission

April 30, 1997

ORDER granting rehearing as to yet another discrete issue addressed in Order No. 22,512 (82 NH PUC 101, *supra*), which pertained to proper treatment of stranded costs associated

with an adopted electric industry restructuring plan. Commission agrees to revisit that part of the order which requires a complete phase-out of ratepayer-funded conservation and energy-efficiency programs.

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1. PROCEDURE, § 32

[N.H.] Rehearings — Limited versus full — As to discrete issues — Addition of single new issue for rehearing — Concomitant adjustment to rehearing schedule — Electric restructuring proceeding — Elimination of energy-efficiency programs. p. 377.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring — Components — Required phase-out of energy-efficiency programs — Rehearing as to such — Further discovery as to market factors and cost-effectiveness. p. 377.

3. CONSERVATION, § 1

[N.H.] Electric utilities — Energy-efficiency programs — Effect of industry restructuring — Elimination of such programs — Rehearing as to phase-out requirements — Further discovery as to market factors and cost-effectiveness. p. 377.

BY THE COMMISSION:

ORDER

On February 28, 1997, the New Hampshire Public Utilities Commission (Commission) issued its Statewide Electric Utility Restructuring Plan (Order 22,514) (the Final Plan or Plan) pursuant to the requirements of RSA Chapter 374-F. Consistent with the enabling legislation, the Final Plan articulates various policies which will guide the Commission's future efforts to

restructure New Hampshire's electric utility industry, and it establishes compliance filing requirements for jurisdictional utilities consistent with those policies.

Subsequent to the release of the Final Plan, a number of parties filed timely motions for rehearing or clarification with respect to the policies announced in the Plan. In order to review and thoroughly evaluate those requests, the Commission suspended and stayed those facets of the Plan that are the subject of pending motions. *See*, Order No. 22,548 (April 7, 1997). The Commission has already granted rehearing with respect to certain issues raised in a motion for rehearing filed by Enron Capital and Trade Resources (Enron); hearings on those matters are scheduled for May 21-22, 1997. *See*, Order No. 22,517 (March 17, 1997).

[1-3] Upon further review of the rehearing requests, we have decided to accept additional testimony and comments with respect to a discrete policy decision announced in the Final Plan. Several parties to this proceeding have requested that we reconsider our decision to phase out mandatory energy efficiency programs which are currently administered by electric utilities. These rehearing requests were filed by the Conservation Law Foundation (CLF),[1(92)] Granite State Electric Company (GSEC) and the Governor's Office of Energy and Community Service (ECS).[2(93)] In order to help define the scope of rehearing on this issue, we briefly review the enabling legislation and the basis for the policies articulated in the Final Plan.

The Legislature's policy principle with respect to energy efficiency services states as follows:

> Restructuring should be designed to reduce market barriers to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective conservation. Utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers.

RSA 374-F:3,X.[3(94)] The Legislature has authorized, but not directed, the Commission to advance this policy objective by requiring ratepayers to subsidize energy efficiency

programs through a system benefits charge. RSA 374-F:3,VI.

The Final Plan reflects our determination that the public policy goals of the Legislature in the area of energy efficiency can and should be advanced without requiring ratepayers to subsidize programs which are of dubious cost-effectiveness. Accordingly, we have directed distribution utilities to phase out ratepayer-subsidized conservation programs within two years after the introduction of retail choice. *See*, Final Plan at 109-112. The basis for this decision is our finding that industry restructuring will most likely lead to the development of competitive markets for energy efficiency services, and that ratepayer-subsidized programs administered by distribution companies could actually impede the development of this evolving market. *Id.*

ECS, CLF and GSEC disagree with the Commission's underlying conclusions with respect to this issue. Each supports the imposition of a non-bypassable charge on ratepayers in order to

fund energy efficiency programs, although none of their rehearing requests are accompanied by an analysis of the rate impact associated with specific proposals.

We continue to believe that the Legislature did not intend to mandate the development of a restructuring plan that requires ratepayers to subsidize energy efficiency programs, a policy which will have the unfortunate effect of decreasing the savings that could otherwise be achieved through retail competition. Moreover, we continue to question the efficacy of such an approach as a means of advancing the public policy objectives of the Legislature. In the Final Plan, we stated our expectation that energy efficiency services will be among the products and services offered by suppliers in a competitive retail market. We believe that our approach is consistent with the policies articulated by the Legislature. Nonetheless, several parties have raised the possibility that the enabling legislation, which is intended to guide our policies in this area, is ambiguous on this point. Accordingly, we will grant rehearing for the purpose of accepting additional testimony or comments on the following issues:

Issue 1: Market Barriers

What are the specific market barriers that are likely to exist which will (a) impede the development of competitively provided energy efficiency services, or (b) cause existing utility-sponsored energy efficiency programs to "lose opportunities"? (*See*, RSA 374-F:3,X). Are ratepayer subsidies necessary to reduce these market barriers, and if so, what level of funding should the Commission require to reduce those barriers?

Issue 2: Market-Based Incentives

Are there other market-based incentives (i.e., not ratepayer subsidies) which the Commission should adopt to encourage the development of energy efficiency programs?

Issue 3: Cost-Effectiveness Test

What is the appropriate method to determine whether a program is "cost-effective" as that term is used in RSA 374-F:3,X?

Issue 4: Program Administration

Assuming that some level of ratepayer funding for energy efficiency programs is adopted by the Commission, how should those program funds be utilized and who should administer those programs? Should distribution companies be obligated (or permitted) to administer energy efficiency programs (directly or through affiliates), and if so, should those services be procured through a competitive bidding process?

Issue 5: Impact on Near-Term Rate Relief

What will be the rate impact of specific proposals to fund energy efficiency programs, and how should those rate impacts be reconciled with the Legislature's near-term rate relief principle in RSA Chapter 374-F?

Any party who wishes to be heard with respect to these issues should pre-file testimony or written comments by May 14, 1997. We have

scheduled a hearing for May 22, 1997 in order to accept oral testimony and argument on these five issues. As with previous hearings, we encourage parties with similar interests to consolidate the presentation of witnesses. We also note that we will treat the hearings on these issues as non-adjudicative, as we have throughout this docket. After reviewing the pre-filed testimony and written comments, we will issue an order establishing a schedule of witnesses for the May 22nd hearing. The Commission strongly encourages all parties who have an interest in this aspect of the Final Plan, including non-utility service providers, to express their views with respect to the availability of energy efficiency programs.

Based upon the foregoing, it is hereby

ORDERED, that any party who wishes to submit testimony or comments regarding the Commission's policies on energy efficiency programs shall file the same on or before May 14, 1997; and it is

FURTHER ORDERED, that a hearing on the issues articulated in this order shall be held on May 22, 1997 beginning at 10:00 A.M.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1997.

FOOTNOTES

[1]CLF's motion for rehearing was filed on behalf of itself and "others" who purportedly represent a group self-named the "Electric Utility Restructuring Collaborative."

[2]ECS is not a party to this proceeding, but asserts that it has standing to seek rehearing because it is "directly affected" by the Commission's order in this area. *See*, RSA 541:3. Although not an intervenor, it is appropriate to consider ECS's positions in view of that agency's stated mission which includes the advancement of programs and policies "that support energy conservation, as well as economically and environmentally sound energy use and planning in New Hampshire."

[3]The policy principles articulated in RSA Chapter 374-F are intended to guide the

Commission "in implementing a statewide electric utility industry restructuring plan ... and in regulating a restructured electric utility industry." RSA 374-F:1,III.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, 175 PUR4th 193, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,517, 82 NH PUC 265, Mar. 17, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997.

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NH.PUC*04/30/97*[97302]*82 NH PUC 379*Statewide Electric Utility Restructuring Plan

[Go to End of 97302]

82 NH PUC 379

Re Statewide Electric Utility Restructuring Plan

Petitioner: Public Service Company of New Hampshire

DR 96-150
Order No. 22,577

New Hampshire Public Utilities Commission

April 30, 1997

ORDER granting Public Service Company of New Hampshire an extension of time for responding to data requests stemming from Order No. 22,548 (82 NH PUC 325, *supra*). The procedural schedule for considering associated petitions for rehearing and/or clarification is modified as well. (The underlying decision pertains to treatment of stranded costs associated with an adopted electric industry restructuring plan.)

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Responses to data requests — Deadlines and schedule

— Extension of — Factors — Volume of data requests — In electric restructuring proceeding — As to treatment of associated

stranded costs. p. 380.

2. PROCEDURE, § 39

[N.H.] Time limits — Extensions of — For responding to data requests — For associated protective treatment — Factors justifying extensions — Volume of data requests — Other procedural modifications — In electric restructuring proceeding — As to treatment of associated stranded costs. p. 380.

3. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — Continuation of — Factors — Modification of procedural and discovery schedules — Extension of data response deadlines — In electric restructuring proceeding — As to treatment of associated stranded costs. p. 380.

4. PROCEDURE, § 16

[N.H.] Discovery and inspection — Disputes as to process — Resolution in prehearing conference — In electric restructuring proceeding — As to treatment of associated stranded costs. p. 380.

BY THE COMMISSION:

ORDER

By Order No. 22,548 (April 7, 1997), the New Hampshire Public Utilities Commission (Commission) established a procedural schedule for the purpose of accepting additional testimony relative to two issues raised by Public Service Company of New Hampshire (PSNH) in this proceeding. The discovery schedule established by that order required PSNH to respond to Commission Staff (Staff) and intervenor data requests one week after service of such requests. On April 24, 1997, PSNH filed a motion seeking additional time to respond to the data requests propounded by various parties in this proceeding. Additionally, PSNH requests an extension of Commission Order No. 22,393 (November 4, 1996) which order granted protective treatment to certain confidential data previously subject to discovery in this proceeding. No objections were

filed to PSNH's Motion, although intervenor, Cabletron Systems, Inc. (Cabletron), submitted a response in which it expressed support for a two week postponement of the hearing dates currently scheduled for May 21-22, 1997. According to Cabletron, PSNH should be granted a one week extension to respond to outstanding data requests; additionally, Cabletron suggests that the Commission schedule a prehearing conference to resolve anticipated discovery disputes.

[1-4] After considering the volume of data requests propounded upon PSNH, we believe that it is reasonable to afford the company additional time to prepare and serve responses. Accordingly, PSNH's motion for a two (2) week extension to the discovery schedule is granted. Additionally, we grant PSNH's request to extend the scope of Order No. 22,393 to commercially sensitive information which is the subject of outstanding discovery requests by intervenors or Staff. We also agree with Cabletron that it is appropriate to schedule a prehearing conference at which time we will resolve any outstanding discovery disputes and to take up any other outstanding procedural issues. We expect that PSNH and the discovering parties will make every effort to resolve any such disputes before seeking Commission involvement in this aspect of the proceeding. In the event that disagreements over the scope of PSNH's discovery develop after Staff and the intervenors their testimony, we will consider scheduling an additional hearing to consider any such issues.

By granting PSNH's motion, we must also revise the remainder of the procedural schedule. The new schedule is as follows:

Page 380

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

PSNH Responses to Data Requests	May 12, 1997
Prehearing Conference	May 14, 1997 (8:30 A.M.)
Intervenor Testimony	May 19, 1997
PSNH Data Requests	May 26, 1997
Intervenor Responses	June 2, 1997
Hearings	June 4-5, 1997 (10:00 A.M.)

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Extension of Time for Responses to Data Requests and for Extension of Protective Order No. 22,393 is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule is revised as set forth herein.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,393, 81 NH PUC 838, Nov. 4, 1996. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997.

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NH.PUC*04/30/97*[97303]*82 NH PUC 381*Northern Utilities, Inc., New Hampshire Division

[Go to End of 97303]

82 NH PUC 381

Re Northern Utilities, Inc., New Hampshire Division

DR 97-047
Order No. 22,578

New Hampshire Public Utilities Commission

April 30, 1997

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a credit of 0.30 cents per therm (a 1.40-cent decrease), attributable primarily to prior-period overcollections and interstate pipeline refunds.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting decrease — Prior-period overcollections — Refunds from interstate pipeline suppliers — Local distribution company. p. 382.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of

Northern Utilities, Inc.; and Stephen P. Frink for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 14, 1997, Northern Utilities, Inc. (Northern or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Cost of Gas Adjustment (CGA) for the period May 1, 1997 through October 31, 1997 for effect May 1, 1997. The filing was accompanied by the pre-filed direct testimony and supporting attachments of Michael J. Harn, Rate Analyst, which explained the filing. The proposed 1997 Summer CGA is a credit of $0.0030 per therm.

On March 14, 1997, Northern filed a Motion for Protective Order and Confidential Treatment which was granted by the Commission on March 25, 1997 in Order No. 22,533.

An Order of Notice was issued on March 18, 1997 setting the date of the hearing for April 23, 1997 at 10:30 a.m. at the Commission's office in Concord, New Hampshire.

Page 381

Apart from the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor, there were no intervenors in this docket. A duly noticed hearing on the merits was held at the Commission on April 23, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Northern*

Mr. Harn testified that the proposed 1997 Summer CGA rate of ($0.0030) per therm represents a decrease of $.0140 from the 1996 Summer CGA rate of $0.0110. The decrease was primarily attributed to a prior period overcollection of $113,370 in the current summer CGA compared to a $323,308 undercollection in the 1996 summer period and interstate pipeline refunds of $133,028 allocated to the 1997 summer period compared to $35,850 in the 1996 summer period.

The 1997 Summer CGA sales forecast reflected a 620,139 therm (5.84 percent) decrease in firm sales from the 1996 Summer period, although the Company forecasted an increase in customers. Mr. Harn stated that the projected decline in sales does not represent a trend, but

resulted from unusually high sales during the 1996 summer period because of a much colder than normal October. In addition, one commercial customer switched from firm sales to firm transportation service, further reducing projected gas sales.

B. *Staff*

Staff presented no testimony but indicated that it had reviewed the filing and supported Northern's revised 1997 CGA filing.

III. COMMISSION ANALYSIS

[1] Based upon Staff's review of the filing, the books and records of the Company and the record developed in this proceeding, the Commission finds that the proposed CGA rate is just and reasonable and in the public interest. Accordingly, we will approve the rate effective May 1, 1997.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Twenty-second Revised Page 32, Sheet No. 1 and Proposed Seventeenth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C. tariff of Northern Utilities, Inc. - New Hampshire Division, providing for Cost of Gas Adjustment of ($0.0030) per therm for the period of May 1, 1997 through October 31, 1997 is hereby APPROVED, said rate to become effective for bills rendered on or after May 1, 1997 in accordance with Puc 1203.05 (b); and it is

FURTHER ORDERED, that the over/undercollection will accrue interest at the Prime Rate as 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 ten percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the Company file properly annotated tariff pages in compliance with this Order no later than fifteen 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 97-047, Order No. 22,533, 82 NH PUC 293, Mar. 25, 1997.

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NH.PUC*04/30/97*[97304]*82 NH PUC 383*Northern Utilities, Inc. - Salem Division

[Go to End of 97304]

82 NH PUC 383

Re Northern Utilities, Inc. - Salem Division

DR 97-048
Order No. 22,579

New Hampshire Public Utilities Commission

April 30, 1997

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 24.28 cents per therm (a 2.51-cent increase), attributable to prior-period undercollections and higher propane supply prices.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors affecting increase — Rising propane supply costs — Prior-period undercollections — Local distribution company. p. 384.

APPEARANCES: Leboeuf, Lamb, Greene, and MacRae by Scott Mueller, Esquire, on behalf of Northern Utilities, Inc.; and Stephen P. Frink, for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 14, 1997, Northern Utilities, Inc. (Northern or the Company) filed with the New Hampshire Public Utilities Commission (Commission) its Salem Division's Cost of Gas Adjustment (CGA) for effect May 1, 1997. The filing was accompanied by a cover letter and supporting schedules from Michael J. Harn, Rate Analyst.

An Order of Notice was issued on March 18, 1997 setting the date of the hearing for April 23, 1997 at 10:00 a.m. at the Commission's office in Concord, New Hampshire.

On April 23, 1997, Northern filed a revised 1997 Summer CGA. The Company's updated CGA is a charge of $0.2428 per therm.

Apart from the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor, there were no intervenors in this docket. A duly noticed hearing on the merits was held at the Commission on April 23, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Northern*

Northern requests a CGA charge for the 1997 summer period of $0.2428 per therm. The March 14, 1997 filing was adjusted to reflect the current propane prices as reported in the April 22, 1997 *Wall Street Journal* for the Pelham customers, added a segment of the Pelham transportation costs not included in the original filing and corrected the unaccounted for gas costs which had not been calculated for the thirteen customers in the Copper Beech Road development (Copper Beech). The revisions increased the March 14, 1997 proposed rate of $0.2148 per therm to $0.2428 per therm.

The Company testified that the proposed CGA rate represents a $0.0251 per therm increase from last summer's CGA rate of $0.2177 per therm, an increase primarily attributed to a prior period undercollection and higher propane prices. The increase was partially offset by the allocation of a portion of the gas costs to the New Hampshire Division, as was proposed and approved in Northern's 1996/97 Winter CGA docket (Order No. 22,390 dated October 31, 1996). Northern's proposed 1997 Summer CGA shifts $2,510 of gas costs to the New Hampshire Division by assigning the New Hampshire Division's average cost of gas rate to the Copper Beech customers and allocating the difference between the actual costs and the assigned costs to the New Hampshire Division.

Northern had intended to connect the

customers on Copper Beech Road to pipeline natural gas and had been pursuing a large anchor customer which would economically justify running a main to Copper Beech Road. Northern was unable to secure the anchor customer and determined that connecting Copper

Beech had become uneconomical. It had been Northern's intent to release the Copper Beech customers from utility propane service during the 1996/97 winter period, however, the Copper Beech customers filed a complaint with the Commission requesting that Northern be required to connect the development to Northern's natural gas distribution system (Docket No. DE 97-008, which is now pending). Northern has assigned Northern Division gas costs to those customers pending the outcome of the Copper Beech proceeding.

Eighteen commercial customers located in the Pelham Plaza comprise the remainder of the Salem Division's customers. The Pelham Plaza system is served by one 19,000 gallon tank for which Northern is able to purchase wholesale propane. The projected Pelham gas costs are based upon the market price in Mont Belvieu, Texas, the pipeline transportation and odorizing costs to deliver the product to Selkirk, New York, and the trucking costs from Selkirk to Pelham.

Northern testified that an intra-division subsidization exists between the Copper Beech customers (that historically have been assessed at the direct delivery retail rate due to limited storage) and those at the Pelham Plaza (that have been assessed the wholesale inventory rate). Prior to assigning the Northern Division's average cost of gas to Copper Beech, the Pelham Plaza customers were subsidizing the Copper Beech customers. Since the allocation, Copper Beech customers subsidize the Pelham Plaza customers. This intra-division subsidization will be eliminated if the Copper Beech customers are either released from regulated propane service or connected to Northern's natural gas system. If the Copper Beech customers are connected to the Northern's natural gas system, those customers would be included in the New Hampshire Division CGA. The Copper Beech allocation issue will be heard on June 12, 1997.

B. *Staff*

Upon review of Northern's filing, Staff indicated its support for the Company's 1997 Summer CGA filing. Staff also supported the Company's continued reallocation of certain gas costs pending the outcome of the Copper Beech proceeding.

III. COMMISSION ANALYSIS

[1] Having reviewed the record, including Staff's recommendations, we find that the proposed CGA rate is just and reasonable and in the public interest. We will, therefore, approve the rate effective for bills rendered on or after May 1, 1997. We will consider Copper Beech allocations in DR 97-008, scheduled for hearing on June 12, 1997.

Based upon the foregoing, it is hereby

ORDERED, that Fourteenth Revised Page 33, superseding Thirteenth Revised Page 33, N.H.P.U.C. tariff of Northern Utilities, Inc. - Salem Division, providing for the Summer 1997 Cost of Gas Adjustment charge of $0.2428 per therm for the period May 1, 1997 through October 31, 1997 is hereby APPROVED, said rate to become effective for bills rendered on or after May 1, 1997 in accordance with Puc 1203.05 (b); and it is

FURTHER ORDERED, that the over/ undercollection will accrue interest at the Prime Rate

as 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 ten percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the Company file properly annotated tariff pages in compliance with this Order no later than fifteen 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 April, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc. — New Hampshire Division, DR 96-295, Order No. 22,390, 81 NH PUC 829, Oct. 31, 1996.

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[Go to End of 97305]

82 NH PUC 385

Neil S. Fineman
v.
Northern Utilities, Inc.

DE 97-009
Order No. 22,580

New Hampshire Public Utilities Commission

May 1, 1997

COMPLAINT by owner of a shopping center as to propane rates charged by a natural gas local distribution company; dismissed, where such rates had been approved as reasonable in the past and are deemed to remain so. However, the customer is told that he may pursue an extension of natural gas service from another supplier if desired.

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1. RATES, § 384

[N.H.] Gas rate design — Propane service — Factors affecting reasonableness — Costs of supply and costs of associated infrastructure — Local distribution company. p. 386.

2. RATES, § 143

[N.H.] Factors affecting reasonableness — Cost of service — Components — Costs of supply *and* costs of associated infrastructure — Local gas distribution company — Propane service. p. 386.

3. SERVICE, § 199

[N.H.] Extensions — By gas utility — By out-of-state entity — Natural gas as replacing propane service — Factors affecting approval — Unwillingness of existing propane supplier to provide natural gas service — Franchise rights notwithstanding. p. 386.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 24, 1996, Neil S. Fineman, owner of the Pelham Plaza, filed with the New Hampshire Public Utilities Commission (Commission), a complaint challenging the rates of Northern Utilities, Inc. (Northern) and its utility status with regard to the Pelham Plaza. The Pelham Plaza is a "strip mall" of 18 commercial establishments located on State Route 38 in Pelham, New Hampshire. Northern, provides propane gas service to the commercial tenants of Pelham Plaza. Propane is supplied to customers from a 19,000 gallon propane storage tank via an underground distribution system. Each customer is individually metered and is billed on a metered basis.

On November 20, 1996, Commission Staff (Staff) met with Mr. Fineman and Northern to discuss the issues raised in Mr. Fineman's letter of complaint in an attempt to resolve those issues. Subsequent to the meeting, Northern provided propane gas price information for the past

seven years to Mr. Fineman. The meeting and this information did not, however, resolve the complaint.

On February 13, 1997, the Commission issued an order of notice scheduling a prehearing conference for April 2, 1997. Subsequently, the prehearing conference was continued to April 3, 1997 due to a Commission scheduling conflict.

At the prehearing conference, Mr. Fineman stated that he did not believe the propane rates Northern charged its Pelham Plaza customers were reasonable. In support of his statement, Mr. Fineman referred to prices he had been quoted by area propane dealers to supply

Pelham Plaza that were significantly lower than the prices being charged by Northern. Mr. Fineman further questioned why the Commission regulated this propane system when similar systems throughout the State are not subject to Commission jurisdiction. It was Mr. Fineman's belief that deregulation of this propane system would allow him to obtain competitive bids to provide service to Pelham Plaza at the lower rates he had been quoted by area propane suppliers. Mr. Fineman also questioned why Colonial Gas, a public utility providing gas service in Massachusetts communities bordering Pelham, could not provide natural gas service to Pelham if Northern is unwilling or unable to provide it with such service.

Northern responded that its price of propane gas for Pelham Plaza was just and reasonable and had been found so by Commission order. Northern explained that the comparisons in cost being made by Mr. Fineman were inaccurate because the prices did not include the cost of the infrastructure, tanks, lines and meters in place to serve Pelham Plaza. With regard to the request to provide natural gas service to the area, Northern noted that the Tennessee Gas Pipeline ran through Pelham and could be accessed to provide natural gas service, but that it was not economically feasible to do so at this time.

Staff concurred with Northern and requested that Mr. Fineman's complaint be dismissed without prejudice because he could not state with sufficient specificity the relief he was requesting.

This matter was heard by a hearings examiner pursuant to RSA 363:17. The hearings examiner made a written report of the facts and recommended that Mr. Fineman's complaint be dismissed without prejudice so that Mr. Fineman could amend or refile his petition to more clearly articulate a request for relief.

II. COMMISSION ANALYSIS

[1, 2] With regard to the rates being charged by Northern at Pelham Plaza, Northern is correct that the rates have been found just and reasonable by the Commission. *Re Northern Utilities, Inc.*, 77 NH PUC 366 (1992) (base rates); *Re Northern Utilities, Inc.*, Order No. 22,495 (January 31, 1997) (cost of gas). Although Mr. Fineman represented that he had received quotes

for propane by providers other than Northern at costs lower than those charged by Northern, the quotes do not reflect the complete cost of service to Pelham Plaza. Pelham Plaza's rates are not based solely on the cost of propane; they also reflect the overhead and rate base required to provide service.[1](95) We find that Mr. Fineman has presented no new evidence that would cause us to reconsider the reasonableness of those rates. RSA 365:28.

We believe Mr. Fineman's request that propane service to the Pelham Plaza be provided on an "unregulated" basis is founded in the misconception that the tank, distribution system and meters are Mr. Fineman's or his tenants' property. However, the evidence demonstrates that Northern purchased the tank, distribution system and meters from Petrolane-Southern New Hampshire Gas Company at a cost of $12,875, which has been depreciated to date to $9,813.35. *Re Petrolane-Southern New Hampshire Gas Company, Inc.*, 74 NH PUC 43 (1989). Thus, "deregulation" of this propane system would not result in free access to the propane tank or the distribution system for the provider of Mr. Fineman's choice as he appears to believe because the system is Northern's property. Therefore, another propane provider could not utilize the equipment unless they purchased this property from Northern.

Given this analysis, we find no basis on which to pursue Mr. Fineman's complaint at this time. We will, therefore, dismiss the complaint.

[3] With regard to Mr. Fineman's inquiry into Colonial Gas' right to provide service in Pelham, Colonial Gas is free to file a petition with this Commission to provide service in this area of Pelham. It is our understanding that Northern has come to the conclusion that it would not be economically feasible to provide service to this area of Pelham at this time. Given that Northern is not willing to provide service in this area and Mr. Fineman has represented that Colonial Gas would be willing to provide such service we would entertain a

request from Colonial Gas to provide service to this area, provided Colonial Gas could establish that such service would be in the public interest and rates would be just and reasonable. RSA 374:24, RSA 374:26, RSA 374:28. Furthermore, the fact that Northern currently holds franchise rights in Pelham is not a prohibition to Colonial Gas' provision of service to this area of Pelham. *See, Appeal of Public Service Company of New Hampshire*, 141 N.H. 13 (1996).

Based upon the foregoing, it is hereby

ORDERED, that the complaint of Neil S. Fineman is dismissed.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1997.

FOOTNOTES

[1]Pelham Plaza's rates are based on Northern's system-wide rate base in New Hampshire. This spreads the risk of rate shock caused by the failure of any single component of service across the

entire customer base.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc. — Salem Division, DR 97-005, Order No. 22,495, 82 NH PUC 58, Jan. 31, 1997.

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NH.PUC*05/01/97*[97306]*82 NH PUC 387*Holiday Ridge Supply Company

[Go to End of 97306]

82 NH PUC 387

Re Holiday Ridge Supply Company

Additional applicants: Holiday Ridge Owners' Association; Lower Bartlett Water Precinct

DE 96-257
Order No. 22,581

New Hampshire Public Utilities Commission

May 1, 1997

ORDER approving a proposed transfer of assets and franchise rights from a small water utility, Holiday Ridge Supply Company, to a related homeowners' association, with the understanding that the system then would be transferred to a municipal water utility.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Negotiated transfer arrangements — Customer input and preferences — Water utilities. p. 388.

2. FRANCHISES, § 50

[N.H.] Transfer — Factors affecting approval — Negotiated arrangements — Customer

input and preferences — Two-step procedure — From utility to homeowners' association to municipal authority — Water system. p. 388.

3. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Terms and conditions — Transfer of water system — To municipal authority — Assumption of service obligation by municipal precinct — Uniformity of rates within and outside precinct. p. 388.

4. RATES, § 429

[N.H.] Municipally provided service — Outside corporate boundaries — Uniformity of charges — As condition of transfer of water utility to municipal precinct. p. 388.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 13, 1996, Holiday Ridge Supply Company (Holiday Ridge), a public utility franchised to provide water service to a limited

area of the Town of Bartlett, New Hampshire, filed a request with the New Hampshire Public Utilities Commission (Commission) for approval of the transfer of the works comprising its water supply and distribution system to the Holiday Ridge Owners' Association (Association) pursuant to RSA 374:30. The Association is comprised of all of the customers of Holiday Ridge.

The proposed transfer to the Association was to be accomplished through a sale of the assets of Holiday Ridge to the Association at a cost that is, according to our Staff, below the current book value of the assets. On October 6, 1996 the Commission issued an order of notice scheduling a prehearing conference to, among other things, establish a procedural schedule to investigate the proposed transfer and to hear input from the affected customers.

In response to the order of notice, a number of homeowners/customers (customers) forwarded letters to the Commission objecting to the transfer of the water system to the Association. In the alternative, they requested that the water system be transferred to the Lower Bartlett Village Precinct (Precinct).[1](96) On November 15, 1996 the Commission held the duly noticed prehearing conference.

A number of the same customers that had written the Commission appeared at the prehearing

conference and reiterated their objection to the proposed transfer because they preferred to be served by the Precinct. The customers also objected to paying the principals of Holiday Ridge for the assets comprising the water utility.

The Precinct also appeared at the prehearing conference and subsequently filed a motion to intervene. The Precinct is a municipal corporation established in accordance with RSA chapter 52 to provide water service. By Order No. 21,951, this Commission recognized the financial, managerial and technical expertise of the Precinct in the provision of water service and granted it a franchise to provide service outside its precinct or municipal boundaries, pursuant to RSA 362:4, 374:22 and 374:26. *Re Lower Bartlett Village Precinct*, Order No. 21,951 (December 19, 1995)

Subsequent to the prehearing conference, Staff met with the customers, Holiday Ridge and the Precinct at a public meeting in Bartlett. Following the meeting, the Commission received correspondence from customers indicating that they had no objection to the transfer of the assets of Holiday Ridge to the Association, provided the Precinct would accept them as customers.[2(97)]

We have never ruled on the Precinct's motion to intervene given our understanding that negotiations were taking place among Holiday Ridge, the Association and the Precinct that might result in the Precinct acquiring the Holiday Ridge distribution system and providing service to the customers of Holiday Ridge from the Precinct's wells.

On April 7, 1997, the Precinct filed a letter with the Commission requesting permission to provide water service to that area of the Town of Bartlett currently franchised to Holiday Ridge. The request was contingent on the transfer of the franchise and works of Holiday Ridge to the Association and the subsequent transfer of the same to the Precinct. Given the pending request we will treat the Precinct as a joint petitioner with Holiday Ridge.

II. COMMISSION ANALYSIS

[1-4] The issues for our consideration are whether the proposed transfer of the assets of Holiday Ridge to the Association is for the public good, RSA 374:30; and whether it is in the public interest to grant the Precinct permission to provide service outside its municipal boundaries to the former customers of Holiday Ridge subsequent to the transfer of the former Holiday Ridge assets to the Precinct from the customers. RSA 362:4, RSA 374:22, RSA 374:24. The two issues are interdependent, however, and we will address them in that manner.

Based on the input we have received from the customers of Holiday Ridge and our Staff's report that the proposed transfer price is less than the book value of the assets, we find that the proposed transfer of the water supply and distribution assets to the Association is for the public good. This finding, however, is conditioned on the Precinct's agreement to accept the transferred assets from the Association and the

provision of service to the customers from the Precinct as set forth below.

We have already recognized the financial, managerial and technical expertise of the Precinct to provide water service. *Re Lower Bartlett Village Precinct*, Order No. 21,951 (December 19, 1995). Nothing has been presented to the Commission that would cause us to reconsider that conclusion. It is our understanding that the Precinct will serve these new customers at a rate no higher than that charged to customers within the Precinct boundary. *See* RSA 362:4,III(a). Thus, we find that it is in the public interest to allow the Precinct to provide service to the current customers of Holiday Ridge and will grant the Precinct the franchise rights currently held by Holiday Ridge. The grant of this franchise, however, is contingent on the transfer of the assets of the water supply and distribution system from the Association to the Precinct.

Based upon the foregoing, it is hereby

ORDERED, that it is for the public good for Holiday Ridge Supply Company to transfer its assets to the Holiday Ridge Owners' Association contingent on the agreement of the Lower Bartlett Village Precinct to provide service to these customers; and it is

FURTHER ORDERED, that it is in the public interest for the Lower Bartlett Village Precinct to provide service in that area currently served by Holiday Ridge Supply Company provided the Holiday Ridge Owners' Association transfers the assets of the distribution system to the Lower Bartlett Village Precinct.

By order of the Public Utilities Commission of New Hampshire this first day of May, 1997.

FOOTNOTES

[1]The Commission received letters from the following customers objecting to the transfer of the Holiday Ridge assets to the Association and alternatively requesting a transfer to the Precinct: John D. Crouchley, Walter J. Zawacki, Robert J. Taylor, Albreht Kopp, John G. Sinkus, Robert A. and Kathleen Zimmerman and Robert Heiges.

[2]The Commission received letters supporting the proposed transfer to the Association, contingent on subsequent transfer to the Precinct, from the following customers: Robert J. Taylor, Kenneth Trank, Rita and William Lucey.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Lower Bartlett Water Precinct, DE 95-302, Order No. 21,951, 80 NH PUC 794, Dec. 19, 1995.

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NH.PUC*05/01/97*[97307]*82 NH PUC 389*EnergyNorth Natural Gas, Inc.

[Go to End of 97307]

82 NH PUC 389

Re EnergyNorth Natural Gas, Inc.

DR 97-062
Order No. 22,582

New Hampshire Public Utilities Commission

May 1, 1997

ORDER authorizing a natural gas local distribution company to eliminate its "controlled attachment policy," under which nonresidential customers not having alternate fuel capability are limited to an average usage of 250 thousand cubic feet of natural gas per day. The commission agrees with the company that expansion of storage facilities, in conjunction with a proliferation of gas supply projects and new transmission opportunities, has largely resolved the gas supply shortages that prompted the policy back in the 1970's.

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1. SERVICE, § 339.4

[N.H.] Natural gas — Allocation of supply — Nonresidential customers without alternate fuel capability — "Controlled attachment policy" — Average daily limits — Elimination of such restrictions — Factors — Mitigation of supply shortage problems — Expansion of transmission and storage facilities — Local distribution company. p. 391.

Page 389

2. CONSERVATION, § 1

[N.H.] Natural gas local distribution company — Limits on deliveries — Nonresidential customers without alternate fuel capability — "Controlled attachment policy" — Elimination of such restrictions — Factors — Mitigation of supply shortage problems — Expansion of transmission and storage facilities. p. 391.

BY THE COMMISSION:

ORDER

On April 3, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed an original and three copies of First Revised Page 18, Superseding Original Page 18 of ENGI's Natural Gas Tariff NHPUC No. 2-Gas. The tariff change being proposed in this filing eliminates ENGI's Controlled Attachment Policy which applies to new and existing non-residential customers that do not have alternate fuel capability. Sales to such customers are limited to an average of 250 thousand cubic feet (Mcf) per day, based upon a daily volume limitation averaged over a calendar month. ENGI submitted the prefiled testimony of Donald E. Carroll, Vice President of Gas Supply, in support of the elimination of the Controlled Attachment Policy.

When the Controlled Attachment Policy was initially approved in 1973 (Order No. 11,021 dated July 24, 1973) with a controlled attachment ceiling of 50 Mcf, Gas Service, Inc. (now ENGI) had been notified by its supplier of natural gas (Tennessee Gas Pipeline Company) that Tennessee Gas Pipeline Company would be unable to increase its supply. Additionally, Gas Service, Inc. had been unable to obtain firm commitments for the necessary quantities of propane to supplement the natural gas supply. On August 23, 1989, ENGI petitioned the Commission to approve an increase in the 50 Mcf ceiling to 100 Mcf because gas supplies were no longer curtailed and ENGI had been able to obtain new firm capacity (see Order No. 19,635 dated December 11, 1989). Again in 1990, ENGI petitioned and received approval to further increase the ceiling by phasing in two increases: the first from 100 Mcf to 150 Mcf and the second from 150 Mcf to 200 Mcf (see Order No. 20,260 dated October 1, 1991).

The prefiled testimony of Mr. Carroll explains the basis for the elimination of the Controlled Attachment Policy. Mr. Carroll states that the natural gas shortages experienced in the mid 1970's in many parts of the country no longer exist. Additionally, many new gas supply projects have been built to serve the Northeast along with the introduction of several new and expanded underground storage projects that increase the availability of supply to the Northeast. Mr. Carroll's prefiled testimony also states that ENGI can still address the concern that a customer with a large new load may use up all the remaining distribution capacity by invoking its "Right to Reject" clause in its tariff which states: "The company may reject any application for service which would involve excessive cost to supply, or which might affect the supply of service to other customers, or for other good and sufficient reasons."

On April 29, 1997, Staff submitted a recommendation to the Commission stating its support of the elimination of the Controlled Attachment Policy. Staff agrees with ENGI that a shortage of natural gas supply to the Northeast no longer exists. Additionally, ENGI's rate schedules in its tariff states in several places: "Availability is limited to use in locations served by the company's mains and for which the company's facilities are adequate." These clauses allow ENGI to evaluate new or additional loads on a case-by-case basis. Staff also recommended that ENGI eliminate the Penalty clause that it retained on First Revised Page 18. Staff believes that the penalty described on First Revised Page 18 is associated with unauthorized volumes of gas taken by a customer in conjunction with the Controlled Attachment Policy. Since the Controlled

Attachment Policy will no longer exist, Staff believes that the associated penalty should also be eliminated. Additionally, Staff noted a discrepancy between Original Page 18 and Order No. 20,260. Order No. 20,260 increased the controlled attachment ceiling to 200 Mcf but Original Page 18 of

ENGI's tariff states the ceiling at 250 Mcf. Given that Staff concurs with ENGI's request to eliminate the Controlled Attachment Policy, Staff believes that the discrepancy is moot.

[1, 2] The Commission has reviewed the prefiled testimony of Mr. Carroll and Staff's recommendation dated April 28, 1997. We find that the circumstances which initiated the Controlled Attachment Policy in 1973 and warranted its continuation no longer exist. Additionally, we are satisfied that ENGI's tariff provides sufficient protection to preserve the adequacy of gas supply to present and prospective customers. Therefore, we will approve the elimination of the Controlled Attachment Policy and will request that ENGI file a compliance tariff which reflects the elimination of the penalty associated with the policy.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ENGI's request for approval of the elimination of the Controlled Attachment Policy as modified above is GRANTED; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, ENGI 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 May 8, 1997 and to be documented by affidavit filed with this office on or before May 15, 1997; 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 22, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 29, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that ENGI shall file a compliance tariff with the Commission on or before June 2, 1997, 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 May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 89-151, Order No. 19,635, 74 NH PUC 474, Dec. 11, 1989. [N.H.] Re EnergyNorth Natural Gas, Inc., DE 90-215, Order No. 20,260, 76 NH PUC 627, Oct. 1, 1991. [N.H.] Re Gas Service, Inc., D-R6511, Order No. 11,021, 58 NH PUC 48, July 24, 1973.

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82 NH PUC 391

Re Vitts Corporation

DE 96-396
Order No. 22,583

New Hampshire Public Utilities Commission

May 1, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 392.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service —

Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 392.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 392.

BY THE COMMISSION:

ORDER

On November 27, 1996, Vitts Corporation (Vitts) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The filing also included a Motion for Confidentiality to exempt certain information from public disclosure. Pursuant to Puc 204.07 (b), the Motion for Confidentiality will be addressed in a separate order. The Commission will protect the information from public disclosure pending review of the request for confidential treatment.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Vitts' petition for compliance with these standards. Staff reports that Vitts has provided all the information required by Puc 1304.02. The information provided supports Vitts' assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Vitts as a New Hampshire CLEC.

[1-3] We find that Vitts has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Vitts in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses

incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Vitts has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Vitts agreed to concur with NYNEX's present rates for intraLATA switched access or charge a lower rate, including future changes for an indefinite period. We will monitor access rates as the intraLATA toll and local exchange markets develop. If, at any point, Vitts seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal inasmuch as a situation where CLECs charge higher access rates than they reciprocally pay NYNEX may inhibit competition for the CLEC customers and may not be in compliance with the TAct.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that Vitts' petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03.

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 May 8, 1997 and to be documented by affidavit filed with this office on or before May 15, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than May 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2, 1997, 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 June 2, 1997, 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 May, 1997.

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NH.PUC*05/01/97*[97309]*82 NH PUC 393*Telecom One, Inc.

[Go to End of 97309]

82 NH PUC 393

Re Telecom One, Inc.

Additional applicant: IXC Long Distance, Inc.

DE 97-029
Order No. 22,584

New Hampshire Public Utilities Commission

May 1, 1997

ORDER approving a transfer of control of Telecom One, Inc., to IXC Long Distance, Inc.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Transfer of control — Factors affecting approval — Transparent effect on customers — Continuation of services — Compliance with standard of no net harm — Telecommunications carriers. p. 393.

BY THE COMMISSION:

ORDER

On February 5, 1997, Telecom One, Inc. (Telecom One) and IXC Long Distance, Inc. (IXC-LD) (the Petitioners) jointly filed with the New Hampshire Public Utilities Commission (Commission) a petition for approval of transfer of control of all outstanding capital stock of Telecom One to IXC-LD.

The transfer of control is part of a larger transaction wherein IXC-Telecom One Acquisition Corp (Acquisition Corp), a wholly owned special purpose subsidiary of IXC Communications, Inc. (IXC), the parent company of IXC-LD, will merge into Telecom One. As a result, Telecom One will become a wholly-owned subsidiary of IXC. IXC will then contribute all of the stock of Telecom One to IXC-LD and, as a result, Telecom One will be a wholly owned subsidiary of IXC-LD.

IXC-LD, a Delaware Corporation, was granted authority by Order 21,620, (April 18, 1995) to provide interexchange telecommunications services within the State of New Hampshire.

Telecom One, a Delaware Corporation, received authority to provide interexchange telecommunications services in New Hampshire on December 29, 1995 by Order 21,962.

The Petitioners seek Commission approval to transfer control of Telecom One to IXC-LD. On January 10, 1997, IXC-LD and Telecom One entered into a stock acquisition and merger

agreement.

[1] The transfer of control will be undertaken in a seamless fashion that will not affect the provision of interstate telecommunications services and will have no adverse effect on the operations and services provided in New

Hampshire. Telecom One will continue to operate under its own name. Telecom One's and IXC-LD's customers will continue to be able to purchase the same services at the same rates, terms and conditions as currently available. Telecom One will continue to be managed by the existing personnel. The Petitioners anticipate achieving economic and marketing efficiencies from the transfer.

We find the proposed transfer of control of Telecom One to IXC-LD will result in no net harm, which is the standard by which we evaluate merger petitions. *See, Re Eastern Utility Associates*, 76 NH PUC 236 (1991). We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the transfer of control of Telecom One to IXC-LD is granted; 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 May 8, 1997 and to be documented by affidavit filed with this office on or before May 15, 1997; 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 22, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 29, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

By order of the Public Utilities Commission of New Hampshire this first day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IXC Long Distance, Inc., DE 95-052, Order No. 21,620, 80 NH PUC 212, Apr. 18, 1995. [N.H.] Re Telecom One, Inc., DE 95-253, Order No. 21,962, 80 NH PUC 819, Dec. 29, 1995.

82 NH PUC 394

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: United States Cellular Corporation

DE 97-068
Order No. 22,585

New Hampshire Public Utilities Commission

May 2, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 395.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 395.

3. TELEPHONES, § 14

[N.H.] Connecting carriers —

Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on

wireless networks. p. 395.

BY THE COMMISSION:

ORDER

[1-3] On April 11, 1997, New England Telephone and Telegraph Company (NYNEX) and United States Cellular Corporation (US Cellular) jointly filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems. The TAct has mandated a major change in compensation in that cellular providers now receive "reciprocal compensation" for calls that terminate on the wireless network. This interconnection agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff has recommended approval of the Cellular Interconnection Agreement between NYNEX and US Cellular based on a review of the summary and actual agreement for compliance with the TAct. Staff also points out that the Agreement is substantially consistent with the terms of previously approved Interconnection Agreements and that all prices are the same as other NYNEX Cellular Agreements. Furthermore, Staff notes that this cellular arrangement is very similar to those previously employed by Independent Local Exchange Companies and wireless carriers, which were not required to be filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and it is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and US Cellular is approved; 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 May 9, 1997 and to be documented by affidavit

filed with this office on or before May 16, 1997; 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 23, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 30, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2 , 1997, 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, 1997.

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NH.PUC*05/02/97*[97311]*82 NH PUC 396*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97311]

82 NH PUC 396

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Southwestern Bell Mobile Systems Inc.

DE 97-074
Order No. 22,586

New Hampshire Public Utilities Commission

May 2, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 396.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As

conducive to competitive local exchange market — Local exchange and cellular carriers. p. 396.

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 396.

BY THE COMMISSION:

ORDER

[1-3] On April 16, 1997, New England Telephone and Telegraph Company (NYNEX) and Southwestern Bell Mobile Systems Inc. (SW Bell Mobile) jointly filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

The TAct has mandated a major change in compensation in that cellular providers now receive "reciprocal compensation" for calls that terminate on the wireless network. This interconnection agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff has recommended approval of the Cellular Interconnection Agreement between NYNEX and SW Bell Mobile based on a review of the summary and actual agreement for compliance with the TAct. Staff also points out that the Agreement is substantially consistent with the terms of previously approved Interconnection Agreements and that all prices are the same as other NYNEX Cellular Agreements. Furthermore, Staff notes that this cellular arrangement is very similar to those previously employed by Independent Local Exchange Companies and wireless carriers, which were not required to be filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and it is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and SW Bell Mobile is approved; 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 May 9, 1997 and to be documented by affidavit filed with this office on or before May 16, 1997; 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 23, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 30, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2, 1997, 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, 1997.

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NH.PUC*05/02/97*[97312]*82 NH PUC 397*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97312]

82 NH PUC 397

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Atlantic Cellular/New Hampshire RSA 1 Limited Partnership

DE 97-076
Order No. 22,587

New Hampshire Public Utilities Commission

May 2, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 397.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 397.

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 397.

BY THE COMMISSION:

Page 397

ORDER

[1-3] On April 21, 1997, New England Telephone and Telegraph Company (NYNEX) and Atlantic Cellular/New Hampshire RSA 1 Limited Partnership(Atlantic) jointly filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

The TAct has mandated a major change in compensation in that cellular providers now receive "reciprocal compensation" for calls that terminate on the wireless network. This interconnection agreement establishes reciprocal compensation as well as negotiated rates for

cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff has recommended approval of the Cellular Interconnection Agreement between NYNEX and Atlantic based on a review of the summary and actual agreement for compliance with the TAct. Staff also points out that the Agreement is substantially consistent with the terms of previously approved Interconnection Agreements and that all prices are the same as other NYNEX Cellular Agreements. Furthermore, Staff notes that this cellular arrangement is very similar to those previously employed by Independent Local Exchange Companies and wireless carriers, which were not required to be filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and it is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and Atlantic is approved; 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 May 9, 1997 and to be documented by affidavit filed with this office on or before May 16, 1997; 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 23, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 30, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 2, 1997, 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, 1997.

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NH.PUC*05/02/97*[97313]*82 NH PUC 399*Union Telephone Company

[Go to End of 97313]

82 NH PUC 399

Re Union Telephone Company

DS 97-056
Order No. 22,588

New Hampshire Public Utilities Commission

May 2, 1997

ORDER adopting stipulation under which a local exchange telephone carrier is granted renewed authority to provide toll service and is deemed to be the designated toll provider in its service area.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — As provided by local exchange carrier — Stipulation for renewed authority — Recognition as designated toll provider in assigned service area — Advent of intraLATA presubscription as a factor. p. 401.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone — Toll service — Renewed toll authority of local exchange carrier — Status as designated toll provider in assigned service area — Advent of intraLATA presubscription as a factor — Competitive choices as being in the public good — Stipulation. p. 401.

3. RATES, § 588

[N.H.] Telephone rate design — Toll service — Access charges — Effect of renewed toll authority for local exchange carrier — Adjustments to account for overearnings from intraLATA toll and access charges — Stipulation. p. 401.

APPEARANCES: Rothfelder Law Offices by Martin C. Rothfelder, Esq. for Union Telephone Company, Victor D. DelVecchio, Esq. for New England Telephone and Telegraph, Inc., Kenneth R. Traum of the Office of the Consumer Advocate on behalf of New Hampshire residential ratepayers, E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. Procedural History

On March 26, 1997, Union Telephone Company (Union) filed with the New Hampshire Public Utilities Commission (Commission) a Revision to Tariff No. 7 to Reintroduce the Provision of Toll Service, Introduce Charges for Directory Assistance and Eliminate the End User Toll Credit. Union requested approval of these tariff revisions in order to effectuate its plan to terminate its Designated Carrier Plan agreement with New England Telephone and Telegraph Inc. (NYNEX), thus replacing NYNEX as the Designated Toll Provider in Union's service territory. Union requested that the Commission act on the tariff revisions in time for the 30 day notice to customers prior to implementation of intraLATA presubscription pursuant to Order No. 22,281 (dated August 16, 1996). On April 1, 1997, Union filed a Motion for Protective Treatment of certain usage and revenue data regarding NYNEX's intrastate toll services filed by Union in support of its effort to become the Designated Toll Provider.

By Order of Notice dated April 2, 1997, the Commission ordered NYNEX to be a full party to the proceeding. At a duly noticed prehearing conference, the Commission approved an accelerated procedural schedule and deferred ruling on Union's Motion for Protective Treatment until NYNEX had an opportunity to review the information for which Union requested protection.

In accord with the approved procedural schedule, NYNEX filed testimony on April 9, 1997 and a technical session attended by all parties and Staff was held on April 22, 1997. As

a result of discussions at the technical session and telephone conferences on April 23, 24, and 25, 1997, Union, Staff and the Office of the Consumer Advocate (OCA) reached an agreement designed to resolve all issues in this docket. The agreement, to which NYNEX did not object, was presented to the Commission at a hearing on April 29, 1997.

As a preliminary matter at the hearing on April 29th, NYNEX confirmed that the testimony filed by Union contains data pertaining to usage of NYNEX services in Union's service area which is commercially sensitive. NYNEX therefore requested the Commission to grant Union's Motion for Protective Treatment for the reasons contained in the motion.

At the hearing April 29, 1997, a motion for late intervention was filed orally by Merrimack Telephone Company and Contoocook Telephone Company (Independent Telephone Companies) pursuant to N.H. Admin. Rules Chapter Puc 203.03. The Independent Telephone Companies stated that their agreements with NYNEX regarding Designated Carrier Plans appeared to be affected by the docket. In the alternative to obtaining party status, the Independent Telephone Companies requested that the Commission indicate that the scope of this docket is limited to Union's Designated Carrier Plan and does not encompass questions relating to Designated Carrier Plans generally. Union, NYNEX, and Staff objected to the late intervention, stating that the Independent Telephone Companies rights and interests are not affected and that intervention

would impair the prompt conduct of the proceedings. The Commission denied the motion for intervention. The Commission advised the Independent Telephone Companies that the request for a statement of scope would be considered upon its renewal at the close of evidence. At the close of evidence, the Independent Telephone Companies renewed their request.

II. Positions of the Parties and Staff

Union, the OCA, and Staff (the Signatories) agree that, effective June 1, 1997, Union shall be the designated toll provider in its service territory, without the 30 day notice required in Commission Order No. In DE 90-002.

The Signatories agree that Union shall implement the toll directory assistance and directory listing rates reflected in the following tariff pages:

> NHPUC No. 7 Contents, Page 1, Seventh Revision Contents, Page 2, Eighth Revision Contents, Page 3, Eighth Revision Index, Page 3, Twelfth Revision Part III-General, Section 2, Page 1, Third Revision Part III-General, Section 2, Page 2, Third Revision Part III-General, Section 2, Page 3, Second Revision Part III-General, Section 6, Page 4, Second Revision Part V-Toll Service, Section 1, Page 1, Fourth Revision Part V-Toll Service, Section 1, Page 2, Original Part V-Toll Service, Section 1, Page 3, Original Part V-Toll Service, Section 1, Page 4, Original

The Signatories agree that Union shall implement reduced access rates as reflected in the following tariff pages:

> NHPUC No. 7 Access Service, Section 3, Page 10, Fourth Revision Access Service, Section 6, Page 13, First Revision Access Service, Section 6, Page 14, Second Revision

The Signatories agree that Union will notify its customers regarding toll providers and intraLATA presubscription via a bill insert or by first class mail sent no more than five business days after the issuance of this order. In addition, Union will notify its customers regarding directory assistance, directory listing, and toll rates via a separate mailing also sent no more than five business days after the issuance of this order.

The Signatories agree that future proposals for toll rate reductions will not be suspended by the Commission; rather, the Commission shall approve or reject any such toll reduction filings within 30 days from the date of filing.

NYNEX is not a signatory to the Stipulation but does not oppose any of its provisions.

III. Commission Analysis

[1-3] After careful review of the proposed Stipulation and the testimony presented in support of it, as well as testimony by NYNEX, we find that the provisions of the Stipulation are reasonable and in the public good. In June, with the advent of intraLATA presubscription, New Hampshire consumers will be able to select, for all such calls made from a particular phone, a carrier for in-state toll calls. The addition of Union as Designated Toll Provider in its service territory means New Hampshire consumers will have an additional carrier among the competitors, enhancing the opportunity for competition to bring about lower prices and technologic innovation. We also note that provisions in the Stipulation assure that the changes will not have an adverse impact upon E911 services or municipal calling services.

We find that the proposed tariff changes are just, reasonable, and in the public good. The effect of the changes to toll and access tariffs is to apportion the revenue reduction approved in our Order No. 21,913 to adjust for overearnings between intraLATA toll and access charges. The reductions do not fall below the toll pricing floor established in Section IV.B. of the modified Stipulation and Agreement in DE 90-002, dated July 29, 1993. Therefore, the requested changes will serve to promote competition in Union's telecommunications market without violating principles which were established to govern toll rates.

We respond to the Independent Telephone Companies request for a statement of the scope of this proceeding by affirming that this proceeding affects only the Designated Carrier Plan between Union and NYNEX. Existing Designated Carrier Plans between NYNEX and other carriers are not affected; nor does this order establish any policy regarding the validity of Designated Carrier Plans.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation making Union the Designated Toll Provider in its service territory, as submitted by Union, the OCA, and Staff, including the revised tariff pages referenced above and appended thereto, is APPROVED; and it is

FURTHER ORDERED, that Union's Motion for Protective Treatment, DATED April 1, 1997, is GRANTED.

By order of the Public Utilities Commission of New Hampshire this second day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996. [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*05/05/97*[97314]*82 NH PUC 401*Keene Gas Corporation

[Go to End of 97314]

82 NH PUC 401

Re Keene Gas Corporation

DR 97-060
Order No. 22,589

New Hampshire Public Utilities Commission

May 5, 1997

ORDER approving a natural gas local distribution company's summer cost-of-gas adjustment filing, resulting in a rate of 23.43 cents per therm (an 18.05-cent increase), attributable to prior-period undercollections and concerns as to winter supplies.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Summer season — Factors

Page 401

affecting increase — Prior-period undercollections — Concerns as to availability of winter supplies — Operations at a loss — Local distribution company. p. 403.

APPEARANCES: John F. DiBernardo, Assistant General Manager, and Mr. Harry B. Sheldon, President, for Keene Gas Corporation; and, Richard B. Deres for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 1, 1997, 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 Public Utilities Commission (Commission) certain revisions to its tariff providing for a 1997 Summer Cost of Gas Adjustment (CGA), of $0.2343 effective May 1, 1997. In support of the filing, Keene submitted the pre-filed testimony of John F. DiBernardo, Plant Operator. The proposed adjustment would represent a $0.1805 per therm increase from the $0.0538 CGA rate approved by the Commission for the 1996 Summer period.

A duly noticed public hearing was held at the Commission on April 28, 1997.

II. POSITION OF KEENE

Mr. DiBernardo described the essential elements from which the projected CGA rate was derived, the current base unit cost of gas, the status of the customer base, and lost and unaccounted for gas.

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 $167,030 for the six month period May 1, 1997 through October 31, 1997, include projected delivered propane costs of $141,745 and a prior period under-collection (deficiency) of $25,285. Sales for the period are projected to total 250,112 therms. When total costs are divided by sales, the result is a projected unit cost of gas sold of $0.6678 per therm. When the current base unit cost of gas of $0.4335 is subtracted from the projected unit cost of gas sold, the difference represents the summer period CGA rate of $0.2343 per therm.

Mr. DiBernardo pointed out that the reason for the high undercollection going into this period's CGA was caused primarily by the rising costs of gas brought about by concerns regarding ample supplies for the forthcoming winter period. These concerns caused the prices in the market to start rising in September and October, traditionally summer period months in the CGA.

III. POSITION OF STAFF

Staff has some concerns with the current financial stability of Keene Gas. A review of the Annual Reports submitted by the Company has indicated that for the past 8 years Keene incurred net operating losses. Although Company President, Mr. Harry Sheldon, has indicated that the nonregulated retail company has been subsidizing the utility, it is unable to continue doing this. Mr. Sheldon also mentioned that there is a possibility the retail company may be sold. If this occurs, continued operation of the utility could be in jeopardy. When questioned by

Commissioner Ellsworth for an idea of how long the utility company would continue to operate after the sale of the nonregulated retail company, Mr. Sheldon indicated that within a year of the sale, a shutdown of the system was a possibility.

Staff agreed that a high prior period under-collection coupled with high propane costs have resulted in this significant CGA increase. Although concerned with potentially high supply costs for a summer period, Staff recommended that the proposed 1997 Summer CGA rate of $0.2343 be accepted as filed.

Page 402

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 $.2343 per therm, which is an increase from the 1996 Summer CGA, is just and reasonable and in the public good and, therefore, accepts such as filed. In view of Mr. Sheldon's comments concerning the potential sale and shutdown of the system, the Commission believes that it is appropriate that Keene Gas keep Staff informed of developments in a timely manner. The Company must keep in mind that abandonment procedures need to be reviewed and approved by the Commission to insure they are done safely. In addition, the customers need time to prepare for their heating needs for the next winter.

Based upon the foregoing, it is hereby

ORDERED, that the 19th Revised Page 27, superseding the 18th Revised Page 27 of Keene Gas Corporation Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Cost of Gas Adjustment of $0.2343 per therm for the period May 1, 1997 through October 31, 1997 is APPROVED, said rate to be effective for bills rendered on or after May 1, 1997; 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); and it is

FURTHER ORDERED, that Keene Gas keep Staff apprised of any sale or plans to abandon gas service.

By order of the Public Utilities Commission of New Hampshire this fifth day of May, 1997.

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NH.PUC*05/07/97*[97315]*82 NH PUC 403*Kearsarge Telephone Company

[Go to End of 97315]

Re Kearsarge Telephone Company

DE 97-070
Order No. 22,590

New Hampshire Public Utilities Commission

May 7, 1997

ORDER suspending a local exchange telephone carrier's proposed revision of customer credits applicable to basic exchange and access service rates.

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1. RATES, § 532

[N.H.] Telephone rate design — Basic exchange and access services — Customer credits applicable to — Proposed revision of — Suspension — Local exchange carrier. p. 403.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposal to revise customer credits — To allow for adequate investigatory period — Local exchange telephone carrier. p. 403.

BY THE COMMISSION:

ORDER

[1, 2] On April 8, 1997, Kearsarge Telephone Company (Kearsarge) re-filed tariff pages with the New Hampshire Public Utilities Commission (Commission) to revise customer credits which had been put in place in July 1995 pursuant to Order No. 21,764 in DR 95-181. The original filing, DR 97-002, was withdrawn after the Commission Staff advised Kearsarge that the proposed application of the customer credit to intra-state toll and to Basic Exchange service would result in a barrier to competitive

entry, in violation of the Telecommunications Act of 1996, and a failure to apply the customer credit to the source of Kearsarge's over-collection of revenues.

Staff has conducted a review of the current filing and finds the request is deficient. The request is not supported with sufficient detail and appears to continue to include a customer credit to basic exchange service. Rather than deny the request, however, Staff recommended the Commission suspend the tariff revisions for 30 days from the date of this order. Additional time will provide Staff and Kearsarge an opportunity to arrive at an adjustment to access rates, which would be in accord with the Commission's orders in similar situations.

We will grant Staff's request for the reasons noted above and suspend Kearsarge's tariff filing for 30 days from the date of this order.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff pages of Kearsarge Telephone Company are hereby suspended pending further Commission review:

NHPUC No. 7: Section 1, First Revised Page 13 NHPUC No. 1 - Access: Second Revised Sheet 17-1 NHPUC No. 1 - Access: First Revised Sheet 17-2 NHPUC No. 1 - Access: First Revised Sheet 17-3

By order of the Public Utilities Commission of New Hampshire this seventh day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Teleph. Co., DR 95-181, Order No. 21,764, 80 NH PUC 485, July 21, 1995.

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NH.PUC*05/12/97*[97316]*82 NH PUC 404*EnergyNorth Natural Gas, Inc.

[Go to End of 97316]

82 NH PUC 404

Re EnergyNorth Natural Gas, Inc.

DR 97-057
Order No. 22,591

New Hampshire Public Utilities Commission

May 12, 1997

ORDER establishing a procedural schedule for considering a natural gas local distribution company's proposed special rate contract for the provision of transportation service for Hitchiner Manufacturing Company, Inc.

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1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — For industrial customer — Proposed special rate contract — Procedural schedule for consideration of — Local distribution company. p. 405.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to proposed special rate contract — Relative to underlying marketing study and analysis — Local gas distribution company. p. 406.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Richard A. Samuels, Esq. for EnergyNorth Natural Gas, Inc., Office of Consumer Advocate by James R. Anderson for 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 March 27, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of Special Contract with Hitchiner Manufacturing Co., Inc. (Hitchiner). Included with the filing was the prefiled testimony of Michelle L. Chicoine, Vice President, Treasurer and Chief Financial Officer of ENGI.

By an Order of Notice issued April 7, 1997, the Commission scheduled a prehearing conference for April 28, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. Sprague Energy filed for limited intervenor status. There were no objections to the motion to intervene. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, ENGI, the OCA and Staff modified certain dates in the proposed procedural schedule and agreed to the following:

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

Responses to Oral Data Requests Propounded at the 1st Technical Session	May 5, 1997;
Data Requests by Staff and Intervenors	May 9, 1997;
Company Data Responses	May 23, 1997;
Technical Session	May 30, 1997;
Testimony by Staff and Intervenors	June 13, 1997;
Data Requests by the Company	June 20, 1997;
Data Responses by Staff and Intervenors	June 27, 1997;
Settlement Conference	July 8, 1997;
Hearing	July 16, 1997.

In accordance with the Order of Notice, the Parties and Staff also stated their positions with regard to the filing.

ENGI stated that it was seeking Commission approval of its Special Contract with Hitchiner, and that the only issue for Commission consideration was an examination of how the Special Contract deviates from ENGI's currently effective tariff. ENGI also stated that the Special Contract provides for transportation of natural gas for a period of nine years or eighteen million therms, whichever occurs first, and that the Special Contract provides security for ENGI in planning its main extension to the Town of Milford.

The OCA stated that it is still evaluating ENGI's petition and that it is generally supportive of the petition provided that existing customers do not bear any expense for the expansion.

Staff stated that it is also generally supportive of the Special Contract and is concerned that existing customers are not harmed by ENGI's expansion to the Town of Milford.

Also at the prehearing conference, ENGI and Staff stated as a preliminary matter that they had come to an agreement regarding a Motion for Protective Order and Confidential Treatment (Motion) filed by ENGI on April 11, 1997. ENGI stated in the Motion that it was seeking confidentiality for certain portions of a market analysis performed by ENGI referred to as the Milford Study. ENGI stated that portions of the Milford Study constitute confidential commercial information under RSA 91-A which ENGI has not disclosed to anyone outside of its

corporate affiliates and legal advisors. ENGI and Staff indicated that they had met prior to the prehearing conference and had come to agreement on those materials contained in the Milford Study that met the *prima facie* requirements of RSA 91-A.

II. COMMISSION ANALYSIS

[1] Sprague Energy's request for limited intervention is granted. We find the proposed procedural schedule to be reasonable with two exceptions and will approve the schedule subject to the following modifications. Because of prior commitments, the hearing date scheduled for July 16, 1997 is not available. For that reason, the hearing in this docket is set for July 8,

1997. Because July 8, 1997 is the day allotted for the settlement conference, we will schedule the settlement conference for July 1, 1997. Any party unable to appear on these dates should contact the Executive Director and Secretary.

[2] With regard to the request for protective treatment of the marketing study conducted to evaluate the economic feasibility of this main extension, the Milford Study, the Commission notes that this information is an integral component of its review of the proposed special contract. The Commission also recognizes that this type of information is particularly sensitive given the competitive nature of the gas industry. Thus, based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to ENGI of non-disclosure in this case outweigh the benefits to the public of disclosure. The information should, therefore, be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

We will direct ENGI to refile redacted and unredacted copies of its filing consistent with this order.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as delineated above is APPROVED subject to the modification regarding the dates of the settlement conference and hearing; and it is

FURTHER ORDERED, that ENGI's Motion for Protective Order and Confidential Treatment as modified at the prehearing conference is GRANTED; and it is

FURTHER ORDERED, that ENGI shall refile redacted and unredacted copies of its fling consistent with this order; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May,

1997.

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NH.PUC*05/12/97*[97317]*82 NH PUC 406*New Hampshire Electric Cooperative, Inc.

[Go to End of 97317]

82 NH PUC 406

Re New Hampshire Electric Cooperative, Inc.

DR 97-061
Order No. 22,592

New Hampshire Public Utilities Commission

May 12, 1997

ORDER adopting procedural schedule relative to an electric cooperative's proposed 1997/98 demand-side management (DSM) programs. Commission notes that matters of general DSM policy will be addressed in the electric restructuring docket rather than in individual, utility-specific DSM proceedings.

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1. CONSERVATION, § 1

[N.H.] Demand-side management (DSM) — New program year — Procedural schedule for reviewing — Electric cooperative — Overall DSM policy issues reserved for electric restructuring docket. p. 407.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) — New program year — Procedural schedule for reviewing — Scope of issues — Overall DSM policy issues reserved for electric restructuring docket. p. 407.

APPEARANCES: Dean Rice & Howard by Mark W. Dean, Esq. and Anne Davidson, Esq. for the New Hampshire Electric Cooperative, Inc.; Mark E. Bennett of the Conservation Law Foundation; and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 1, 1997, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its Demand-Side Management proposals for the program year July 1, 1997 through June 30, 1998. NHEC's filing included the prefiled joint testimony of NHEC's Robert Reals, Manager of Demand-Side Services, and Teresa Muzzey, Manager of Rates & Financial Analysis.

By Order of Notice issued April 9, 1997, the Commission scheduled a prehearing conference and a first technical session for April 29, 1997, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. On April 24, 1997, both the Northeast Energy Efficiency Council (NEEC) and the Conservation Law Foundation (CLF) filed Petitions to Intervene. No party objected to either NEEC's or CLF's Petition to Intervene. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, NHEC, CLF and Staff modified certain dates in the proposed procedural schedule and agreed to the following:

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

Responses to Oral Data Requests     May 2, 1997;
Propounded at the 1st
Technical Session

Data Requests by Staff and          May 7, 1997;
Intervenors

Company Data Responses             May 13, 1997;

Technical Session @ 1:00 p.m.      May 22, 1997;

Testimony by Staff and             May 27, 1997;
Intervenors

Data Requests by the Company       May 30, 1997;

Data Responses by Staff and        June 5, 1997;
Intervenors

Settlement Conference @ 1:30 p.m. June 11, 1997;

Filing of Settlement Agreement,   June 13, 1997;
if any

Hearing @ 2:00 p.m.               June 17, 1997.
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Also at the prehearing conference, in accordance with the Order of Notice, NHEC, CLF and Staff stated their positions with regard to the filing for the record. NHEC stated that it proposes that its DSM programs, budget and surcharges be approved as filed.

CLF stated that it has not had the opportunity to fully investigate the filing but is supportive of efforts for continued DSM. CLF stated that it believes that general DSM issues should not be addressed in this instant docket but should be reserved for Docket DR 96-150, the Commission's investigation into Restructuring New Hampshire's Electric Utility Industry. CLF stated that NHEC's DSM programs should be evaluated under the current regulatory scheme.

Staff stated that it believed the significant issues to be addressed in this docket are NHEC's compliance with the Commission's *Restructuring New Hampshire's Electric Utility Industry: Final Plan* regarding energy efficiency programs, the potential rate impact of the proposed DSM Surcharges and the cost-effectiveness of the programs proposed by NHEC.

The NEEC and the OCA were not present at the prehearing conference.

II. COMMISSION ANALYSIS

[1, 2] We will approve the Petitions to Intervene of the Northeast Energy Efficiency Council and the Conservation Law Foundation. We find the proposed procedural schedule as revised by the Parties and Staff to be reasonable and will, therefore, approve it for the duration of the case. We agree with CLF that policy issues

regarding DSM be dealt with as part of DR 96-150, our restructuring docket. We have previously announced our decision to rehear those portions of our final plan regarding DSM programs. The hearing on June 17 will deal solely with the terms of NHEC's filing.

Based upon the foregoing, it is hereby

ORDERED, that the Petitions to Intervene of the Northeast Energy Efficiency Council and the Conservation Law Foundation are GRANTED; and it is

FURTHER ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May, 1997.

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NH.PUC*05/12/97*[97318]*82 NH PUC 408*Public Service Company of New Hampshire

[Go to End of 97318]

82 NH PUC 408

Re Public Service Company of New Hampshire

DR 97-087
Order No. 22,593

New Hampshire Public Utilities Commission

May 12, 1997

ORDER approving an electric utility's proposed nuclear plant decommissioning charge of 0.068 cents per kilowatt-hour, in accordance with the formula adopted for such in 1990.

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1. NUCLEAR PLANT DECOMMISSIONING, § 16

[N.H.] Funding — Decommissioning charge — Change in charge — In accordance with approved formula — Separate "base" and "above base" portions — Increase in the decommissioning escalation rate. p. 408.

BY THE COMMISSION:

ORDER

[1] On May 1, 1997, Public Service Company of New Hampshire (PSNH) proposed an increase in the nuclear decommissioning charge (charge) to take effect June 1, 1997.

The Nuclear Decommissioning Charge consists of two components: the base payment for the effective period and the payment above base. PSNH is proposing an increase of $0.00018 per kilowatt-hour in the charge above the base level, assumed in the Rate Agreement, from the current level of $0.00019 per kilowatt-hour to $0.00037 per kilowatt-hour. The base charge is $0.00031 per kilowatt-hour. Overall this results in a proposed charge of $0.00068 per kilowatt-hour for the period June 1, 1997 through May 31, 1998. For a typical 500 kilowatt-hour residential bill, the proposed change represents an increase of $0.09 or 0.1% per month over current rates.

This change in the nuclear decommissioning charge reflects the adjustment in the schedule of annual payments to the Nuclear Decommissioning Fund approved on October 30, 1996 by the Nuclear Decommissioning Financing Committee (NDFC). The increased charge is a result of increasing the escalation rate, the projected annual rate of increase of the estimated cost to decommission Seabrook Station Unit 1 at the end of its licensed life in the year 2026, from

4.25% to 5.00%. Decommissioning escalation is not identical to inflation as certain components of decommissioning costs may be greater than or less than the overall inflation rate.

The basic formula and methodology to be used by PSNH to calculate the Nuclear Decommissioning Charge was first established in Commission Order No. 19,899 dated July 31, 1990 in Docket No. DR 90-019. Adjustments for the period ending May 31, 1997 include the exclusion of wholesale sales made by PSNH to its affiliate, PSNH Energy, in the Retail Wheeling Pilot program.

PSNH included a technical statement which presents the calculations and substantiates the change in the charge. Staff has reviewed PSNH's technical statement and recommends approval of PSNH's changes to its

Page 408

tariff.

Pursuant to §5(a)(v)B of the Rate Agreement and RSA 162-F:19, III, the increase in nuclear decommissioning charges ordered by the NDFC should be reflected in PSNH's retail rates and delineated on all PSNH bills rendered on or after June 1, 1997.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the revised nuclear decommissioning charge of $0.00068 per kwh, representing an increase of $0.00018 per kwh is effective for use by PSNH in retail customer bills rendered for meters read on or after June 1, 1997 and continue in effect through May 31, 1998, or until the Commission orders otherwise; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, PSNH 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 May 19, 1997 and to be documented by affidavit filed with this office on or before June 1, 1997; 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 May 26, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on June 1, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this twelfth day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Nuclear Decommissioning Charge, DR 90-019, Order No. 19,899, 75 NH PUC 494, July 31, 1990.

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[Go to End of 97319]

82 NH PUC 409

Re Excel Telecommunications Inc.

DE 96-167
Order No. 22,594

New Hampshire Public Utilities Commission

May 13, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 410.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 410.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 410.

BY THE COMMISSION:

ORDER

On May 23, 1996, Excel Telecommunications Inc., (Excel) filed with the New

Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Excel's petition for compliance with these standards. Staff reports that it has provided all the information required by Puc 1304.02. The information provided supports Excel's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set forth in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Excel as a New Hampshire CLEC.

[1-3] We find that Excel has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Excel in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Excel has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Excel agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Excel seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Excel's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03.

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 May 20, 1997 and to be documented by affidavit filed with this office on or before May 27, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than June 3, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 12,1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1997.

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NH.PUC*05/13/97*[97320]*82 NH PUC 411*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97320]

82 NH PUC 411

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Cellco Partnership-New Hampshire RSA 2 Partnership dba Bell Atlantic NYNEX Mobile

DE 97-067
Order No. 22,595

New Hampshire Public Utilities Commission

May 13, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 411.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 411.

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 411.

BY THE COMMISSION:

ORDER

[1-3] On April 11, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement) with Cellco Partnership-New Hampshire RSA 2 Partnership d/b/a Bell Atlantic NYNEX Mobile (BANM).

The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. NYNEX and BANM will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff recommends approval of the Agreement between NYNEX and BANM based on a review of the summary and actual agreement for compliance with the TAct. Staff points out that the Agreement is substantially consistent with the terms of previously approved interconnection agreements and that all prices are the same as other agreements between NYNEX and cellular companies. Staff notes that this Agreement is very similar to those previously employed by NYNEX, independent local exchange carriers and wireless carriers, which were not previously filed with the Commission but are now required to be filed under the TAct.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A)

for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations. We find that approval is consistent with the public interest in achieving a more competitive telecommunications market. Therefore, we will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and BANM is approved; 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 May 20, 1997 and to be documented by affidavit filed with this office on or before May 27, 1997; 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 3, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 12, 1997, 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 May, 1997.

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NH.PUC*05/13/97*[97321]*82 NH PUC 412*KMC Telecom Inc.

[Go to End of 97321]

DE 96-352
Order No. 22,596

New Hampshire Public Utilities Commission

May 13, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 413.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 413.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 413.

BY THE COMMISSION:

ORDER

On October 29, 1996, KMC Telecom Inc.,

(KMC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services,

pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed KMC's petition for compliance with these standards. Staff reports that it has provided all the information required by Puc 1304.02. The information provided supports KMC's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set forth in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of KMC as a New Hampshire CLEC.

[1-3] We find that KMC has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of KMC in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because KMC has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, KMC agreed to concur with NYNEX's present and future rates for intraLATA switched access or charge a lower rate. If, at any point, KMC seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that KMC's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03.

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 May 20, 1997 and to be documented by affidavit filed with this office on or before May 27, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than June 3, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 12, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of May, 1997.

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NH.PUC*05/16/97*[97322]*82 NH PUC 414*Public Service Company of New Hampshire

[Go to End of 97322]

82 NH PUC 414

Re Public Service Company of New Hampshire

DR 97-088
Order No. 22,597

New Hampshire Public Utilities Commission

May 16, 1997

ORDER approving an electric utility's proposed special rate contract with a commercial customer, Shaw's Supermarkets. The contract allows the customer to take advantage of interruptible service discounts without meeting the tariffed minimum load requirements.

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1. RATES, § 322

[N.H.] Electric rate design — Load factors — Minimum load subject to interruption under tariffs — Contractually based exceptions — For commercial customer — Eligibility for interruptible discounts at 65 kilowatts rather than 100 kilowatts — Review of tariffed minimums. p. 414.

2. SERVICE, § 324

[N.H.] Electric — Interruptible service — Eligibility criteria — Tariffed minimum load requirements — Exceptions via special contract — For commercial customer — Eligibility for interruptible discounts at 65 kilowatts rather than 100 kilowatts — Review of tariffed minimums.

p. 414.

BY THE COMMISSION:

ORDER

[1, 2] On May 1, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (NHPUC or Commission) a special contract, NHPUC-137, between PSNH and Shaw's Supermarkets, Inc. (Shaw's), with a technical statement and attachments to become effective May 15, 1997.

The purpose of this filing is to assist NEPOOL in ensuring an adequate supply of electricity in the region this summer. NHPUC-137 provides benefits to PSNH, its other customers and the New England region by enabling PSNH to gain 715 kilowatts (kW) of interruptible load, thereby helping PSNH to prevent a potential summer capacity problem. Under this agreement, Shaw's would receive a payment of $8 per kW of interruption. Under this provision, there is no penalty for not interrupting when called upon by NEPOOL.

NHPUC-137 allows eleven of Shaw's locations to receive service under NEPOOL Type 5 Interruptible Service Rate N-5 (Rate N-5). Rate N-5 requires each customer to designate a minimum of 100 kW of load as interruptible. Each of Shaw's locations is able to provide only 65 kW of interruptible load, but those locations in total can provide 715 kW of interruptible load. NHPUC-137 provides for a waiver of the 100 kW minimum for each location.

Staff has reviewed the filing and recommends approval of this contract based upon the fact that it will enable PSNH to gain 715 kW of interruptible load that would not otherwise be available for interruption, thereby helping to prevent a potential capacity problem for the supply of electricity in New England this summer. Staff, however, has concerns that there may be other customers that are eligible for interruptible service who do not qualify under the tariffed rate, Rate N-5, and that a change in the tariffed rate's eligibility criteria may be warranted.

The Commission has reviewed Staff's recommendation and finds that the special contract, NHPUC-137, between PSNH and Shaw's is in the public interest. The Commission also agrees with Staff that further information from PSNH is warranted regarding the eligibility of other customers for the tariffed rate, Rate N-5. Such information should include an estimate of the number of customers who are situated

similarly to Shaw's, whether those customers have been contacted, and the feasibility and costs of modifying Rate N-5 to make it available to customers with a load less than 100 kW.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-137 between PSNH and Shaw's as filed on May 1, 1997 is APPROVED; and it is

FURTHER ORDERED, that PSNH file a report with the Commission, by May 30, 1997, addressing the customer and eligibility concerns raised by Staff and described in our analysis above; and it is

FURTHER ORDERED, that PSNH file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called for curtailment of interruptible load and the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, PSNH 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 May 21, 1997 and to be documented by affidavit filed with this office on or before May 30, 1997; 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 May 27, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on May 30, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this sixteenth day of May, 1997.

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NH.PUC*05/22/97*[97323]*82 NH PUC 415*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97323]

82 NH PUC 415

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,598

New Hampshire Public Utilities Commission

May 22, 1997

ORDER lifting the suspension applicable to a local exchange telephone carrier's approved increase in rates for local sent-paid calls placed from pay telephone stations, from 10 cents to 25 cents. Associated reductions in intrastate local exchange and exchange access service rates are approved on a temporary basis as well, with a procedural schedule adopted for consideration of permanent rates.

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1. RATES, § 532

[N.H.] Telephone rate design — Local exchange and exchange access service rates — Reductions in — As offset for increase in local pay station charges — Pursuant to federal requirements for new payphone compensation plans — Approval as temporary rates — Procedural schedule for considering permanent rates — Local exchange carrier. p. 419.

2. RATES, § 565

[N.H.] Telephone rate design — Pay stations — Local sent-paid calling rates — Increase from 10 to 25 cents — Actual implementation of increase — Factors — Approval of temporary reductions in local exchange and exchange access service rates — Cost-based adjustments — Local exchange carrier. p. 419.

BY THE COMMISSION:

ORDER

Page 415

I. PROCEDURAL HISTORY

By Order No. 22,562 issued April 18, 1997, the New Hampshire Public Utilities Commission (Commission) granted the request of New England Telephone & Telegraph Company, Inc. d/b/a/ NYNEX (NYNEX) for a local coin rate increase for customer-dialed local calls made from payphones. However, the Commission suspended implementation of the rate increase until such time as the Commission approves a reduction to "intrastate local exchange service and exchange access service rates" in conformance with FCC Order No. 97-678 (Payphone Order).

On April 22, 1997, NYNEX filed a Motion for Establishment of Temporary Rates and for Waiver of the 30 Day Notice Requirement of N.H. Admin. Rules Chapter Puc 1601.05(a) (Motion). The Motion, pursuant to RSA 378:27, requests the Commission to order the current level of rates as temporary rates for the services subject to rate reductions in this docket, i.e. basic service and switched access services as identified in Order No. 22,562. The Motion requested that temporary rates go into effect immediately and without hearing. NYNEX also filed proposed tariff pages to reduce basic service and switched access services to comply with the Commission's order.[1](98)

On April 25, 1997, New Hampshire Legal Assistance (NHLA) filed, on behalf of Save Our

Homes Organization (SOHO) an Objection to NYNEX's Motion. NHLA also filed a Motion for Reconsideration of Commission Order 22,562.

On April 29, 1997, MCI filed a Motion in Opposition to NYNEX's Motion and a Request for Investigation of NYNEX's Tariff Revision to Eliminate Payphone Costs and Subsidies from Basic Exchange and Switched Access Services.

On April 30, 1997, by Order No. 22,575, the Commission denied NYNEX's request for approval of temporary rates without a hearing, citing RSA 378:27 which mandates a hearing prior to imposing temporary rates. The Commission also suspended the proposed tariff provisions and scheduled a hearing on the subjects of temporary rates and waiver of Puc 1605.01(a) for May 8, 1997. On that date, the Commission heard arguments regarding NYNEX's Motion. In addition, the Commission heard oral argument regarding the Motion for Reconsideration of Order No. 22,652. The Commission requested the Parties and Staff to discuss and, if possible, agree upon a procedural schedule for the conduct of the underlying permanent rate case.

Subsequent to the hearing, the parties and Staff reached agreement upon a procedural schedule and submitted the schedule to the Commission.

II. POSITIONS OF THE PARTIES AND STAFF WITH REGARD TO TEMPORARY RATES

A. *NYNEX*

NYNEX requests that the Commission establish the current level of rates as temporary rates for the duration of this proceeding, pursuant to RSA 378:27, effective April 22, 1997. NYNEX argues that the effect of establishing temporary rates is to put NYNEX in compliance with the FCC's requirement to eliminate intrastate subsidies for Payphone rates. NYNEX points out that because RSA 378:27 permits that any rate reduction that the Commission ultimately determines to be just and reasonable will apply retroactively to the date temporary rates are effective, NYNEX must return to ratepayers the difference between the temporary and permanent rates if the eventual permanent rates are lower. Therefore, the Commission would be approving a reduction to intrastate local exchange service and exchange access service rates in conformance with FCC Order No. 97-678 and the prerequisite established in the Commission's Order No. 22,562 is met. As a result, NYNEX argues, the coin rate increase suspended by Order 22,562 may be implemented when temporary rates are approved.

Despite the fact that NYNEX filed its request for temporary rates on April 22, 1997, NYNEX offers to voluntarily impose any reduction the Commission determines to be just and reasonable retroactively to April 15, 1997. This would benefit ratepayers and would, NYNEX

argues, place the company in compliance with the FCC's Payphone Order.

NYNEX asserts that no party will be harmed by establishing temporary rates effective April 22, 1997, other than NYNEX. The harm to NYNEX occurs because NYNEX will have to return to ratepayers the difference between permanent and temporary rates for the period going back to April 15th. However, NYNEX will not be able to collect additional coins from payphone users for the period of time between April 15th and the date when the coin rate increase is implemented. As no other party will be harmed, and ratepayers benefit, NYNEX requests the Commission indicate that the temporary rates commence April 15, 1997.

B. *SOHO*

SOHO objects to implementation of the coin rate increase prior to hearings on the permanent rate reductions proposed by NYNEX. SOHO argues that the Commission must determine the subsidy issue as a prior condition to the coin rate increase.

SOHO filed a Motion for Rehearing on the issue of whether the coin rate approved in Order No. 22,562 is "cost based." SOHO urges that no increase occur before the cost issue is determined. If the coin rate increase is found not to be cost based, on rehearing, coin phone users will have overpaid and will have no process for obtaining reimbursement. SOHO also argues that implementation of the coin rate increase will impose a burden on consumers dependent on coin phones. Therefore, any increase should be delayed by the Commission as long as possible in order to protect those consumers.

C. *MCI*

MCI's opposition to NYNEX's imposition of temporary rates is based primarily upon Paragraph 186 of the September 20, 1996 FCC Payphone Order. Paragraph 186 states:

> "We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the cost of payphones. Revised intrastate rates must be effective no later than April 15, 1997. Parties did not submit state-specific information regarding the intrastate rate elements that recover payphone costs. States must determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies within this time frame."

MCI argues that NYNEX has failed to give any evidence of which intrastate rates are subsidizing payphone costs; therefore, MCI insists that NYNEX is not in compliance with Paragraph 186. MCI opposes temporary rates if that would mean the Commission finds that NYNEX is in compliance with the FCC Payphone Order. Compliance with the Payphone Order would permit NYNEX to begin collecting a flat monthly compensation fee from MCI, and other interexchange carriers, of $45.85 per payphone. Allowing such collection prior to actual compliance would permit NYNEX to "double dip" according to MCI.

MCI takes no position on the effective date of the coin rate increase.

D. *OCA*

The Office of the Consumer Advocate (OCA) does not object to the imposition of temporary rates. However, the OCA urges the Commission to establish temporary rates not at the current level, but at the level proposed for permanent rates in the tariff pages filed by NYNEX on April 22, 1997. The benefit of lower rates would thus accrue to ratepayers now, rather than at the time permanent rates are approved. The OCA points out that RSA 378:27 provides for return of any differences between temporary rates and the permanent rate ultimately approved. Therefore, the OCA argues, the Commission should order the reductions now, at the same time the coin rate increase is implemented.

E. *Commission Staff*

The Commission Staff (Staff) agrees with MCI that the Commission must determine which rates must be reduced in order to remove intrastate subsidies to payphone rates. The

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appropriate procedure to do so, Staff argues, however, is not during a temporary rate hearing but in the permanent rate proceeding which will follow. Temporary rates will preserve for ratepayers the benefit of the proposed rate reductions as of the date of filing. Failing to establish temporary rates will mean that the benefit of reductions is postponed until after the substantive investigation.

Staff supports setting temporary rates at the current level in order to best serve New Hampshire customers. Customers will reap the benefits of the reduction, Staff argues, without incurring the confusion and instability of multiple rate changes. Staff proposes establishing temporary rates at the current level for an additional category of toll. NYNEX requested temporary rate status for basic exchange and switched access rates, pursuant to the Commission's Order No. 22,562. However, Staff indicates that the Commission is not barred by FCC Telephone Order or the Telecommunications Act from eliminating payphone subsidies from toll revenues as well, although language in the FCC Payphone Order is not clear on this point. Having confirmed by telephone conversation with the FCC that intrastate toll revenues may be reduced to remove payphone subsidies, Staff proposes that the Commission also establish the current intrastate toll rates as temporary rates. This will give the Commission the greatest latitude for removing intrastate subsidies of payphone rates as a result of the substantive investigation, Staff argues.

Staff proposes that the effective date for such temporary rates be set at either the date of filing (April 22, 1997) or the date of this order. Staff points out that there is no precedent for

making temporary rates effective prior to the date of filing.

Staff also proposes that the coin rate increase approved but suspended by Order No. 22,562 be implemented as of the date of this order. Staff argues that the reductions anticipated by the filings in this docket will be retroactively effective to the date of this order at the latest. Therefore, the coin rate increase approved to offset these reductions must, in fairness and in order to preserve revenue neutrality, be permitted to be implemented concurrently.

III. POSITIONS OF THE PARTIES AND STAFF REGARDING SOHO'S MOTION FOR RECONSIDERATION

A. *SOHO*

Save Our Homes Organization (SOHO) asks the Commission to grant a rehearing to determine if the 25 cent local coin rate approved but suspended by Order No. 22,562 is cost based. SOHO informs the Commission that NYNEX produced a cost study for a Massachusetts docket, showing a local coin cost of 16.7 cents, as opposed to the 20.8 cent cost shown by NYNEX's cost study in New Hampshire. On the basis of the difference between the Massachusetts study and the New Hampshire study, SOHO argues that the New Hampshire study is questionable and the decision based upon the study should be reconsidered. SOHO also requests the Commission stay implementation of the 25 cent local coin rate until the Motion for Rehearing is decided.

B. *NYNEX*

NYNEX argues first that the Massachusetts study is not relevant to New Hampshire. The cost of a call in any state is directly affected by the volume of calls made. Because Massachusetts is both more urban and more populous, the volume of calls is significantly greater than in New Hampshire. Therefore, NYNEX asserts, the cost of a payphone call in Massachusetts is significantly lower than in New Hampshire. Further, NYNEX argues, SOHO argued against the validity of NYNEX's New Hampshire cost study at the initial hearing and presented its own expert witness and cost study. SOHO should have presented information about NYNEX costs in other states then.

C. *MCI*

MCI did not present an opinion regarding the Motion.

D. *OCA*

The OCA supported SOHO's Motion for Rehearing.

E. *Commission Staff*

The scope of the earlier hearing, Staff points out, was narrowly focused upon whether the 25 cent rate is cost based. The Commission made a determination in the affirmative and, Staff argues, SOHO has not explained why the new evidence it wished the Commission to consider could not have been presented at the earlier hearing. Further, Staff concurs with NYNEX that a Massachusetts cost study will not provide information relevant to New Hampshire.

IV. POSITION OF ALL PARTIES AND STAFF WITH REGARD TO A PROCEDURAL SCHEDULE

Subsequent to the hearing on temporary rates, the Parties and Staff discussed and agreed upon a procedural schedule for the conduct of the investigation into the proposed permanent rates. The schedule agreed upon is as follows:

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

Discussions on Methodology for Determining Subsidy Locations	May 16, 1997 at 10:00 a.m.
Data Requests	On or before May 27, 1997
Data Responses	On or before June 11, 1997
Settlement Discussions	June 18, 1997 at 10:00 a.m.
Settlement Agreement (if any)	July 1, 1997
Testimony (if necessary)	July 1, 1997
Reply Testimony	July 9, 1997
Hearing on the Merits	July 17, 1997 at 10:00 a.m.

V. COMMISSION ANALYSIS

A. *Temporary Rates*

[1, 2] Having carefully reviewed the filings and arguments made before us, we will grant the motion to establish the current rates for intrastate toll rates, basic exchange rates, and switched access rates as temporary rates for the duration of this docket. Because we anticipate the outcome of this proceeding will bring the prices of services closer to the costs of those services, and because the effect of temporary rates is to permit application of the outcome retroactively, we find that temporary rates best serve the interests of New Hampshire consumers. Our approval

of temporary rates is consistent with the Congressional intent of the Telecommunications Act of 1996.

Although we do not have authority to mandate temporary rates effective on a date prior to the filing of proposed tariff pages. *Appeal of Pennichuck Water Works*, 120 NH 562, 567, 419 A2d 1080 (1980), NYNEX has committed to make permanent rates, when approved, retroactively effective to April 15, 1997, a week before the request was filed. Therefore, we will approve the temporary rates effective April 15, 1997. Because the establishment of temporary rates establishes the beginning of the period to which the rates allowed in the underlying permanent rate proceeding will apply, and because the underlying permanent rate filing anticipates rate reductions, New Hampshire ratepayers will enjoy the benefit of any reductions as if they were effective April 15, 1997. We are cognizant of the fact that an effective date of April 15, 1997 may assist NYNEX's efforts to comply with the FCC's Payphone Order; we note, however, that it will also benefit New Hampshire ratepayers.

Our inclusion of toll rates in this grant of temporary rates should not be construed as an indication that reduction to toll rates will ensue. Until we receive official notification that the FCC intended otherwise, we will continue to interpret the FCC Payphone Order as requiring intrastate subsidies be removed from "intrastate

local exchange service and exchange access service rates" which excludes toll service. FCC Order No. 97-678 at Paragraphs 30 and 35, Commission Order No. 22,562 at Page 9.

We find that a single rate adjustment, with its concomitant notice, is more efficient and understandable to ratepayers, and therefore reject the multiple adjustments which would possibly be necessary using the OCA's suggestion to adopt the proposed permanent tariffs filed by NYNEX.

B. *Motion for Reconsideration*

We will deny SOHO's Motion for Rehearing. In evidentiary hearings on April 2 and 3, 1997, we heard testimony on the issue of whether the 25 cent rate is cost based. We also agreed to consider an April 9th submission by SOHO's witness Mr. Kersey. SOHO could have provided information about other states' payphone costs at that time. We find that SOHO has not provided good reason for the rehearing pursuant to RSA 541:3.

C. *Implementation of Coin Rate Increase*

By Order No. 22,562 we approved a 25 cent coin rate for customer-dialed local calls made from payphones. We suspended the rate until after we approved rate reductions to conform with FCC Order No. 97-678. In light of our actions denying rehearing of our order and approving

temporary rates, we will lift the suspension of the 25 cent coin rate.

D. *Procedural Schedule*

We find the proposed procedural schedule to be a reasonable method for dealing with the issues raised herein.

Based upon the foregoing, it is hereby

ORDERED, that temporary rates at their respective current levels are established for basic exchange, switched access, and toll service rates, retroactive to April 15, 1997; and it is

FURTHER ORDERED, that the Motion for Rehearing filed by Save Our Homes Organization is denied; and it is

FURTHER ORDERED, that NYNEX may implement the 25 cent payphone rates approved but suspended by Order No. 22,562 effective immediately; and it is

FURTHER ORDERED, that the procedural schedule detailed above is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1997.

FOOTNOTES

[1]The proposed tariff pages are NHPUC No. 77: Part M, Section 1 pages 14-20, 29; Part M, Section 3, pages 58-60, 66, and 84-86; and NHPUC No. 79: Access Service, Section 30, page 6.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,562, 82 NH PUC 352, Apr. 18, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,575, 82 NH PUC 375, Apr. 30, 1997.

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Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,599

New Hampshire Public Utilities Commission

May 22, 1997

ORDER temporarily suspending further action on outstanding motions for rehearing and/or clarification of Order No. 22,512 (82 NH PUC 101, *supra*), pending the outcome of mediation sessions mandated by a federal court relative to legal claims of electric utilities in the course of the commission's electric industry restructuring proceeding.

Page 420

1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Before federal court — Required mediation sessions — Abstention by the commission — So as to preserve neutral status in rehearing process. p. 422.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Before federal court — Required mediation sessions — Abstention by the commission — So as to preserve neutral status in rehearing process. p. 422.

3. COMMISSIONS, § 15.1

[N.H.] Powers and duties — Arbitration or mediation — As to challenges to an electric industry restructuring plan — Court-mandated mediation sessions — Abstention by the commission — So as to preserve neutral status in rehearing process. p. 422.

4. PROCEDURE, § 42

[N.H.] Stay and suspension — Temporary duration — Deferral of further discovery — Pending completion of required mediation sessions — Electric restructuring proceeding. p. 423.

5. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Federally required mediation sessions — Effect on commission rehearing process — Temporary stay and suspension of further action. p. 423.

6. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Federally required mediation sessions — Effect on commission rehearing process — Temporary stay and suspension of further action. p. 423.

BY THE COMMISSION:

ORDER

I. BACKGROUND AND PROCEDURAL HISTORY

This order addresses a Motion for Suspension filed by Public Service Company of New Hampshire (PSNH) and a Motion for Extension of Time filed by the Conservation Law Foundation (CLF).[1(99)] PSNH and CLF seek to modify the rehearing process and schedule established by the New Hampshire Public Utilities Commission (Commission) in Orders Nos. 22,548 (April 7, 1997), 22,576 and 22,577 (April 30, 1997). The relevant background to the subject motions is as follows.

On February 28, 1997, the Commission issued its Statewide Electric Utility Restructuring Plan (Final Plan) and related interim stranded cost orders pursuant to the requirements of RSA 374-F. *See*, Order No. 22,514, and Nos. 22,509-22,512. On March 3, 1997, PSNH filed a lawsuit against the Commission in the United States District Court for the District of New Hampshire.[2(100)] The District Court thereafter issued a temporary restraining order (TRO) effective until it conducts further hearings on PSNH's request for temporary and permanent injunctive relief.

By Order No. 22,548 (April 7, 1997), the Commission suspended and stayed those aspects of the Final Plan which were the subject of pending motions for rehearing or clarification. In the same order, the Commission announced that it would accept additional testimony and evidence on two issues specific to PSNH.[3(101)] The District Court subsequently decided to abstain from considering PSNH's claims regarding the Rate Agreement and ratemaking methodology until the Commission completes the rehearing process with respect to these issues. By Order No. 22,576 (April 30, 1997), the Commission also agreed to accept additional testimony and evidence relative to a generic policy decision articulated in the Final Plan; specifically, whether ratepayers should be required to subsidize energy efficiency programs after the implementation of retail

competition. Hearings on energy efficiency policies and the PSNH-specific issues were scheduled for May 22nd and June 4-5, 1997, respectively. On May 13, 1997, a stipulation was filed in the federal litigation under which PSNH and the State of New Hampshire have agreed to a mediation process; the District Court approved that stipulation on the same date. On May 14, 1997, the Commission heard oral argument on the PSNH and CLF requests after which it temporarily suspended any filing deadlines and hearings to address the stay issue.

II. POSITIONS OF THE PARTIES

According to PSNH, the Commission should suspend this proceeding "to allow the mediation process to go forward in an orderly fashion and to allow parties to the mediation to devote time, effort and resources necessary to make that process successful." PSNH Motion, p. 2. CLF's Motion asks that the Commission extend the energy efficiency rehearing schedule because issues related to this policy could be part of the mediation process. A number of parties have expressed varying degrees of support or opposition to the CLF and PSNH Motions. These positions are briefly summarized below.

Three parties oppose any suspension or delay in this proceeding: PJA Energy Systems, Inc., the City of Manchester and the City of Claremont. The following parties unconditionally support both the PSNH and CLF Motions: the Governor's Office of Energy and Community Services (ECS) and Bellwether Solutions.[4](102)

Most parties support a more limited suspension of the rehearing process than the one advanced by PSNH. After the May 14th hearing, a collective written response to PSNH's Motion was filed by the following parties: Cabletron Systems, the Retail Merchants Association, the Campaign for Ratepayer Rights, Granite State Taxpayers Association, Enron Capital and Trade Resources, EnerDev, Inc., and Freedom Energy Company, LLC. In that response, the aforementioned intervenors express support for a limited 45 day suspension of this proceeding "[a]ssuming that the Commission can be removed as party to the Federal Court stipulation on mediation and also removed as a party to the mediation." They propose that any delay beyond the proposed forty-five day period should be allowed only if there is a consensus of all parties participating in the mediation. These intervenors also urge the Commission to reject PSNH's request for a "blanket suspension" of DR 96-150, and that PSNH should be required to answer all outstanding discovery requests. Finally, these parties offered no objection to CLF's Motion.

Granite State Electric Company (GSEC), Connecticut Valley Electric Company (CVEC) and the Unitil Companies (Unitil) offered no objection to either motion. GSEC and CVEC both requested that any suspension should not preclude the Commission from entertaining settlements involving other companies. Unitil supported PSNH's request but only if the working groups continued and jurisdictional utilities were required to file unbundled tariffs by the June 30, 1997 statutory compliance filing deadline.

During the May 14th hearing, a number of parties expressed other miscellaneous concerns. Granite State Hydro Association offered no objection to PSNH's Motion based on its stated understanding that the policy decisions articulated in the Final Plan would not be subject to mediation. The Office of Consumer Advocate proposed moving forward with the scheduled hearings but suggested that the Commission could defer its rulings during the pendency of the mediation. The New Hampshire Electric Cooperative stated that it had not been invited to participate in the mediation and urged the Commission to avoid possible conflicts which could compromise its ability to evaluate the merits of any settlement reached with PSNH.

III. COMMISSION ANALYSIS

[1-3] At the outset, we wish to eliminate any misunderstanding regarding the Commission's role in the mediation process that has been initiated through the federal court stipulation. The Commission has not participated and will not participate in the mediation process that has been approved by the federal court. Although the Attorney General's Office will take part in those discussions on behalf of the

State, the Commission will not be bound by the outcome of the mediation process. We will not
communicate with the Attorney General's Office, any other member of the State negotiating team or any mediation participant regarding the mediation. These steps ensure our continued ability to fairly and neutrally evaluate any settlement that may be reached as a result of the mediation. Although some parties to this docket have expressed concern about the stipulation, when read as a whole it clearly contemplates that if a mediated resolution is reached, it will be reviewed by the Commission in public hearings. Thus, the Commission will retain its role as a neutral arbiter of whether such a settlement is in the public good. We clearly have the statutory responsibility to ensure that any modifications to the Final Plan are debated in a public forum and subjected to the appropriate procedural safeguards to allow for the meaningful participation of all stakeholders. *See*, RSA 374-F:4,XI. The Final Plan is the product of such a process and we believe that our review of any settlement should employ the same procedural rigor.

Although the Commission will not participate in any settlement discussions, some Commission Staff will be available to assist the Attorney General's Office in such negotiations. Any Staff member who participates in the mediation will not represent the views of the Commission or any individual Commissioner and will not communicate with the Commissioners about the mediation. Any such Staff member may, however, testify at any subsequent public hearings concerning the results of the mediation.

[4-6] Turning to the merits of the motions filed by PSNH and CLF in this docket, we have decided to grant those requests subject to the qualifications discussed below. We will suspend any further action on the outstanding motions for rehearing or clarification until July 2, 1997, at

which time we will conduct a hearing in order to determine whether to proceed with the rehearing process as outlined in Orders No. 22,548, 22,576 and 22,577. This means that the Commission will defer issuing further orders addressing any matter raised in pending motions until after July 2, 1997. In so doing, we will also defer rulings on outstanding motions to compel the production of discovery. In that respect, this order grants PSNH's request to "suspend" this proceeding as of May 9, 1997.[5](103) The sole basis for taking this action is to accommodate the requests of those parties, including PSNH, who contend that a temporary suspension of this docket will help facilitate a proposed negotiated resolution of PSNH's legal claims.

In granting this relief, however, we will reiterate a concern that has plagued structured settlement discussions in past proceedings. Any structured negotiation process that requires us to defer rulings and suspend the rehearing process could have the unintended effect of diminishing the possibility of a settlement. The Legislature has delegated important responsibilities to the Commission through the enactment of RSA 374-F. We intend to fulfill those responsibilities within the time frames established by the Legislature. As stated above, any settlement reached in the federal litigation must be reviewed by this Commission in a proceeding which shall be subjected to the procedural safeguards of the New Hampshire Administrative Procedure Act, RSA Chapter 541-A, and the Commission's rules. We therefore place PSNH and other participants in the mediation process on notice that we will deny any future requests to extend the rehearing process unless participants in the mediation report that there has been meaningful and significant progress made in those negotiations, and unless such request is for a limited time that allows the Commission to meet its statutory deadlines.

Under current law, utilities must submit compliance filings which are substantially consistent with the Final Plan no later than June 30, 1997. The effect of our decision here today will necessarily have an impact on those filing requirements. *See*, RSA 374-F:4,III. We believe that the enabling legislation which the Commission is required to implement grants us the discretion to define the scope of compliance filing requirements in light of current circumstances.

Due to our decision to temporarily suspend these proceedings, utilities must file only the open access tariffs required by RSA 374-F:4,III. We recognize that certain aspects of that statutory filing requirement potentially implicate legal issues which are the subject of rehearing requests. The filing of open access tariffs for the purpose of complying with RSA 374-F:4,III will not prejudice any such rehearing requests or the legal positions asserted therein. In addition, these filings will be deemed informational only and will not trigger any statutory investigation into the proposed rates until the rehearing process has been completed. We suspend all other aspects of the compliance filings required by the Final Plan, but intend to reinstate those requirements when circumstances so warrant.

Finally, we understand that utilities other than PSNH may seek to negotiate with various parties in this proceeding during the time that this docket has been suspended. Our decision herein does not preclude any other party from proposing negotiated settlements prior to the July 2, 1997 hearing.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion is GRANTED consistent with the conditions set forth in this order; and it is

FURTHER ORDERED, that CLF's Motion is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 1997.

FOOTNOTES

[1]The PSNH Motion was also filed in three other proceedings pending before the Commission; specifically, PSNH filed the same Motion in its biannual Fuel and Purchase Power Adjustment Clause (FPPAC) proceeding (DR 97-014), Petition of Hannaford Brothers Co. (DR 97-424) and in the general rate case proceeding initiated by PSNH (DR 97-059). Separate orders will be issued in those dockets.

[2]See, *Public Service Company of New Hampshire, et al. v. Patch, et al.*, N.H. Civil Action No. 97-97-JD, RI Action C.A. 97-121L. For reasons we need not recite here, that case has been transferred to the Chief Judge of the federal court in Rhode Island.

[3]Those two issues relate to the methodology used to develop PSNH's interim stranded cost charges and whether the adoption of such an approach by the Commission would cause the State to "repudiate" the Rate Agreement.

[4]ECS supports a 45 day suspension of this proceeding with an opportunity to extend the suspension if circumstances warrant it.

[5]The suspension of this docket will not affect the ongoing efforts of the "working groups" because participation in those groups is voluntary. During the hearing in this proceeding, PSNH agreed that any suspension should not interrupt the progress of the working groups. Transcript, May 14, 1997, p. 84.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,509, 82 NH PUC 80, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,510, 82 NH PUC 87, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,511, 82 NH PUC 93, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,512, 82 NH PUC 101,

175 PUR4th 331, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, 175 PUR4th 193, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,576, 82 NH PUC 376, Apr. 30, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,577, 82 NH PUC 379, Apr. 30, 1997.

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NH.PUC*05/27/97*[97325]*82 NH PUC 425*IntraLATA Presubscription

[Go to End of 97325]

82 NH PUC 425

Re IntraLATA Presubscription

DE 96-090
Order No. 22,600

New Hampshire Public Utilities Commission

May 27, 1997

ORDER accepting cost studies submitted by Chichester Telephone Company, Kearsarge Telephone Company, and Meriden Telephone Company as to the projected costs of implementing intraLATA presubscription (ILP), as had been required by Order No. 22,281 (81 NH PUC 624). Although the studies are deemed reasonable, commission provides for future accounting audits and a reconciliation process, upon actual implementation of ILP.

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1. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Recovery of associated implementation costs — Acceptance of associated cost studies — Small local exchange carriers. p. 426.

2. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation arrangements — Relative to intraLATA presubscription — Recovery of implementation costs — Acceptance of associated cost studies — Small local exchange carriers. p. 426.

3. EXPENSES, § 140

[N.H.] Telephone carriers — IntraLATA presubscription — Implementation costs — Means of recovery — Acceptance of associated cost studies — Small local exchange carriers. p. 426.

4. RATES, § 588

[N.H.] Telecommunications rate design — Toll services — IntraLATA presubscription — Recovery of associated implementation costs — Acceptance of associated cost studies — Small local exchange carriers. p. 426.

5. RATES, § 144

[N.H.] Factors affecting reasonableness — Cost of service — Particular costs — Telecommunications-related expenses — Costs of implementing intraLATA presubscription — Acceptance of associated cost studies — Provision for subsequent audits and true-up — Small local exchange carriers. p. 426.

BY THE COMMISSION:

ORDER

On April 21, 1997, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,563 approving the implementation of IntraLATA Presubscription (ILP) cost studies and compliance filings for NYNEX and eight of the twelve independent telephone companies. Because Chichester Telephone Company, Kearsarge Telephone Company and Meriden Telephone Company (collectively, TDS) had not filed ILP cost studies or compliance tariff filings in a timely manner, the Commission ordered TDS to comply with Commission requirements no later than May 1, 1997. Dixville Telephone Company, the remaining independent telephone company, is exempt from intraLATA presubscription and, therefore, is not required to submit a cost recovery filing.

On May 1, 1997, TDS filed its ILP cost recovery study and compliance tariff. Staff has reviewed the cost study and finds that the costs to implement ILP are reasonable. Based upon its review, Staff recommends approval of the TDS cost study and compliance tariff filing. Similar to Staff's recommendations in Order No. 22,563, Staff recommends that TDS re-submit ILP cost studies on June 2, 1998 and June 2, 1999. Subsequent cost studies shall juxtapose the actual implementation costs incurred

against forecasted costs submitted in May, 1997. Also, Staff recommends that TDS be subject to an accounting audit and be required to report its costs and revenues associated with

ILP on a quarterly basis.

[1-5] We have reviewed Staff's recommendation concerning the cost study submitted by TDS. We find the cost study reflects a reasonable level of anticipated capital expenditures and expenses associated with ILP. As presubscription will benefit all intrastate toll customers, cost recovery shall be shared by all intrastate toll carriers, including NYNEX and Union Telephone Company. Having determined Presubscription will result in a benefit to all intrastate toll customers, we find the cost recovery rates proposed by TDS are in the public interest.

We accept the specific recommendations of staff with regard to accounting audits and reporting requirements. TDS, as well as all other local exchange companies, shall be subject to an accounting audit of the ILP costs. Such an audit will assist the parties and Staff to determine the actual ILP implementation costs at the end of the two year cost recovery period in the absence of an agreed upon "true-up" value. Quarterly reports will also assist us in monitoring TDS costs and revenues.

Based upon the foregoing, it is hereby

ORDERED, that the cost study and compliance tariff filing submitted by TDS in support of the intrastate Equal Access Cost Recovery rate is approved; and it is

FURTHER ORDERED, that TDS shall submit a cost study on June 2, 1998 and June 2, 1999 indicating the actual implementation costs incurred compared to the forecasted costs of implementation; and its is

FURTHER ORDERED, that the implementation program of TDS shall be subject to a "true-up" at the end of the two year recovery period; and it is

FURTHER ORDERED, that TDS shall be the subject of an accounting audit to verify the actual implementation costs; and it is

FURTHER ORDERED, that TDS shall file a report of ILP costs and revenues on a quarterly basis beginning June 30, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,563, 82 NH PUC 357, Apr. 21, 1997.

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NH.PUC*05/27/97*[97326]*82 NH PUC 426*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97326]

82 NH PUC 426

Re New England Telephone and Telegraph Company dba NYNEX

DR 96-043
Order No. 22,601

New Hampshire Public Utilities Commission

May 27, 1997

ORDER conditionally approving amendments to a previously executed special rate contract as between a local exchange telephone carrier and Lockheed Sanders Corporation for fiber distributed data interface service.

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1. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Special rate contract — Amendment — As providing for additional network locations — Rates based on incremental costs — Conditional approval. p. 427.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Amendment of special contract — To expand network locations — Conditional approval. p. 427.

3. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Special rate

Page 426

contract — Amendment — As providing for additional network locations — Rates based on incremental costs — Propriety of unconditional approval — Separate opinion. p. 428.

4. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Amendment of special contract — To expand network locations — Propriety of unconditional approval — Separate opinion. p. 428.

BY THE COMMISSION:

ORDER

[1, 2] On February 9, 1996, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a special contract (No. 96-4) amending an earlier special contract[1(104)] with Lockheed Sanders Corporation (Sanders) for Fiber Distributed Data Interface (FDDI) service. In support of its petition, NYNEX filed a brief contract overview and a cost analysis associated with the proposed contract.

FDDI is a 100 Mbps service, typically utilized by the most demanding and capacity-intensive data users. FDDI is often employed to link together geographically disparate high-capacity network users, such as the interconnection of multiple Local Area Networks (LAN) located in different areas from each other. Permitting a special contract enables NYNEX to obtain revenues which contribute to shared and common costs.

NYNEX's cost analysis is incremental to its earlier docketed analyses, because this contract is an incremental expansion of the service. This contract amends the earlier approved contract by adding another Sanders location to the FDDI network. The information provided by NYNEX contains no opportunity cost analysis, because unlike the Centrex-versus-PBX analysis, NYNEX has no alternative or wholesale revenue stream if it does not provide this retail offering to this customer. Subject to a number of location-specific, engineering and business assumptions, this cost analysis demonstrates that the proposed rates for this service, when aggregated, exceed the case-specific incremental costs.

Staff recommends approval of Special Contract No. 96-4 with conditions. Staff makes this recommendation after evaluating the assumptions on which the cost analysis is based. Staff concludes that the cost factors and inputs, as reported by NYNEX, are appropriate. Specialized Central Office Equipment and Outside Plant Facilities are properly amortized during the life of the contract. Maintenance costs are properly estimated for both Central Office and Outside Plant Facilities. The Cost study details demonstrate that the proposed incremental rates for FDDI services exceed the relevant incremental costs and are, thus, contributing to joint and common costs.

Staff recommends approval with the following conditions. First, Section 8.3 of the contract should be amended. The current language provides NYNEX an opportunity to assign its rights and obligations under the contract to any corporate affiliate on written notice to the customer. Staff recommends amending this section to include language similar to other recently approved special contracts. According to prior orders approving special contracts, NYNEX must obtain Commission approval before assigning this contract to a NYNEX affiliate. Second, Section 8.4

provides the parties to this contract an opportunity to modify this contract. Staff recommends amending this contract to include a provision that requires modifications to this contract to be approved by the Commission before becoming effective. Third, pursuant to prior orders, Staff recommends that the Commission require NYNEX to re-file revised copies of this special contract making public the term of years.

We have reviewed the petition and the Staff recommendation. As the proposed incremental rates exceed the incremental cost, we find approval of the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the

Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420.

For future filings of special contracts subject to RSA 378:18-b, NYNEX and other telephone utilities are required, contemporaneous with filing of the special contract, to publish notice of its filing and notify the public that comment on the special contract must be submitted to the Commission within 14 days.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 96-4 with Sanders 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 contract; and it is

FURTHER ORDERED, that the Commission retains it right to approve modifications to this contract before they are made effective; and it is

FURTHER ORDERED, that NYNEX, pursuant to prior Commission orders, shall re-file revised copies of this special contract making public the term of years, and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of Special Contract No. 96-4, the Commission may consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Sanders in Special Contract No. 96-4.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited

depending on the outcome of docket DR 96- 420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

May 27, 1997

FOOTNOTES

[1]See DR 93-028, Order No. 20,840 (May 17, 1993).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 93-028, Order No. 20,840, 78 NH PUC 259, May 17, 1993.

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[Go to End of 97327]

82 NH PUC 429

Re EnergyNorth Natural Gas, Inc.

DR 97-072
Order No. 22,602

New Hampshire Public Utilities Commission

May 27, 1997

ORDER adopting procedural schedule as to a natural gas local distribution company's proposed 1997-98 demand-side management programs for large scale commercial and industrial customers.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Proposed 1997-98 programs — As to large scale commercial and industrial customers — Energy audits and thermostat rebates as primary components — Local gas distribution company — Adoption of procedural schedule. p. 429.

2. GAS, § 7

[N.H.] Operation — Demand-side management — Proposed 1997-98 programs — As to large scale commercial and industrial customers — Energy audits and thermostat rebates as primary components — Adoption of procedural schedule — Local distribution company. p. 429.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc. and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On April 15, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its Large Scale Commercial and Industrial (C&I) Demand-Side Management (DSM) Program effective for the period July 1, 1997 through June 30, 1998. The prefiled testimony of Donald E. Carroll, Vice President of Gas Supply, was included with the filing.

By Order of Notice issued April 24, 1997, the Commission scheduled a prehearing conference for May 15, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. There were no Motions to Intervene filed. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, ENGI and Staff agreed to the proposed schedule as outlined in the Order of Notice and as follows:

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

Data Requests by Staff and Intervenors	May 19, 1997;
Company Data Responses	May 23, 1997;
Technical Session	May 28, 1997;
Testimony by Staff and Intervenors	June 4, 1997;
Settlement Conference	June 11, 1997;
Filing of Settlement	June 16, 1997;

Agreement, if any	
Hearing	June 19, 1997;

In accordance with the Order of Notice, ENGI and Staff also stated their positions with regard to the filing.

ENGI stated that it was seeking Commission approval of its Large Scale Commercial and Industrial (C&I) Demand-Side Management filing for effect July 1, 1997 and that the expedited procedural schedule reflects that intention. Per the Settlement Agreement reached in DR 95-343 and approved by the Commission in Order No. 22,067 (March 18, 1996), ENGI was to file a two-year C&I DSM Program. ENGI stated that in light of the Commission's February 28, 1997 *Restructuring New Hampshire's Electric Utility Industry: Final Plan*, ENGI filed a one year plan in case the Commission applies a similar standard to gas utilities regarding how DSM programs will be continued in the future.

ENGI explained that the energy audits and the thermostat rebates included in the program were based on surveys completed during the pilot program which indicated that customers were most receptive to these two options. ENGI proposes a DSM Surcharge of $0.0000 per therm due to a substantial overrecovery generated by the current C&I DSM Surcharge which was collected over two heating seasons.

Staff stated that its initial concerns with ENGI's filing are with the cost-effectiveness of the overall program and a lack of co-payments from program participants for the energy audits. Additionally, Staff stated that it wants to exam-
ine the assumptions that were used to prepare the filing that were not supplied with the petition.

The OCA did not appear at the prehearing conference.

II. COMMISSION ANALYSIS

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 95-343, Order No. 22,067, 81 NH PUC 211, Mar. 18, 1996.

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NH.PUC*05/27/97*[97328]*82 NH PUC 430*WESCO Utilities Water Company Inc.

[Go to End of 97328]

82 NH PUC 430

Re WESCO Utilities Water Company Inc.

DR 97-025
Order No. 22,603

New Hampshire Public Utilities Commission

May 27, 1997

ORDER suspending and scheduling prehearing conferences relative to a water utility's petition for a 27.2% 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 —

Page 430

Necessity of prehearing conferences — Water utility. p. 431.

2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 25% — Necessity of suspension — To allow for adequate investigatory period — Issues to be addressed — Plant additions — System management — Rate case expense. p. 431.

BY THE COMMISSION:

ORDER

[1, 2] On April 22, 1997, WESCO Utilities Water Company (WESCO, or Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules, revised financial schedules and supporting testimony. WESCO proposes an overall annual revenue increase of $2,644 or 27.2 percent. Pursuant to RSA 378:28 the new rates were submitted for effect on May 22, 1997.

The filing raises issues concerning, but not limited to, plant additions, system supervision and maintenance, and rate case expenses. A full investigation is necessary to determine whether the proposed increases are in the public good.

Based upon the foregoing, it is hereby

ORDERED, that WESCO's Tariff No. 1 Water First Revised Page No. 7 is hereby suspended; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rule Puc 203.05, a prehearing conference to address procedural matters governing the course of this of this proceeding be held before the Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire on June 24, 1997 at 10:00 a.m. at which each party will provide a preliminary summary of its position with regard to the Petition. Absent objection five days before the hearing, the Prehearing Conference will be recorded on tape rather than by a stenographer; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, WESCO, staff and the Intervenors hold a First Technical Session to review the Petition and allow WESCO to provide any updates or amendments to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule Puc 203.01, that WESCO notify all persons desiring to be heard and that they should appear at the said hearing where they may be heard on the question of whether the proposed revenue increase is in the public good, by causing a copy of this order to be published once in a newspaper having general circulation in that portion of the state in which operations are proposed, such publication to be no later than June 2, 1997; and it is

FURTHER ORDERED, that WESCO serve a summary of its proposed rate change and a copy of this Order of Notice in accordance with N.H. Admin. Rules Puc 1601.05(j), on current and known prospective customers and the town Clerk of Hooksett by first class U.S. Mail, postmarked no later than June 2, 1997; 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 WESCO and the Office of Consumer Advocate on or before June 19, 1997 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 make said

Objection on or before June 24, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

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NH.PUC*05/27/97*[97329]*82 NH PUC 432*Public Service Company of New Hampshire

[Go to End of 97329]

82 NH PUC 432

Re Public Service Company of New Hampshire

DR 97-014
Order No. 22,604

New Hampshire Public Utilities Commission

May 27, 1997

ORDER temporarily staying further action on an electric utility's fuel and purchased power adjustment clause filing.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause — Temporary credit of 0.481 cents per kilowatt-hour — During pendency of stay of further action on filing — Facilitation of mediation of restructuring-related issues — Electric utility. p. 434.

2. RATES, § 640

[N.H.] Procedure — Fuel and purchased power adjustment clause filing — Temporary stay of further action — To allow for mediation of restructuring-related issues — Potential summer capacity problems as a factor — Electric utility. p. 434.

3. PROCEDURE, § 42

[N.H.] Stay — Of further action on fuel and purchased power adjustment clause filing — Temporary versus indefinite stay — To allow for mediation while considering possible summer capacity problems — Electric utility. p. 434.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Dean, Rice and Howard by Mark W. Dean, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; F. Anne Ross, Esq. on behalf of Retail Merchants Association; James T. Rodier, Esq. on behalf of Freedom Energy Company; Andrew Weisman, Esq. for Cabletron Systems, Inc. Michael W. Holmes, Esq. of the Office of Consumer Advocate 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 March 14, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period June 1, 1997 through November 30, 1997, along with supporting testimony and exhibits. PSNH proposed a change in the FPPAC rate from the current credit of $0.00848 (8.48 mills) per kWh to a charge of $0.00118 (1.18 mills) per kWh, an increase of $0.00966 (9.66 mills) per kWh.

Prior to making its FPPAC filing, PSNH filed with the Commission, on February 4, 1997, a letter requesting a docket be opened to consider FPPAC issues and the setting of an FPPAC rate for the June through November 1997 FPPAC period, and the consideration of a proposed FPPAC procedural schedule. An Order of Notice was issued by the Commission on February 24, 1997. A pre-hearing conference, followed by a technical session, was held March 5, 1997. On March 24, 1997, the Commission issued Order No. 22,529 which, among other things, adopted a procedural schedule, formally granted NHEC's March 24, 1997 motion to intervene and granted PSNH's March 4, 1997 motion to defer consideration of certain nuclear outages in this FPPAC proceeding. By Executive Letter dated April 7, 1997, the Commission granted Freedom Energy Company's late filed motion to intervene. The Office of

Consumer Advocate (OCA) is a statutory party.

On May 7, 1997, the Retail Merchants Association filed a motion to intervene. Cabletron Systems, Inc. filed a motion to intervene on May 8, 1997. On May 9, 1997, PSNH filed a motion to suspend the proceeding and to impose a new FPPAC rate effective June 1, 1997, contingent on the Commission granting the PSNH suspension motion.[1(105)] The Commission heard evidence on the PSNH motion to suspend the FPPAC proceeding and request for a temporary, reconcilable FPPAC credit of $0.00427 (4.27 mills) per kWh on May 13, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH requested a stay of this proceeding to allow the mediation process now underway in the federal court action regarding the Commission's Final Plan issued in DR 96-150. At the May 13, 1997 hearing, PSNH presented one witness, Robert A. Baumann, Manager of Fuel Accounting and Recovery for Northeast Energy Services Company (NUSCo), an affiliate of PSNH. Mr. Baumann testified in support of a proposed FPPAC credit of $0.00481 per kWh as shown in Exhibit 23 - FPPAC Rate Scenario for Docket 97-014, FPPAC Rate Extension without SPP Refund. Mr. Baumann explained how PSNH derived the proposed credit of $0.00481 per kWh as shown in Exhibit 23 and why it differed from the credit proposed by PSNH in the Motion to Suspend. PSNH proposed a temporary FPPAC rate based solely on removing the SPP refund which was scheduled to end May 31, 1997 pursuant to Commission Order No. 22,234 in DR 96-077. The SPP refund of $11.435 million was subtracted from the estimated credit of $26.392 million currently in place. The difference, $14.956 million, was divided by the estimated PSNH retail sales for the upcoming FPPAC period, 3,112,265,000 kWh, to arrive at the proposed credit of $0.00481 per kWh. Mr. Baumann stated that the credit mentioned in the PSNH Motion to Suspend, $0.00427 per kWh, was incorrect because it included the total SPP refund with interest rather than only the retail portion of the SPP refund.

B. *NHEC*

NHEC took no position on the proposed Motion to Suspend. NHEC did question PSNH about the derivation of the proposed credit and, in particular, about the difference between the adjustment to derive the retail FPPAC rate and the wholesale FPPAC rate. The difference, $1.2 million in the SPP refund account, was not refunded through the wholesale FPPAC to NHEC customers.

C. *OCA*

The OCA presented the testimony of Kenneth E. Traum, OCA Finance Director, whose pre-filed testimony was marked as Exhibit 25. The OCA argued that the Commission should revisit Northeast Utilities' sale of Seabrook Unit II generators which affects a number of pending proceedings, including the present FPPAC docket and the base rate proceeding. The OCA contended that the sale has reduced the value of Seabrook and affected the continued operation of Seabrook. The OCA stated that North Atlantic Energy Corporation is the clear owner of Seabrook's assets, both Unit I and Unit II, and therefore, NAEC should have come before the Commission pursuant to RSA 374:30 before it sold the Unit II generators. The OCA proposed a number of options the Commission might pursue based on its belief that the sale of Unit II generators was illegal. The OCA asserted that the Commission could open a separate proceeding

to investigate the sale, use the revenue from the sale to offset FPPAC costs, or find that the sale constituted a breach of the Seabrook Power Contract or the Rate Agreement.

Although the OCA presented a witness at the hearing, OCA's May 15, 1997 Brief clearly urges the Commission to hold full hearings on FPPAC or continue the current rate while a separate proceeding is initiated to fully explore OCA's allegations that the Seabrook Power Contract was breached by the illegal sale of Unit II steam generators. OCA also states that

fines and penalties should be levied for failure to seek Commission approval of the sale as required by law. Finally, OCA states that PSNH's proposed postponement of this FPPAC proceeding is unsupportable as temporary rates do not apply to fuel and purchased power clause proceedings.

D. *Staff*

Staff pre-filed testimony, but did not present any witnesses at the hearing. Staff did not oppose the temporary credit presented at the hearing by PSNH or the request for a suspension to FPPAC that is reconcilable. Staff did, however, state that its pre-filed testimony would support a significant reduction in FPPAC rates and raised a number of issues associated with PSNH's Motion for Suspension, including the length of time for the suspension and the scope of the Motion.

III. COMMISSION ANALYSIS

[1-3] Based on the testimony presented to us at the hearing and the record in this proceeding, we find that a credit of $0.00481 per kWh during the pendency of this stay as calculated in Exhibit No. 23 is appropriate and fairly balances the interests of PSNH and its customers while the State, PSNH and other parties enter into negotiations.

Accordingly, we will temporarily suspend this docket to help facilitate a negotiated resolution of PSNH's legal claims in DR 96-150. This action, however, must be balanced against the interests raised by a number of parties and our Staff in investigating PSNH's FPPAC rate. Thus, we will stay this proceeding until July 2, 1997, at which time we will reexamine this issue and determine whether to continue the stay.

Although we are delaying consideration of most of the issues raised in this proceeding in the interest of fostering meaningful negotiations, consideration of the issue of potential widespread capacity and energy problems during the upcoming summer period cannot be delayed as it should be addressed prior to the time those problems could arise. Thus, we require PSNH to pre-file its testimony on this limited matter by the close of business on June 3, 1997 for presentation to the Commission at a hearing to be held at 10:00 on June 5, 1997.

With regard to the OCA's contentions relative to the Seabrook Unit II steam generators, we believe the OCA has raised some issues previously addressed and others which remain appropriate for our consideration. For the purposes of this reconcilable FPPAC rate, however, we will not disallow PSNH's portion of the value of the steam generators sold, as the OCA requests. By issuance of this stay, we are deferring until a later date the OCA's assertions regarding the relationship between the Unit II parts, the Acquisition Premium, stranded cost recovery and future ratemaking.

We do not accept the OCA's contention that the FPPAC rate is subject to the provisions of RSA 378:27. The FPPAC rate set herein is not a temporary rate but a rate subject to reconciliation as of June 1, 1997, when we address the appropriate FPPAC rate for this FPPAC period. RSA 365:28.

Based upon the foregoing, it is hereby

ORDERED, that the FPPAC rate shall be a credit of $0.00481 per kWh effective June 1, 1997, fully reconcilable to that date when the issues raised in this proceeding are addressed; and it is

FURTHER ORDERED, that the credit of $0.00481 per kWh shall remain in effect until further ordered; and it is

FURTHER ORDERED, that a hearing be held on at 10:00 on July 2, 1997 to consider the continuing efficacy of the stay granted herein; and it is

FURTHER ORDERED, that a hearing be held at the Commission at 10:00 on June 5, 1997 to hear testimony on the limited issue of potential widespread summer capacity and energy shortages; and it is

FURTHER ORDERED, that the existing short-term avoided costs are to remain effective until further ordered; and it is

FURTHER ORDERED, that PSNH file a compliance tariff in conformance with this order no later than June 10, 1997; and it is

FURTHER ORDERED, that Retail Merchants Association's and Cabletron System's

motions to intervene are granted.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

FOOTNOTES

[1]The PSNH motion to suspend the FPPAC proceeding was made pursuant to the waiver

authority of the Commission contained in Rule Puc 201.05. PSNH's motion to suspend FPPAC was included with the request by PSNH to suspend three other dockets: DR 96-150 - Electric Utility Restructuring Proceeding; DR 96-424 - petition of Hannaford Brothers Company; and DR 97-059 - PSNH Intent to File Rate Schedules and Request for Waiver of Tariff Filing Requirements (Base Rate Case).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-077, Order No. 22,234, 81 NH PUC 531, July 10, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,529, 82 NH PUC 286, Mar. 24, 1997.

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NH.PUC*05/27/97*[97330]*82 NH PUC 435*Public Service Company of New Hampshire

[Go to End of 97330]

82 NH PUC 435

Re Public Service Company of New Hampshire

DR 97-059
Order No. 22,605

New Hampshire Public Utilities Commission

May 27, 1997

ORDER temporarily staying further action on an electric utility's base rate filing.

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1. RATES, § 640

[N.H.] Procedure — Rate filing — Temporary stay of further action — To allow for mediation of restructuring-related issues — Potential for overearnings as a factor — Electric utility. p. 436.

2. PROCEDURE, § 42

[N.H.] Stay — Of further action on rate filing — Temporary versus indefinite stay — To allow for mediation while protecting against possible overearnings — Electric utility. p. 436.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 31, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules and a Request for Waiver of Tariff Filing Requirements, pursuant to N.H. Admin. Rules Puc 1603.02 and 1603.07, which was subsequently corrected and refiled on April 1, 1997. On May 2, 1997, PSNH filed testimony, exhibits, schedules, workpapers and the remainder of the standard tariff filing requirements under N.H. Code Admin. Rule §1603 supporting an increase in overall rates.

On May 9, 1997, PSNH filed a motion to stay this proceeding. On May 13, 1997, Commission Staff (Staff) filed a response to the proposed stay.

In its motion, PSNH stated that a stay of this proceeding was necessary "to allow a mediation process to go forward in an orderly fashion," and because it would "allow the parties to the mediation to devote the time, effort and resources necessary to make the process successful." Motion at ¶5. PSNH assented to "waive the application of RSA 378:6 I(a) for a period commensurate with the length of [the stay]." Motion at ¶8. RSA 378:6, I(a) requires the Commission to conduct its investigation into a request for a general rate increase within

twelve months.

At the May 13, 1997 hearing in DR 97-014, PSNH further asserted that the twelve-month deadline contained in RSA 378:6, I(a) was inapplicable to its May 2, 1997 filing. Because the filing did not propose a general increase in rates but merely supported the proposition that such an increase was justified and made minor changes to a few discrete tariff provisions, PSNH argued the filing fell under RSA 378:6,I(b), which provides the Commission with three to eight months to review the petition. We note that the position which PSNH took on this issue at the hearing appears to contradict the position which it took in paragraph 8 of the Motion, as noted above.

In its response, Staff contended that a stay of this proceeding might harm ratepayers because a review of monthly return-on-equity filings made during the Fixed Rate Period by PSNH

revealed PSNH was in all likelihood, and would be as of June 1, 1997, over-earning based on current costs of capital. Thus, Staff requested that the Commission schedule a temporary rate proceeding in June of 1997 to ensure that any over-collections are returned to ratepayers. Staff also requested that the Commission require PSNH to waive any rights it might have to place increased base rates into effect under bond on December 31, 1997, pursuant to RSA 378:6, III.

Other concerns raised by Staff included the fact that the requested stay contained no deadline when the Commission's investigation into this matter would commence, and the fact that the motion contained an ambiguous request to stay any other "existing or future proceedings involving issues related to the matters that are the subject of the mediation efforts." Motion at ¶9.

In response to PSNH's oral contention that its May 2, 1997 filing was made pursuant to RSA 378:6, I(b), Staff objected that PSNH had filed for a general increase in rates although it had not requested implementation of the increased rates. Alternatively, Staff suggested the Commission commence its own investigation into PSNH's base rates pursuant to RSA 378:7.

II. COMMISSION ANALYSIS

[1, 2] We will temporarily suspend this proceeding to help facilitate a negotiated resolution of PSNH's legal claims in DR 96-150. This action, however, must be balanced against the interests raised by a number of parties and our Staff in investigating PSNH's current base rates because we are concerned that PSNH may be over-earning and, therefore, charging rates higher than may be appropriate at this time, and that this situation will continue without reconciliation while the stay remains in place. Thus, we will stay this proceeding until July 2, 1997, at which time we will reexamine this issue and determine whether to continue the stay.

Furthermore, we believe PSNH's May 7, 1997 filing was made pursuant to RSA 378:6, I(a) as PSNH stated in its motion. Thus, we will treat it as a filing allowing the Commission the full twelve months to investigate PSNH's base rate filing when and if that investigation commences at the conclusion of this stay or any extensions of this stay.

Based upon the foregoing, it is hereby

ORDERED, that this proceeding is stayed, tolling the twelve month timeline contained in RSA 378:6 I(a) until July 2, 1997; and it is

FURTHER ORDERED, that PSNH's May 2, 1997 proposed tariff filing is hereby suspended.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of May, 1997.

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NH.PUC*05/28/97*[97331]*82 NH PUC 437*IntraLATA Presubscription

[Go to End of 97331]

Re IntraLATA Presubscription

DE 96-090
Order No. 22,606

New Hampshire Public Utilities Commission

May 28, 1997

PETITION by AT&T Communications of New Hampshire, Inc., for reconsideration of Order No. 22,541 (82 NH PUC 309, *supra*) as to the issues of municipal calling service (MCS) and the resale of toll service as a means of preserving MCS; denied. Commission reiterates that resale of MCS is not yet technically feasible and it finds that previously approved consumer education announcements are adequate and appropriate for informing subscribers as to MCS options.

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1. SERVICE, § 171

[N.H.] Resale of service — Telecommunications — Toll services — IntraLATA presubscription — Municipal calling service (MCS) as an element — Technical infeasibility of MCS resale — Affirmation of conclusion. p. 440.

2. SERVICE, § 468

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Municipal calling service as an option — Consumer education and information announcements — Script approval. p. 440.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Toll services — IntraLATA presubscription — Municipal calling service as an option — Consumer education and information announcements — Script approval. p. 440.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

This order addresses both AT&T's Motion for reconsideration of Order No. 22,541 and the MCS Script proposed by Staff and the Parties. 0n April 30, 1997, the New Hampshire Public Utilities Commission (Commission) received a Motion for Reconsideration of the Commission's Order No. 22,541 (April 1, 1997) (Motion) from AT&T Communications of New Hampshire, Inc. (AT&T).

AT&T's Motion asks the Commission to reconsider its Order No. 22,541:

> insofar as the Order permits: (1) the incumbent local exchange carrier (ILEC) to refuse to resell intrastate toll service; and (2) the ILEC, pursuant to an approved script, to police whether a potential customer of the competitive intrastate toll provider has been advised by that provider that it will not be offering a municipal calling service (MCS) as part of its toll service.

On May 6, 1997, New England Telephone and Telegraph Company, d/b/a NYNEX (NYNEX) and the Commission Staff (Staff) each submitted Responses opposing AT&T's Motion. On May 8, 1997, MCI Telecommunications Corporation (MCI) filed a response generally supporting AT&T's Motion but requesting different relief. The Office of the Consumer Advocate did not file a response to AT&T's Motion.

Order No. 22,541 directed Staff and interested parties to this docket to develop an MCS Script for use after June 2, 1997, the ILP implementation date. On April 15, 1997, NYNEX filed a letter with the Commission in which it proposed language for the MCS Script. On May 19, 1997, the Staff filed a memo with the Commission describing the results of discussions among the parties on the MCS Script issue.

II. POSITIONS OF THE PARTIES AND STAFF

A. AT&T

1. Resale of Toll

AT&T contends that Commission Order No. 22,541 permits NYNEX to refuse to resell intrastate toll service because such resale is not currently technically feasible. AT&T cites transcripts from the March 3, 1997 hearing at which NYNEX contended that its toll service was not currently available to a subscriber who is not also a subscriber of basic exchange service and, therefore, NYNEX toll is not available for resale. AT&T avers that the Commission accepted NYNEX's statement by failing to approve resale as a method for preserving Municipal Calling Service (MCS) after implementation of intraLATA presubscription (ILP). AT&T argues that acceptance of NYNEX's assertion results in a violation of Section 251 (c)(4)(A) of the Federal

Telecommunications Act of 1996 (TAct) which requires ILECs to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." AT&T points out that NYNEX cannot escape its Section 251(c)(4)(A) obligation by claiming technical infeasibility that is based merely on cost, as established in the FCC's First Report and Order in the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98), FCC 96-325 (August 8, 1996). AT&T further supports its argument by citing Commission Order No. 22,453 in DE 95-054, *Resale of Retail Toll Services by Switchless Aggregators*, which interpreted the plain meaning of Section 251(c)(4)(A) as requiring NYNEX to offer toll service for resale.

2. MCS Script

AT&T argues that the Commission should reconsider that part of Order No. 22,541 which directs NYNEX, during a customer initiated Primary Inter/IntraLATA carrier (PIC) change request, to ask customers whether they have been advised that MCS may not be provided by the alternate PIC. AT&T argues that this places NYNEX as the Commission's agent (police) for enforcing its ILP provisions and thereby "imbues NYNEX representatives with authority and credibility that none of NYNEX's competitors enjoy." AT&T advocates that the Commission itself, not NYNEX, should be the enforcing agency to insure that competitors are informing customers of the effects of a PIC choice. Enforcement could occur via the Commission's standard complaint proceedings, a questionnaire polling consumers, or a mailer sent to MCS customers and requesting they discuss MCS with their PIC provider.

B. NYNEX

1. Resale of Toll

NYNEX objects to AT&T's motion, arguing that it fails to meet the standards for reconsideration in New Hampshire and fails to state a claim for which relief can and should be granted under the TAct. NYNEX also argues that, from a practical standpoint, no reasonable time remains prior to statewide implementation of ILP on June 2, 1997, to implement AT&T's proposal of resale as a method for preserving MCS in the ILP environment.

NYNEX points out that the Commission's notice of the hearing on this MCS issue informed parties that the proposed method, resale of what it calls "naked toll," was not a method NYNEX supported. Naked toll refers to IntraLATA toll offered separately from basic exchange service. At the hearing itself the issue was raised and argued. NYNEX states that AT&T could and should have raised, at the hearing, the arguments brought forward by its Motion for Reconsideration. As AT&T offers no explanation as to why its arguments could not have been presented, and simply reargues the same issue, NYNEX argues that the Commission should reject the motion in accord with RSA 541:4.

NYNEX presents extensive argument as to its belief that no reseller is entitled to purchase

naked toll because NYNEX does not offer naked toll. Pursuant to the TAct and the FCC First Report and Order, FCC 96-235, released August 8, 1996 (FCC Order) implementing the

TAct, as well as the Commission's Order No. 22,433 in the arbitration docket DE 96-252 (Arbitration Order), NYNEX insists that it cannot be compelled to sell naked toll.

Without conceding that naked toll must be provided at all, NYNEX further argues that AT&T is incorrect in asserting that NYNEX would have to absorb all the costs of providing naked toll. In support, NYNEX cites language in RSA 374:22-g,II, language in the proposed Interconnection Agreement between NYNEX and AT&T, and the Commission's Arbitration Order.

2. MCS Script

NYNEX characterizes AT&T's concern as overstated and unnecessary, as well as new. NYNEX points out that the Commission's order was issued in response to a NYNEX concern as to what limited action, if any, NYNEX should take when a customer contacts NYNEX directly for a PIC change. The Commission's guidance, according to NYNEX, was clear and reasonable. NYNEX suggests that an additional safeguard could be obtained by following a script now being considered in Maine, wherein no reference is made to MCS in the initial inquiry. NYNEX states that it is willing to follow any procedure the Commission may devise, including remaining silent.

C. MCI

1. Resale of Toll

Although MCI generally supports AT&T's Motion, MCI argues that there is no record in this docket on whether NYNEX is obligated to make toll available for resale. The record would have to include a determination on whether it was feasible for NYNEX to provide toll without basic exchange and MCI argued the answer to that question would depend to a certain extent on whether NYNEX was the customer's local exchange carrier. MCI suggested that the Commission clarify its order to indicate that it "is not ordering NYNEX to resell toll without basic exchange service but that it is also not foreclosing consideration of the question if it arises in the future."

2. MCS Script

MCI emphasizes its support for the concept of informed customer choice and its interest in complying with the Commission's order with respect to giving MCS-eligible customers the required MCS information. MCI supports and agrees with NYNEX that a workable and adequate

solution can be crafted and recommends that the Commission adopt the modified, limited NYNEX script such as the one under consideration in the Maine ILP docket.

D. Staff

1. Resale of Toll

Staff opposes AT&T's Motion for Reconsideration, arguing that the Commission's order makes no ruling on the issue of NYNEX's obligation, under Section 251(c)(4)(A), to resell toll but merely does not include resale as a method for preserving MCS while implementing ILP. Staff agrees with MCI that the question AT&T raises is not ripe for review but should be considered at a time when an incumbent LEC refuses to resell intraLATA toll separate from Basic Service.

2. MCS Script

Staff argues that the Commission was well aware of the potential for marketing abuses which arise in the context of ILP, citing the original ILP implementation order, Order No. 22,281. Staff argues that the Commission's requirement for a strictly scripted, competitively neutral inquiry by NYNEX regarding MCS demonstrates the Commission's concern and decision as to the proper safeguard against abuse. Although Staff states that the Commission's safeguard is adequate, Staff suggests adopting AT&T's suggestion of developing a mailer, to be sent to MCS customers only, describing MCS and the possible effects of selecting a PIC with MCS limitations. Staff also recommends that the Commission adopt the script contained in its May 19, 1997 memo.

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III. COMMISSION ANALYSIS

1. Resale of Toll

[1] Having considered the Motion and all responses, we will deny AT&T's request for reconsideration of our decision not to employ resale of toll as a method for preserving MCS. We find that AT&T has not met the New Hampshire standards for reconsideration. *See* RSA 541:3. By this order we clarify that NYNEX is not exempt from ever offering to resell toll separate from basic service except in the limited circumstance of MCS which, for the time being, is not technically feasible.

2. MCS Script

[2, 3] We have considered all the arguments presented and will deny AT&T's request for reconsideration of our requirement that NYNEX deliver a strictly scripted dialogue regarding MCS to MCS-eligible customers requesting a PIC change. The issue is one we have considered carefully. In our original order implementing ILP, Order No. 22,281, we mandated that the benefits of municipal calling should not be compromised. We subsequently modified that order, removing the mandate but permitting IXCs the option of offering MCS if they wish. We stressed the critical importance of informing customers about MCS so that they will be able to choose the carrier which will best serve their needs. We continue to find that information critical. We therefore find that the benefit of insuring customers have been informed about MCS outweighs the disadvantage of requiring the LEC service representatives to perform a strictly scripted inquiry.

The proposed script, according to a memo from Staff, consisted of an initial question of: "Have you spoken to your carrier about Municipal Calling Service?" If the MCS-eligible customer answers "yes," no further dialogue occurs on the subject. If the customer answers "no," the LEC service representative would proceed as follows:

> Municipal calling service is an arrangement by which calls within a municipality that would normally be rated as a toll call are rated as a local call. Municipal calling service has been provided by local exchange companies in New Hampshire. Your new carrier may or may not offer this arrangement. If your carrier does not, you may be billed toll charges for these calls. If you need more information regarding this matter or other arrangements your carrier may offer, please contact your new carrier.

While the second part of the dialogue was acceptable to all parties, MCI and AT&T objected to the initial question. MCI and AT&T preferred that the question not include a specific reference to MCS and instead read: "Have you spoken to your carrier?" This is the wording now being considered in Maine, according to NYNEX. This wording could eliminate concerns about the LECs answering unscripted questions regarding a competitor's service and could remove the perception that the LEC is policing the IXC's compliance with Commission order to inform customers about MCS. Staff, in its memo and in discussions with the parties, continued to recommend that the initial question contain a specific reference to MCS in order to assure consumers are properly informed. We find that a specific reference to MCS in the initial inquiry is preferable to the open-ended question. The open-ended question does not accomplish our purpose directly, nor does it avoid the necessary difficulty of having the LECs make the inquiry in the first place.

Having decided that the inquiry is necessary, we find that it should be specific enough to accomplish our purpose of assuring that MCS-eligible New Hampshire consumers are well-informed about MCS. To facilitate notification of the affected consumers, NYNEX will provide a database of its MCS customers to any requesting IXC.

In addition to certain NYNEX MCS customers, the majority of customers of Independent Telephone Companies (ITCs) are eligible for MCS. Twelve ITCs in New Hampshire will implement ILP on June 2, 1997, of which all but one consist of mainly MCS-eligible customers.

Hollis Telephone Company is the only exception. The ITCs proposed that, rather than

combing 12 databases to determine which customers should be notified about MCS, IXCs could reasonably assume that all ITC customers are MCS-eligible. IXCs should therefore give MCS information to all ITC customers requesting a PIC change.

We accept the ITCs' proposal to assume that all ITC customers, with the exception of Hollis Telephone Company, which has no MCS customers, and Dixville Telephone Company, which is exempt from ILP implementation, are MCS customers and should be properly advised.

Based upon the foregoing, it is hereby

ORDERED, that AT&T's Motion for Reconsideration of Order No. 22,541 regarding resale of toll service is DENIED; and it is

FURTHER ORDERED, that AT&T's Motion for Reconsideration of Order No. 22,541 regarding the MCS script is DENIED; and it is

FURTHER ORDERED, that NYNEX and other LECs shall employ the scripted dialogue specifically referencing MCS when accepting a PIC change request from an MCS eligible customer; and it is

FURTHER ORDERED, that IXCs shall clearly and unambiguously notify all MCS-eligible customers of NYNEX and all ITC customers, with the exception of customers of Hollis Telephone Company and Dixville Telephone Company, of the effect on MCS of ILP if the IXC is unable to maintain the customers' MCS; and it is

FURTHER ORDERED, that the script identified herein, which includes a specific reference to MCS in the initial question, is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996. [N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,541, 82 NH PUC 309, Apr. 1, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 96-252, Order No. 22,433, 81 NH PUC 919, Dec. 4, 1996. [N.H.] Re Tioga River Water Co., DR 96-300, Order No. 22,453, 81 NH PUC 1022, Dec. 11, 1996.

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NH.PUC*05/28/97*[97332]*82 NH PUC 441*Granite State Electric Company

[Go to End of 97332]

82 NH PUC 441

Re Granite State Electric Company

DR 97-085
Order No. 22,607

New Hampshire Public Utilities Commission

May 28, 1997

PETITION by electric utility for authority to revise its "performance interruptible credit" program, so as to lower the minimum eligible load to better reflect interruptible service requirements used by the New England Power Pool; granted.

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1. RATES, § 322

[N.H.] Electric rate design — Load factors — Interruptible service — "Performance interruptible credit" program — Revision of minimum eligible load — Reduction from 200 to 100 kilowatts — Correlation to interruptible service requirements of the New England Power Pool. p. 442.

2. SERVICE, § 324

[N.H.] Electric — Interruptible service — "Performance interruptible credit" program — Revision of minimum eligible load — Reduction from 200 to 100 kilowatts — Correlation to interruptible service requirements of the New England Power Pool. p. 442.

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BY THE COMMISSION:

ORDER

[1, 2] On May 13, 1997, Granite State Electric Company (GSEC) filed with the New Hampshire Public Utilities Commission (Commission) a revised Performance Interruptible Credit Provision (PICP) to become effective May 15, 1997.

The purpose of this filing is to assist NEPOOL in ensuring an adequate supply of electricity in the region this summer. To make this credit available to a greater number of customers, GSEC is proposing to revise the tariff to be applicable to customers who can designate an interruptible load of at least 100 kilowatts (kW). The new option will allow GSEC's G-1 customers with an average demand of less than 500 kW to commit a minimum interruptible load of 100 kW as compared to the 200 kW minimum in the current PICP. The change allows a better opportunity for small customers on the Rate G-1 to participate in the PICP. Implementation of the credit represents a rate reduction for participating customers, and the costs of the program are fully reimbursed to GSEC by NEPOOL.

The PICP was designed to exactly match the terms and conditions set forth for NEPOOL Type 5 dispatchable load. NEPOOL changed the terms and conditions for Type 5 dispatchable load in order to address the potential capacity problem this summer. NEPOOL increased the credit for Type 5 interruption from $2.00 to $8.00 per average kW interrupted per day for the period May 15, 1997 to September 15, 1997. The credit remains $2.00 per average kW interrupted per day for the rest of the year.

Staff has reviewed the filing and recommends approval of the change in the tariffed rate because it will enable GSEC and NEPOOL to gain additional interruptible load that would not otherwise be available for interruption, thereby helping to prevent a potential capacity problem for the supply of electricity in New England this summer.

The Commission has reviewed Staff's recommendation and finds that the reduction from a 200 kW minimum to a 100 kW minimum for the interruptible service is in the public interest. We are satisfied that this change will enable GSEC and NEPOOL to expand interruptible load thereby reducing the probability of capacity problems this summer.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed change to GSEC's tariff as filed on May 13, 1997 is APPROVED; and it is

FURTHER ORDERED, that GSEC file with the Commission a letter, by June 1, 1997, indicating how many customers and how much interruptible load GSEC expects to acquire with this tariff change; and it is

FURTHER ORDERED, that GSEC file with the Commission, by October 1, 1997, a report indicating the number of customers that took interruptible service under this rate and the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, GSEC 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 May 30, 1997 and to be documented by affidavit filed with this office on or before June 16, 1997; 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 June 10, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 13, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on June 16, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, Granite State Electric Company shall file a compliance tariff with the Commission 15 days from the date of this order, in accordance with NH Admin. Rules, Puc 1601.91 (b).

By order of the New Hampshire Public Utilities Commission this twenty-eighth day of May, 1997.

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NH.PUC*05/28/97*[97333]*82 NH PUC 443*Sprint Communications Company L.P.

[Go to End of 97333]

82 NH PUC 443

Re Sprint Communications Company L.P.

DE 96-305
Order No. 22,608

New Hampshire Public Utilities Commission

May 28, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 443.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 443.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 443.

BY THE COMMISSION:

ORDER

On September 19, 1996, Sprint Communications Company L. P., (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules, on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Sprint's petition for compliance with these standards. Staff reports that Sprint has provided all the information required by Puc 1304.02. The information provided supports Sprint's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set forth in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Sprint as a New Hampshire CLEC.

[1-3] We find that Sprint has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Sprint in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996

(TAct). Because Sprint has satisfied the requirements of Puc 1304.01(a), we will grant

certification.

As part of its application, Sprint agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Sprint seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Sprint's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 June 4, 1997 and to be documented by affidavit filed with this office on or before June 11, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than June 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 25, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 27,1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1997.

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NH.PUC*05/28/97*[97334]*82 NH PUC 444*New Hampshire Telephone Company Inc. dba MCT Long Distance, Inc.

[Go to End of 97334]

82 NH PUC 444

Re New Hampshire Telephone Company Inc. dba MCT Long Distance, Inc.

DE 97-064
Order No. 22,609

New Hampshire Public Utilities Commission

May 28, 1997

ORDER granting an interexchange telephone carrier interim authority to offer intrastate interexchange services despite come concern about its affiliation with a local exchange carrier, Merrimack County Telephone Company.

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1. CERTIFICATES, § 123

[N.H.] Telephone carrier — Intrastate interexchange services — Assessment of competitive impacts — Affiliation with local exchange carrier as a factor — Prevention of cross-subsidization — Exclusion of local exchange services. p. 445.

2. MONOPOLY AND COMPETITION, § 94

[N.H.] Telecommunications — Competing intrastate interexchange services — Assessment of competitive impacts — Affiliation with local exchange carrier as a factor — Prevention of cross- subsidization — Exclusion of local exchange services. p. 445.

BY THE COMMISSION:

ORDER

On April 7, 1997, New Hampshire

Telephone Company Inc. d/b/a MCT Long Distance, Inc. (MCT-LD), petitioned the New Hampshire Public Utilities Commission (Commission) for authority to provide certain intrastate

interexchange telecommunications services in the State of New Hampshire (petition) pursuant to, *inter alia*, RSA 374:22 and RSA 374:26. MCT-LD is affiliated with Merrimack County Telephone Company (MCT) which is a New Hampshire public utility; MCT-LD is a wholly owned subsidiary of MCT Inc. (MCTI), a New Hampshire corporation.

Staff has reviewed the petition and recommends approval with certain conditions. Although Staff believes that MCT-LD has demonstrated the financial, managerial and technical ability to offer service, Staff is concerned about the special circumstance of MCT-LD's affiliation with a local exchange Carrier (LEC).

As an affiliate of MCT, a LEC which is wholly owned by MCT-LD's parent corporation MCTI, MCT-LD has the potential for cross-subsidizing its competitive services with MCT's regulated operations. There are three circumstances, however, which minimize the opportunity for such cross-subsidization. First, MCT-LD has entered into a Service Agreement with MCTI whereby MCTI's MCT Telecom division (Telecom) will provide management, administrative, accounting, and marketing services. Second, MCT-LD has entered into a Billing & Collection (B&C) Agreement with MCT whereby MCT will provide billing and collection of end user customers charges associated with MCT-LD toll services. Third, MCT-LD has entered into a contract with ST Long Distance, Inc. (STLD), an interexchange carrier authorized to do business in the State of New Hampshire, from which the petitioner will purchase intrastate and interstate telecommunications services for resale.

Staff has reviewed both the Service Agreement between MCTI and MCT-LD, and the Billing and Collection Agreement between MCT-LD and MCT to analyze the relationship between MCT and MCT-LD. Staff concluded that no cross subsidy currently exists. Also, MCT's network will not be providing MCT-LD's toll services because STLD will be the underlying Interexchange Carrier (IXC). Therefore, the opportunity for co-mingling revenues is further mitigated since STLD, not MCT-LD, will be responsible for all tariff access charges due to MTC. The insulating factor of an independent IXC between MCT and MCT-LD leads Staff to recommend approval.

A potential unfair market advantage arises from MCT-LD's provision of intrastate toll in MCT's franchise area. This occurs because MCT currently applies an 18.4% credit against intrastate billings for each customer bill, as ordered in Order No. 21,766 (July 24, 1995). Because NYNEX is currently the designated toll carrier for MCT, the 18.4% customer credit is also applied to NYNEX toll charges. The B&C Agreement between MCT and MCT-LD could afford MCT-LD customers the 18.4% credit and thereby give MCT-LD an unearned advantage over other alternative toll providers. MCT assured Staff that the 18.4% credit would not apply to any toll provider other than NYNEX. We will so order.

[1, 2] We accept Staff's recommendation and will order approval of MCT-LD's petition, subject to conditions which safeguard against cross-subsidization. We find that the public good is served by permitting and fostering competition by telecommunications companies in the New Hampshire intrastate toll market.

The public should be provided an opportunity to respond in support of, or in opposition to this order.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MCT-LD is granted authority to offer intrastate message telecommunications services, specifically excluding local exchange service, for the service territory of the entire State of New Hampshire, subject to the following conditions:

1. The service shall be offered by approved tariffs.

2. The services shall be offered until the Commission orders otherwise.

3. MCT-LD will 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, MCT-LD shall notify the Commission of the change.

5. MCT-LD is exempted from N.H. Admin. Rules, Puc 406 Accounting Records and Puc 407 Forms Required of All Telephone Utilities.

6. MCT-LD will be required to comply with NHPUC Uniform System of Accounts for Telecommunication Companies.

7. MCT-LD 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. MCT-LD 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. New Service offerings filed with the Commission shall be accompanied by tariff pages describing the service, rates and effective dates; and it is

FURTHER ORDERED, that MCT shall apply the 18.4% credit to MCT-LD toll charges billed to NYNEX customers only; and it is

FURTHER ORDERED, if MCT-LD changes its operations to provision toll which would require any additional use of the MCT network or resources other than represented in the petition or the Service Agreement and B&C Agreement, MCT-LD shall file with the Commission for prior approval; 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 MCT-LD 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 June 4, 1997, and an affidavit proving publication shall be

filed with the Commission on or before June 11, 1997; and it is

FURTHER ORDERED, that pursuant to RSA 363-A:1, et seq. MCT-LD 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 June 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 25, 1997; and it is

FURTHER ORDERED, this Order *Nisi* shall be effective June 27, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that MCT-LD shall file a compliance tariff with the Commission on or before June 27, 1997, in accordance with NH Admin. Rules, Puc 1601.01 (b).

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 1997.

Notice of Conditional Approval of
NEW HAMPSHIRE TELEPHONE COMPANY, D/B/A MCT LONG DISTANCE

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

On April 7, 1997, New Hampshire Telephone Company, d/b/a MCT Long Distance (MCT-LD), which is affiliated with Merrimack County Telephone Company, filed with the New Hampshire Public Utilities Commission a petition to provide intrastate interexchange telecommunications services in the State of New Hampshire.

In Order No. 22,609, issued in Docket No. DE 97-064, the Commission granted MCT-LD conditional approval to operate as of June 27, 1997, subject to the right of the public and interested parties to comment on MCT-LD 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 MCT-LD's petition to do business in the State must be submitted in writing no later than June 18, 1997, and reply comments no later than June 25, 1997, to:

Thomas B. Getz
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 Merrimack County Teleph. Co., DR 95-197, Order No. 21,766, 80 NH PUC 488, July 24, 1995.

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NH.PUC*06/02/97*[97335]*82 NH PUC 447*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97335]

82 NH PUC 447

Re New England Telephone and Telegraph Company dba NYNEX

DE 97-013
Order No. 22,610

New Hampshire Public Utilities Commission

June 2, 1997

ORDER suspending the procedural schedule that had been adopted in Order No. 22,531 (82 NH PUC 290, *supra*) for reviewing a local exchange telephone carrier's compliance with the provisions of § 271 of the Telecommunications Act of 1996.

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1. TELEPHONES, § 3

[N.H.] Operating practices — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine compliance with thereto — Procedural schedule — Suspension of schedule and investigation — Due to administrative uncertainties — Local exchange carrier. p. 448.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Local exchange telephone carrier — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine compliance with thereto — Procedural schedule — Suspension of schedule and investigation — To conserve administrative resources. p. 448.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) commenced this docket in order to develop a thorough record regarding all issues and facts regarding interLATA services authorization as detailed in Section 271 of the Telecommunications Act of 1996 (TAct). New England Telephone and Telegraph Company (NYNEX) had indicated to the Commission that it intended to file an application for Section 271 authorization with the Federal Communications Commission (FCC), by mid-1997, utilizing a comprehensive statement of generally available terms and conditions (SGAT) to demonstrate compliance with the Section 271 competitive checklist. On March 24, 1997, the Commission issued Order No. 22,531 granting intervention and setting a procedural schedule reflecting an SGAT filing date of April 16, 1997 as agreed by NYNEX at the duly noticed prehearing conference held on March 13, 1997.

On April 3, 1997, NYNEX filed with the Commission a letter requesting that the Commission suspend the procedural schedule. In its letter, NYNEX averred that, although it will continue its efforts to prepare an SGAT, it will

attempt to complete pending interconnection negotiations and arbitrations to demonstrate compliance with the competitive checklist. Therefore, NYNEX believes that formal proceedings on an SGAT would be premature and perhaps unnecessary and requests the filing requirements and discovery schedule be suspended until further notice. NYNEX offered to complete the filing requirements contained in the procedural schedule at least 60 days prior to its FCC filing of its Section 271 application. Further, NYNEX stated that its completion of the filing requirements would not be intended to trigger the 60 day notice period prior to the Company's Section 271 application with the FCC unless accompanied by a draft 271 application and supporting evidence and information.

On April 10, 1997, the Commission notified NYNEX that its letter would be considered a motion and that, pursuant to Puc 203.04(c), parties to the docket were provided 10 days to file comments or objections to the motion. Accordingly, the Commission notified all parties that

comments and objections could be filed until April 18, 1997. On April 17, 1997, the New England Cable Television Association, Inc. (NECTA) filed comments.

[1, 2] After considering the motion and comments, we find that suspending the procedural schedule indefinitely is in the public good, in order to conserve agency resources. Given the uncertainty of filing dates and content, as well as the condensed schedule for review, we also find that the public good will be served by requiring NYNEX to give the Commission 90 days notice of its intended FCC filing date, rather than the 60 day notice proposed by NYNEX. This notice period has been endorsed by the National Association of Regulatory Utility Commissioners, ordered by several state commissions, and committed to by NYNEX in Massachusetts and Rhode Island. Finally, in order to provide ongoing focus to this docket, upon NYNEX's filing of the 90 day notification to the Commission, we direct that Staff and parties to this docket may submit data requests to NYNEX, to which NYNEX shall respond within 30 days.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's motion to indefinitely suspend the procedural schedule approved by our Order No. 22,531 is GRANTED; and it is

FURTHER ORDERED, that NYNEX shall provide the Commission with 90 days written notice of the date it intends to file its Section 271 application with the FCC; and it is

FURTHER ORDERED, that once NYNEX has provided the Commission with the 90 day notice above-ordered, the Commission Staff and parties to this docket may submit to NYNEX data requests for which NYNEX shall provide responses within 30 days.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,531, 82 NH PUC 290, Mar. 24, 1997.

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NH.PUC*06/02/97*[97336]*82 NH PUC 448*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97336]

82 NH PUC 448

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-089
Order No. 22,611

New Hampshire Public Utilities Commission

June 2, 1997

ORDER granting proprietary treatment of certain customer-specific cost data and network information contained in an amendment to a previously approved special rate contract as between a local exchange telephone carrier and Cabletron Systems, Inc., for fiber distributed data interface service.

Page 448

1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — As to special telephone service contract — For fiber distributed data interface service — Confidentiality of customer-specific cost and network configuration data contained in amendment thereto — Benefits of nondisclosure as outweighing those of disclosure. p. 449.

BY THE COMMISSION:

ORDER

On May 7, 1997, New England Telephone and Telegraph Company, d/b/a NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, an amendment to its special contract with Cabletron Systems, Inc. (Cabletron) for FDDI Services. In support of the contract amendment, NYNEX filed a contract overview and a cost study.

On the same date, NYNEX filed a Motion for Proprietary Treatment to exempt from disclosure the cost study as well as certain terms within the special contract amendment and appendices.

NYNEX states that portions of the special contract amendment contain customer proprietary network information that is within the exemptions from disclosure set forth in RSA 91-A,IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and Section 222 of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

NYNEX also states that the information is competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental costs. Though the Motion states otherwise, the special contract as filed does not redact the relevant rates and charges. Nor does it seek to protect the term of years, consistent with recent Commission orders.

NYNEX also states that it regularly seeks to prevent dissemination of confidential information, as required by Puc 204.08(b)(4)a.2.

[1] The Commission recognizes that the information identified above is critical to the review of the special contract by the Commission, the Commission Staff and the Office of Consumer Advocate. The Commission also recognizes that some of the information contained in the filing is sensitive commercial information on a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, the Commission recognizes the need for NYNEX to protect over certain information contained in its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g.*, *Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Proprietary Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1997.

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NH.PUC*06/02/97*[97337]*82 NH PUC 450*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97337]

82 NH PUC 450

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-089
Order No. 22,612

New Hampshire Public Utilities Commission

June 2, 1997

ORDER conditionally approving amendments to a previously executed special rate contract as between a local exchange telephone carrier and Cabletron Systems, Inc., for fiber distributed data interface service.

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1. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface (FDDI) service — Amendment to special rate contract — To add further FDDI network locations — Conditional approval. p. 450.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Interconnection of multiple local area networks — Amendment to special rate contract — Conditional approval. p. 450.

3. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Amendment to special rate contract — Propriety of unconditional approval — Separate opinion. p. 451.

4. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Amendment to special rate contract — Propriety of unconditional approval — Separate opinion. p. 451.

BY THE COMMISSION:

ORDER

On May 7, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, an

amended special contract with Cabletron Systems Inc. (Cabletron) for FDDI Service. In support of its petition, NYNEX filed the signed contract and a cost analysis of the proposal.

The Special Contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc 204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

FDDI is employed to link together geographically disparate high-capacity network users, such as the interconnection of multiple Local Area Networks (LAN) at various locations. Permitting a special contract enables NYNEX to obtain revenues which contribute to shared and common costs.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on May 21, 1997. No comments have been received by the Commission regarding this filing.

[1, 2] The Commission approved the original contract for FDDI service with Cabletron in DR 95-039 through Order No. 21,816 (September 6, 1995). The Commission approved amended contracts to add additional Cabletron locations to the FDDI Network in DR 95-325 (November 1995) and in DR 96-187 (July 1996). The amended contract currently before the Commission adds two additional locations to the FDDI network. The costs and revenues for these locations are included in a NYNEX Cost Study that was provided with the filing. Staff inquiries regarding the cost data have been appropriately answered by NYNEX. Staff agrees that specialized central office equipment

is properly amortized during the life of the contract and that outside plant which would be reusable, is correctly amortized at 63% of full cost. Maintenance Costs are properly estimated for both Central Office and Outside Plant facilities.

The cost study details demonstrate that the proposed rates for the FDDI service exceed the relevant costs, thus, Staff has recommended that the Commission approve this special contract.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with Cabletron 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Cabletron Systems Inc. in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1997.

SEPARATE OPINION OF COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

June 2, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 95-039, Order No. 21,816, 80 NH PUC 573, Sept. 6, 1995. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*06/02/97*[97338]*82 NH PUC 452*ST Long Distance, Inc.

[Go to End of 97338]

82 NH PUC 452

Re ST Long Distance, Inc.

DE 97-073
Order No. 22,613

New Hampshire Public Utilities Commission

June 2, 1997

PETITION by telecommunications carrier for protective treatment of its parent company's financial statement, filed as part of an application for certification as a competitive local exchange carrier; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to parent company's financial statement — Certificate proceeding — Competitive local exchange telephone carrier. p. 452.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Request for authority to operate as a competitive local exchange telephone carrier — Protective treatment — As to parent company's financial statement. p. 452.

BY THE COMMISSION:

ORDER

[1, 2] On April 15, 1997, ST Long Distance, Inc. (ST) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authorization as a competitive local exchange carrier. Concurrently with the petition, ST filed a Motion for Protective Order pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08. ST seeks protection from disclosure of the audited financial statement of ST's parent company, ST Enterprises, Inc., and the *pro forma* income statement for ST.

ST asserts in its Motion for Protective Order that the information for which it seeks protective treatment is not publicly available and the company takes measures to prevent its dissemination. Disclosure, it alleges, would reveal commercially sensitive financial information, would reveal terms of its confidential business plan and would be detrimental to its success in a competitive environment.

The Commission recognizes that the information identified above is critical to the review of the petition by the Commission, the Commission Staff and the Office of Consumer Advocate. The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Based on ST's representations, under the balancing test we have applied in prior cases, *e.g. Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to ST of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, ST's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1997.

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NH.PUC*06/02/97*[97339]*82 NH PUC 453*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97339]

82 NH PUC 453

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-069
Order No. 22,614

New Hampshire Public Utilities Commission

June 2, 1997

ORDER granting protective treatment to certain revenue analyses contained in a local exchange telephone carrier's filing seeking authority to revise its tariffs for CallAround 603 service.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — In the course of a tariff revision proceeding — Relative to underlying revenue analyses included in the filing — Commercially sensitive nature of such data — Benefits of nondisclosure outweighing those of disclosure — CallAround 603 service — Local exchange telephone carrier. p. 453.

BY THE COMMISSION:

ORDER

On April 11, 1997, New England Telephone and Telegraph Company, d/b/a/ NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) tariff revisions to its CallAround 603 Plan. Concurrently with the filing, NYNEX filed a Motion for Proprietary Treatment pursuant to RSA 91-A and N.H. Admin. Rules, Puc 204.08. NYNEX seeks protection from disclosure of the revenue analyses and other information it asserts is competitively sensitive.

NYNEX asserts in its Motion for Proprietary Treatment that the information for which it seeks protective treatment is not publicly available and the company takes measures to prevent its dissemination. Disclosure, it alleges, would reveal customer development information and competitively sensitive financial information regarding NYNEX and disclosure would be detrimental to its success in a competitive environment.

[1] The Commission recognizes that the information identified above is critical to the review of the petition by the Commission, the Commission Staff and the Office of Consumer Advocate. The Commission also recognizes that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar changes, the Commission recognizes the need for NYNEX to protect certain information. Based on NYNEX's representations, under the balancing test we have applied in prior cases, *e.g. Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, NYNEX's Motion for Proprietary Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of June, 1997.

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NH.PUC*06/02/97*[97340]*82 NH PUC 454*Freedom Ring Communications, L.L.C.

[Go to End of 97340]

82 NH PUC 454

Re Freedom Ring Communications, L.L.C.

DR 96-420
Order No. 22,615

New Hampshire Public Utilities Commission

June 2, 1997

ORDER granting New England Telephone and Telegraph Company dba NYNEX proprietary treatment of certain marketing and other commercially sensitive data in the course of a proceeding taking a "fresh look" at special rate and service contracts that have been developed for various telecommunications services, given the introduction of competition within local exchange markets.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — As to marketing strategies — As to customer billing systems and network configurations — Distinction between confidential and highly confidential data — Extent of protection — In docket re-examining special telecommunications service contracts. p. 454.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Effect of local exchange competition — As to efficacy of special service contracts — "Fresh look" at such mechanisms — Protective treatment in discovery phase — Confidential versus highly confidential information. p. 454.

BY THE COMMISSION:

ORDER

[1, 2] On May 15, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the Commission a Motion for Confidential Treatment of certain information sought in Data Requests (D.R.s) made in this docket by Freedom Ring Communications, L.L.C. (Freedom Ring) and the Commission Staff (Staff). NYNEX does not indicate that it has sought concurrence from any of the parties or Staff.

The information is classified by NYNEX into two categories: confidential and highly confidential. The two categories, according to NYNEX, should be accorded different treatment. Confidential information, which NYNEX describes as information such as market service development (as requested in Freedom Ring D.R. 1-6), customer billing and network characteristics by service (Freedom Ring D.R. 1-7, 8, 9, and 10), and foregone service revenues (Staff D.R. 1-1) should, according to NYNEX, be available to parties to the docket, the Commission and the Commission Staff, but not to the public. Highly confidential information, which NYNEX describes as information such as documentation or information concerning current and future marketing strategies (Staff D.R. 1-3a) and competitive analysis of competition in New Hampshire and NYNEX's assessments of its own and its competitors' specific competitive strengths and weaknesses (Staff D.R. 1-3) should, according to NYNEX, be available to the Commission, Commission Staff, and the Office of the Consumer Advocate (OCA) but not to the public and not to other parties in the docket.

For both confidential and highly confidential information, NYNEX requests that the identity and affiliation of independent consultants, experts, or any other person to be provided access be disclosed to NYNEX prior to such access. NYNEX wishes to reserve the right to refuse access to any person who is an officer, director, stockholder partner, owner, consultant or employee of a NYNEX or NYNEX affiliate competitor.

After reviewing NYNEX's request, we believe that what NYNEX describes as confidential and highly confidential information both warrant protection under RSA 91-A:5,IV and the Commission's standards for granting confidential treatment in *Re New England Telephone Co.*, DR 95-069, Order 21,731 (July 10,

1995) and codified at Puc 204.08(b). Disclosure would compromise the business plans of NYNEX and provide competitors with information that NYNEX has invested time and resources to develop, thereby unfairly advantaging competitors and jeopardizing ongoing commercial relationships that NYNEX has nurtured.

We recognize that the detailed information regarding special contracts, including foregone service revenues, market service development, customer billing and network characteristics, is necessary for the parties and Staff to fully investigate the issues raised by this docket. Further, we recognize that the information identified by NYNEX as highly confidential can be viewed as having special sensitivity in the newly competitive telecommunications market. Under the balancing test we have applied in prior cases, *Re NYNEX (Auditel)*, 80 NH PUC 437 (1995), the benefits of non-disclosure to NYNEX appear to outweigh the benefits of disclosure to the public. Puc 204.08(c) provides us with latitude to prescribe the manner in which information shall be protected from disclosure. Therefore, although atypical, the treatment NYNEX requests for highly confidential information is not prohibited. We note that in DE 96-220, *Petition for Approval of Proposed Merger of a Wholly-Owned Subsidiary of Bell Atlantic Corporation into NYNEX Corporation*, we granted approval of an agreement whereby the parties and Staff agreed to substantially similar treatment of certain information.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that NYNEX's Motion for Confidential Treatment of the Responses to the Data Requests enumerated above is GRANTED; and it is

FURTHER ORDERED, that Data Responses containing similar information shall be similarly treated; and it is

FURTHER ORDERED, that this order is subject to the Commission's on-going rights in light of RSA 91-A, should circumstances so warrant; 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 June 9, 1997 and to be documented by affidavit filed with this office on or before June 16, 1997; 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 23, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request

for hearing shall do so no later than June 30, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 2, 1997, unless the Commission provided 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, 1997.

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*06/09/97*[97341]*82 NH PUC 455*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97341]

82 NH PUC 455

Re New England Telephone and Telegraph Company dba NYNEX

DR 94-310
Order No. 22,616

New Hampshire Public Utilities Commission

June 9, 1997

ORDER conditionally approving proposed amendments to a previously executed special rate contract as between a local exchange telephone carrier and Capital Region Health Care Corporation for the provision of Centrex service.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Proposed contract amendments — Factors affecting conditional approval — Modified term of contract — Provision for line growth — Local exchange carrier. p. 457.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Proposed contract amendments — Factors affecting conditional approval — Modified term of contract — Provision for line growth — Local exchange carrier. p. 457.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Negotiated modification of terms — Propriety of unconditional approval — Separate opinion. p. 458.

4. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Negotiated modification of terms — Propriety of unconditional approval — Separate opinion. p. 458.

BY THE COMMISSION:

ORDER

On December 22, 1994, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with Capital Region Health Care Corporation (CRHC)[1(106)]

for Centrex services.[2(107)] In support of its petition, NYNEX filed a contract overview and a cost study associated with the contract.

The filing also included a Motion for Protective treatment of the special contract between NYNEX and CRHC and all supporting documents. The motion was granted in Order No. 21,487, issued January 4, 1995.

CRHC is currently a Centrex customer with locations throughout New Hampshire but primarily in the Concord exchange. The original special contract was filed with the Commission on May 19, 1992 and approved by the Commission on September 9, 1992 in DR 92-091. See Order No. 20,595.

The proposed initial Centrex service provides for a mix of analog lines, Integrated Services Digital Network (ISDN) lines and high capacity terminations into the Centrex system from

interLATA carriers. Provisions of this contract allow for line growth of Centrex analog and ISDN services to be added to the initial Centrex system provided outside plant facilities are available at the new locations. Termination of the contract by CRHC, prior to the end of the term, requires it to pay the present value of the remaining outstanding payments.

The primary purpose of this filing is to replace the current special contract with the proposed contract. The proposed special contract provides for an extension in the term of years and establishes a price schedule for Centrex analog and Basic Rate Interface (BRI) ISDN growth lines to specifically identified locations and future locations not yet determined. The contract also contains a provision which indicates that future amendments and assignments to this contract do not require Commission approval.

The proposed contract extends the term of years for an additional three years (March 27, 2002). The proposed contract does not require an additional commitment amount and the Monthly service rate is unchanged. Monthly rates will change in the future as new services are added to the initial Centrex system.

Sections of the proposed contract that pertain to analog Centrex growth lines and/or ISDN growth lines establish different pricing schedules depending on the location of the termination point. The pricing schedules include a set of prices on a per line basis at current locations, current and unknown locations within two miles of a #5ESS central office switch, current and unknown locations outside of two miles of a #5ESS central office switch and current and

unknown locations within two miles of a #5ESS host remote switch. For locations which have not yet been established, NYNEX asserts the proposed rates reflect a state-wide average of the "forward-looking" cost of providing the applicable services.

Centrex services provided by this proposed special contract are, according to NYNEX, a competitive alternative to Private Branch Exchange (PBX) service and approval allows NYNEX to respond to the competitive market. Without this contract, NYNEX claims the revenue erosion resulting from CRHC purchasing a PBX would exceed foregone revenue resulting from the discounted contract prices for Centrex services. Therefore, approving this contract results in less harm to stockholders and the general body of ratepayers because CRHC would be contributing more to joint and common costs than it otherwise would had CRHC purchased a PBX.

Staff has reviewed the petition, the contract overview and cost study details. Subject to a number of location-specific, engineering and business assumptions, the cost analysis provided by NYNEX demonstrates that the proposed rates for Centrex service exceed the relevant costs. Therefore, the contract complies with RSA 378:18-b.

Based upon its review, Staff recommends a conditional approval. Staff makes its recommendation after evaluating the assumptions on which the cost analysis is based. Staff concludes that the cost factors and inputs, as reported by NYNEX, are appropriate.

Staff recommends approval subject to a number of conditions. For future amendments and

assignments to this contract, Staff recommends that NYNEX seek and obtain prior approval from the Commission. Staff recommends that NYNEX refile revised copies of this contract making public the term of years.

[1, 2] We have reviewed the petition and Staff's recommendation. Because the proposed rates exceed the relevant incremental costs, we find the special contract to be in the public interest. Approval allows NYNEX to respond to competitive market conditions. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420.

We will accept the specific recommendations of Staff regarding our authority to approve assignments or amendments of this proposed special contract. We will direct NYNEX to insert the appropriate language in subsequent contracts indicating that amendments and assignments will require prior Commission approval. We will require NYNEX to refile revised copies of this contract making public the term of years pursuant to prior orders. As the TAct requires NYNEX to allow resale of special contracts and tariffed services, the current language in Appendix E would be in conflict with the plain meaning of Section 251 (b)(4). Therefore, we will require NYNEX to refile revised copies of this contract amending Appendix E in order to eliminate the restrictions placed on the resale of Centrex services.

Based upon the foregoing, it is hereby

ORDERED, that the special contract between NYNEX and Concord Regional Health Care 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 the Commission retains authority to approve amendments to this contract; and it is

FURTHER ORDERED, that NYNEX refile revised copies of this contract making public the term of years; and it is

FURTHER ORDERED, that NYNEX will insert the appropriate language in subsequent contracts indicating that amendments and assignments will require prior Commission approval, and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of this special contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Concord Regional Health Care in this special contract.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

June 9, 1997

FOOTNOTES

[1]CRHC is also known as Mednet Services.

[2]A decision on this proposed filing was delayed due to a number of contested issues involving CRHC and the resale of retail toll services. These issues were the focus of DE 95-054. The final Order No. 22,435 in DE 95-054 was issued on December 9, 1996.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. Co., DR 92-091, Order No. 20,595, 77 NH PUC 529, Sept. 9, 1992. [N.H.] Re Resale of Retail Toll Services by Switchless Aggregators, DE 95-054, Order No. 22,435, 81 NH PUC 995, Dec. 9, 1996.

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NH.PUC*06/09/97*[97342]*82 NH PUC 458*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97342]

82 NH PUC 458

Re New England Telephone and Telegraph Company dba NYNEX

DR 95-102
Order No. 22,617

New Hampshire Public Utilities Commission

June 9, 1997

ORDER conditionally approving a proposed special rate contract as between a local exchange telephone carrier and St. Joseph Hospital and Trauma Center for the provision of Centrex service.

Page 458

1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Factors affecting conditional approval — Competitive alternative to private branch exchange service — Provision for line growth — Local exchange carrier. p. 460.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Factors affecting conditional approval — Competitive alternative to private branch exchange service — Provision for line growth — Local exchange carrier. p. 460.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Provided via special rate contract — Propriety of unconditional approval — Separate opinion. p. 460.

4. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special contract arrangements — Propriety of unconditional approval — Separate opinion. p. 460.

BY THE COMMISSION:

ORDER

On April 14, 1995, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with St. Joseph Hospital and Trauma Center (Hospital) for Centrex services. In support of its petition, NYNEX filed a contract overview and a cost study associated with the special contract.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the contract from public disclosure. The Motion for Confidentiality was granted in part and denied in part in Order No. 21,749. The Commission, pursuant to Puc 204.07(b), will protect certain information from public disclosure, but will allow public disclosure of other information.

The proposed initial Centrex service provides a mix of analog and ISDN (Integrated Services Digital Network) lines to various known locations in Nashua, New Hampshire on a price per line basis. Provisions in the proposed special contract also allow a limited amount of additional growth lines to various known Nashua locations and various known locations in seven other towns/cities in New Hampshire. Growth lines are provided on a price-per-line basis. Termination of the proposed contract by the Hospital, prior to the end of the term, requires it to pay the present value of outstanding payments.

Adding growth lines to the proposed initial Centrex system is subject to conditions. Growth at the hospital location is limited to a specified number of additional lines. Growth lines to specific and known locations identified in the contract is limited to the availability of existing facilities. Where additional line growth is in excess of the specified number of new lines at the hospital, where existing facilities are not available at other specifically identified locations or

where additional line growth is required outside Nashua but not specifically identified in this contract, the rates and charges for facilities will be developed on an individual case basis. Each service developed on a individual case basis is subject to Commission approval. The contract also contains a provision which indicates that future amendments and assignments to this contract do not require Commission approval.

Centrex services provided by this proposed special contract are, according to NYNEX, a competitive alternative to Private Branch Exchange (PBX) Service. Approval allows NYNEX to respond to the competitive market. Without this contract, NYNEX claims the revenue erosion resulting from the Hospital purchasing a PBX would exceed foregone revenue resulting from the special discounted contract prices for Centrex services. Therefore, approving the contract results in less harm to

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stockholders and the general body of rate payers because the hospital would be contributing more to fixed costs than it otherwise would if the hospital purchased a PBX.

Staff has reviewed the petition, the contract overview and cost study details. Subject to a number of location-specific, engineering and business assumptions, the cost analysis provided by NYNEX demonstrates that the proposed rates for Centrex Services exceed the relevant costs. Therefore, the contract complies with RSA 378:18-b.

Based upon its review, Staff recommends conditional approval. Staff makes its recommendation after evaluating the assumptions on which the cost analysis is based. Staff concludes that the cost factors and inputs, as reported by NYNEX, are appropriate.

Staff recommends approval subject to a number of conditions. For future amendments and assignments to this contract, Staff recommends that NYNEX seek and obtain prior approval from this Commission. Staff recommends that NYNEX refile revised copies of this contract making public the term of years.

[1, 2] We have reviewed the petition and Staff's recommendation. Because the proposed rates exceed the relevant incremental costs, we find the proposed special contract to be in the public interest. Approval allows NYNEX to respond to competitive market conditions. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420.

We will accept the specific recommendations of Staff regarding our authority to approve assignments or amendments of this contract. We will require NYNEX to refile revised copies of this contract making public the term of years.

Based upon the foregoing, it is hereby

ORDERED, that the special contract between NYNEX and St. Joseph Hospital and Trauma Center 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 the Commission retains authority to approve amendments to this contract; and it is

FURTHER ORDERED, that NYNEX refile revised copies of this contract making public the term of years; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of this special contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded St. Joseph Hospital and Trauma Center in this special contract.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be

changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

June 9, 1997

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NH.PUC*06/09/97*[97343]*82 NH PUC 461*Implementation of the Telecommunications Act of 1996

[Go to End of 97343]

82 NH PUC 461

Re Implementation of the Telecommunications Act of 1996

DR 97-113
Order No. 22,618

New Hampshire Public Utilities Commission

June 9, 1997

ORDER addressing discounts on telecommunications services for schools and libraries as federally mandated by the Telecommunications Act of 1996. Commission notes that new tariffs reflecting the discounts are not required. It declines to develop any additional state-based funding mechanism for schools and libraries.

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1. RATES, § 550

[N.H.] Telephone rate design — Classes of users — Schools and libraries — Federally mandated discounts — For various services including internet access — Discounts proportional to eligibility for free and reduced-price lunch programs — Greater discounts for rural areas — Minimum of 20% and maximum of 90% discounts — As provided for in the Telecommunications Act of 1996 — No requirement for new tariffs — No development of additional state-based discount plans. p. 462.

2. DISCRIMINATION, § 157

[N.H.] Rates — Telecommunications services — Schools and libraries — Federally mandated discounts — Internet access as an example — Discounts proportional to eligibility for free and reduced-price lunch programs — Greater discounts for rural areas — Minimum of 20% and maximum of 90% discounts — As provided for in the Telecommunications Act of 1996 — No requirement for new tariffs — No development of additional state-based discount plans. p. 462.

3. DISCRIMINATION, § 65

[N.H.] Rates — Telecommunications services — Special concessions to libraries — As provided for in the federal Telecommunications Act of 1996 — Discounts for such services as internet access — Basis for discounts — Rural versus urban differentials — Minimum of 20% and maximum of 90% discounts — No requirement for new tariffs — No development of additional state-based library funding mechanisms. p. 462.

4. DISCRIMINATION, § 87

[N.H.] Rates — Telecommunications services — Special concessions to schools — As provided for in the federal Telecommunications Act of 1996 — Discounts for such services as internet access — Discounts proportional to eligibility for free and reduced-price lunch programs — Greater discounts for rural areas — Minimum of 20% and maximum of 90%

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discounts — No requirement for new tariffs — No development of additional state-based school funding mechanisms. p. 462.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 8, 1997, the Federal Communications Commission (FCC) issued FCC Order No. 97-157 (Order) in CC Docket 96-45, implementing key portions of Section 254 of the Telecommunications Act of 1996 (Tact) addressing universal service. The Order, based on recommendations of the Federal/State Joint Board on Universal Service, identifies services to be supported by federal universal service funding and the mechanisms for providing such funding. Discounts on telecommunications services and certain non-telecommunications services for

schools and libraries are earmarked for federal support.

The Order provides for funding of discounts on both interstate and intrastate services for schools and libraries. The Order establishes discount levels for interstate services. Although the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, they may begin applying for funding July 1, 1997. For jurisdictional reasons, eligibility for the discounts is predicated upon adoption by the state of discount levels for intrastate services equal to the federal discount levels for interstate services. In this order, we adopt discount levels for intrastate services to schools and libraries.

II. COMMISSION ANALYSIS

A. *Section 254(h)(1)(B) Requirement*

[1-4] The TAct requires that states establish intrastate discounts on designated services provided to eligible schools and libraries. Specifically, Section 254(h)(1)(B)states:

> All telecommunications carriers serving a geographic area shall, upon a bonafide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

B. *The Funding*

Section 254(h)(1)(B) of the TAct permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services. Paragraph 550 of the FCC's Order points out that the TAct does nothing to prohibit federal funding of intrastate discounts or to prohibit conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC decided to provide federal universal service funding for intrastate discounts to schools and libraries, conditioned on state adoption of discount levels at least equal to the federal discount levels. Hence, no state funding is required for these intrastate discounts, so long as we adopt the FCC discount levels. Participating service providers will be compensated for the discounts completely through the federal universal fund.

C. *The Discounts*

The FCC discounts range from 20 percent to 90 percent for all telecommunications services, internet access, and internal connections, subject to a $2.25 billion annual cap. The range of discounts is correlated to students' eligibility for the national school free and reduced price lunch

program, and urban or rural designation based on Metropolitan Statistical Areas. The

following discount matrix has been adopted by the FCC:

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

SCHOOLS AND LIBRARIES DISCOUNT MATRIX

HOW DISADVANTAGED		DISCOUNT LEVEL	
% students eligible for national school lunch program	Estimated % of US schools in category	Urban Discount (%)	Rural Discount (%)
›1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

The discounts are to be applied to a "Pre-discount Price," which must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The Pre-discount Price represents the total price that carriers will receive for the services sold to eligible schools and libraries. While the federal universal service fund will pay the carrier the amount necessary to complete the Pre-discount Price, schools and libraries will pay the carrier only the discounted amount. Therefore, schools and libraries have an incentive to obtain the lowest possible Pre-discount Price, which is obtained through a bidding process administered by the National Exchange Carriers Association (NECA) as the universal service administrator.

D. *New Tariffs Not Required*

The FCC clarified that a carrier's tariffed rate for an eligible service will represent a carrier's lowest corresponding price in a geographic area in which the carrier has not negotiated rates that differ from the tariffed rate. The FCC does not require carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries; discounts will be applied to existing tariff rates where appropriate. We believe that this is appropriate for New Hampshire carriers, too. We will not require that carriers file tariffs reflecting their discounts for schools and libraries.

E. *Further Action*

The level of discounts adopted by us will have no impact on the federal universal service fund assessments paid by New Hampshire carriers. Our telecommunications carriers, and through them the ratepayers of this state, will be contributors to the federal universal service fund regardless of our action here.

The FCC Order, Paragraph 551, recognizes that Section 254(h)(1)(B) provides that states may establish discounts greater than those established as federal levels. States also retain discretion to establish Pre-discount Prices, to which the discount is then applied, lower than that which would be determined by the market. However, no federal funding will be provided above the amounts necessary to support the federally approved discount levels. Therefore, a state which chooses to establish greater discounts must provide the funding to support the difference between the federal and state discounts.

New Hampshire has not established a funding mechanism for telecommunications services for schools and libraries. We find that imposing additional charges on carriers to create a state fund to support telecommunications services for schools and libraries is inappropriate at this time. Furthermore, while we may arguably have authority to create such a fund, we would seek direction from the Legislature before taking such a step. The Legislature is well aware of the ongoing changes in telecommunications. A bill creating a Joint Oversight Committee on Telecommunications, House Bill Number 452, is currently under consideration. We consider that committee, or a similar legislative study committee, to be an appropriate forum for initial investigation of a program of this magnitude.

The schools and libraries wishing to take advantage of the first-come, first-served federal funding must apply to the FCC as soon after July 1, 1997 as possible, once their technology plans are in place. Further, because we believe

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that legislative input is appropriate before creating further intrastate discounts, we find that the public good will be served by establishing the discount levels as soon as possible. This is particularly appropriate given that the preliminary analysis of the federal discount matrix reveals that most, if not all, eligible New Hampshire schools will receive a 50% discount, a considerable savings and incentive to participate.

By this order we will approve the federal discounts on a *nisi* basis subject to written comment from interested parties.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that we adopt the Schools and Libraries Discount Matrix contained in FCC Order No. 97-157, CC Docket 96-45, and reflected in this order; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Commission

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 June 12, 1997 and to be documented by affidavit filed with this office on or before June 23, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this order are hereby notified that they may submit their comments no later than June 19, 1997; and it is

FURTHER ORDERED, that all persons wishing to file a request for a hearing on this matter before the Commission are hereby notified that they may submit a written request for a hearing no later than June 19, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 25, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 1, 1997, 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 ninth day of June, 1997.

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NH.PUC*06/09/97*[97344]*82 NH PUC 464*Public Service Company of New Hampshire

[Go to End of 97344]

82 NH PUC 464

Re Public Service Company of New Hampshire

DR 97-059
Order No. 22,619

New Hampshire Public Utilities Commission

June 9, 1997

ORDER clarifying that an electric utility may continue to offer uncontrolled water heating service despite a stipulation in a prior rate case that such service would be eliminated as of June 1, 1997. Commission notes that significant consumer demand for the service still exists and that continuation of the service will not adversely impact any other service or rate.

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1. RATES, § 351

[N.H.] Electric rate design — Residential and general service customers — Uncontrolled water heating service — Continuation of despite stipulation to the contrary — Factors — Continued consumer demand — Lack of impact on other rates or services. p. 465.

2. SERVICE, § 320

[N.H.] Electric — Uncontrolled water heating service — For residential, general service, and targeted lifeline customers — Continuation of — Prior stipulation to the contrary notwithstanding — Factors — Continued consumer demand — Lack of impact on other rates or services. p. 465.

BY THE COMMISSION:

ORDER

On May 2, 1997, Public Service Company of New Hampshire (PSNH) filed with the

Page 464

Commission testimony, exhibits, work papers and other materials supporting its base rate filing. PSNH did not file changes to its existing tariff, but did file six (6) changes to the proposed tariff which it considers "housekeeping" amendments. One of those changes retains the uncontrolled water heating provisions of Residential Service Rate D, General Service Rate G, and Residential Service Targeted Lifeline Rate D-TL Pilot Program. The existing tariff language and the tariff pages submitted on June 2, 1997 in compliance with the interim Fuel and Purchased Power Adjustment Clause (FPPAC) order, Order No. 22,604, now state, based on a Stipulation in PSNH's last rate design docket, DR 91-001, that uncontrolled water heating will no longer be available after June 1, 1997.

On May 27, 1997, the Commission issued Order No. 22,605, which, *inter alia*, stayed the petition to increase base rates and suspended PSNH's tariff filing. This would have the effect of at least temporarily eliminating the uncontrolled water heating program.

On June 3, 1997, PSNH filed for clarification or reconsideration regarding those "housekeeping" changes of the proposed tariff that were suspended by Order No. 22,605. In particular, PSNH seeks clarification on whether the Commission intended to suspend the effective date of the tariff changes and, if so, PSNH would like the Commission to reconsider the proposed uncontrolled water heating tariff pages contained in the May 2, 1997 base rate filing. No party responded to PSNH's June 3, 1997 filing.

PSNH's support for keeping the uncontrolled water heating rate open to new customers is based on the continuing customer demand for the rate and the effect the additional sales from uncontrolled water heating customers will have on recovery of fixed costs, thereby benefiting all PSNH customers. PSNH also states that continuation of the rate will not upset the existing *status quo* and that by offering the rate, customers will be allowed the opportunity to choose retail services as the industry moves toward restructuring.

[1, 2] We have considered PSNH's request for reconsideration and clarification. We have reviewed the testimony of PSNH in the base rate case and considered the rationale for continuation of the uncontrolled water heating rate contained in PSNH's letter. Although the environment upon which termination of this rate offering was made as part of the Stipulation in DR 91-001 may no longer justify termination of the rate, our decision is based on the ability of customers to choose services they consider valuable so long as those services are cost reflective and do not impede future competition. Continuation of these rate offerings will be at current prices and will not harm future competition. We will, therefore, approve the continuation of the uncontrolled water heating rate with the understanding that our decision is not intended to prejudice any party at a later time in regard to the appropriateness of this rate offering.

Based upon the foregoing, it is hereby

ORDERED, that Water Heating - Uncontrolled for Rate D, Rate G, and Targeted Lifeline Rate D-TL Pilot Program shall remain effective until the Commission provides otherwise in a written order.

By order of the Public Utilities Commission of New Hampshire this ninth day of June, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,604, 82 NH PUC 432, May 27, 1997. [N.H.] Re Public Service Co. of New Hampshire, DR 97-059, Order No. 22,605, 82 NH PUC 435, May 27, 1997.

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NH.PUC*06/10/97*[97345]*82 NH PUC 466*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97345]

82 NH PUC 466

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Vitts Corporation

DE 97-071
Order No. 22,620

New Hampshire Public Utilities Commission

June 10, 1997

ORDER approving an interconnection agreement negotiated by a competitive local carrier and an incumbent local exchange telephone carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Availability of dialing parity, collocation, number portability, directory assistance, and unbundled access — Additional unbundling of interoffice facility elements — Incumbent local exchange and competitive local exchange carriers. p. 466.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Special features — Access to unbundled interoffice facilities — Incumbent local exchange and competitive local exchange carriers. p. 466.

BY THE COMMISSION:

ORDER

[1, 2] On April 14, 1997, Vitts Corporation (Vitts) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Interconnection Agreement (Agreement) with New England Telephone and Telegraph Company (NYNEX).

The Agreement was filed for approval pursuant to 47 U.S.C., Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic, transmission/termination of other types of traffic and joint network configuration. It further provides for unbundled access, resale, collocation, number portability, dialing parity, access to rights of way, access to data bases, and directory assistance service. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement includes virtually all of the same terms and conditions as the three

Interconnection Agreements for non-cellular companies (Freedom Ring, CTEC & KMC) that were approved earlier this year. Additionally this Agreement provides Vitts access to unbundled NYNEX Interoffice Facilities (IOF) throughout New Hampshire at prices, terms, and conditions set forth in section 5.3 of the Statement of Generally Available Terms and Conditions (SGAT) filed with the New York Public Service Commission or as superseded by tariffs filed by NYNEX for New Hampshire. The Interoffice Facilities are priced on an unbundled basis to allow for use with other unbundled network elements thus creating numerous facility-based/resell options to Vitts in the provisioning of exchange and exchange access services. This Agreement also includes more detailed unbundling of local outside plant and central office facilities than in previously approved agreements. This would allow Vitts to provide digital and other high-tech services with minimal future negotiating or "grooming" of the Agreement.

Prices in this filing are the same as those in the three previously approved non-cellular

interconnection agreements for the services/ elements that are common. Whereas this is the first agreement to include detailed unbundling of interoffice elements and greater detail of local services/elements, there is no basis for price comparison of these items. Staff points out that the TAct does not require that a Telecommunications Company sell each service/element for the same price to each requesting party.

The Staff has recommended approval of this Interconnection Agreement between Vitts and NYNEX based on a review of the summary, actual agreement and verbal clarification provided by NYNEX.

We have reviewed the Filing and find it meets the standards of §252(e)(2)(A) of the TAct for approval of a negotiated Agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *Nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between Vitts and NYNEX is approved; 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 June 17, 1997 and to be documented by affidavit filed with this office on or before June 24, 1997; 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 1, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 8, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 10, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1997.

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NH.PUC*06/10/97*[97346]*82 NH PUC 467*Hollis Telephone Company, Inc.

[Go to End of 97346]

82 NH PUC 467

Re Hollis Telephone Company, Inc.

DF 94-071
Order No. 22,621

New Hampshire Public Utilities Commission

June 10, 1997

ORDER directing a local exchange telephone carrier to cease relying on the tariffs of its predecessor and to submit tariffs of its own.

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1. RATES, § 238

[N.H.] Schedules and procedure — Tariffs — Necessity of filing — When taking over another's operations — Elimination of reliance on predecessor's tariffs — Local exchange telephone carrier. p. 467.

BY THE COMMISSION:

ORDER

[1] On June 6, 1994, the New Hampshire Public Utilities Commission (the Commission) issued Order No. 21,253, approving a petition to transfer and reorganize the GTE franchise in Hollis, New Hampshire. As a result, Hollis Telephone Company, Inc. was authorized to operate as a telephone public utility within the Hollis exchange area previously served by GTE

NH. Hollis Telephone Company, Inc. has continued to operate under the GTE New Hampshire Tariff while working with Staff on the filing of NHPUC Hollis Tariff No. 1.

A utility tariff should reflect the rates and charges, including all services furnished to the general public. Rulemaking Docket DRM 93-221 established the uniform administration of utility customer relation rules and required all utilities to revise their tariffs to comply with the changes no later than July 15, 1996. Hollis Telephone Company, Inc. has not yet done so despite considerable efforts on the part of our Staff to assist Hollis with a complete compliance filing. Hollis Telephone customers are entitled to a clear and current tariff for their reference.

Based upon the foregoing, it is hereby

ORDERED, that Hollis Telephone Company, Inc. submit NHPUC No. 1 Hollis Compliance Tariff within thirty days of the date of this order; and it is

FURTHER ORDERED, that the tariff comply with DRM 93-221, the rulemaking docket and with PUC 400 Rules For Telephone Service adopted by the Commission on May 19, 1997, for effect on May 21, 1997; and it is

FURTHER ORDERED, that the Hollis tariff contain only those rates which have been previously approved by Commission order.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Wilton Teleph. Co., Inc., DF 94-021, Order No. 21,253, 79 NH PUC 316, June 6, 1994.

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NH.PUC*06/10/97*[97347]*82 NH PUC 468*Potential 1997 Summer Capacity Constraints of Electric Utility Companies

[Go to End of 97347]

82 NH PUC 468

Re Potential 1997 Summer Capacity Constraints of Electric Utility Companies

Respondents: Concord Electric Company; Connecticut Valley Electric Company; Exeter and Hampton Electric Company; Granite State Electric Company; New Hampshire Electric Cooperative, Inc.; Public Service Company of New Hampshire

IR 97-112
Order No. 22,622

New Hampshire Public Utilities Commission

June 10, 1997

ORDER granting a motion for confidential treatment of customer lists and other customer-specific information required in the course of a commission proceeding evaluating the possibility of electric capacity and energy shortages in the summer of 1997 due to an unprecedented number of generating stations already shut down or scheduled to be shut down during such time.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to customer lists and other customer-specific information — As necessary for determining the potential for summer capacity and energy shortages — Electric service — Benefits of nondisclosure as outweighing those of disclosure. p. 469.

2. ELECTRICITY, § 4

[N.H.] Generating systems — Operating practices and efficiency — Proceeding addressing the potential for summer capacity and energy shortages — Protective treatment of cus-

tomer lists and other customer-specific data necessary thereto. p. 469.

BY THE COMMISSION:

ORDER

The New Hampshire Public Utilities Commission (Commission) has requested an evaluation of the potential for capacity and energy shortages during the summer of 1997 due to the number of generating units in New England that are currently shut down or scheduled for refueling. *See*, Order No. 22,604. During the second half of May 1997, the Commission's Chief Engineer issued discovery requests to the six jurisdictional retail electric utilities: Concord Electric Company, Connecticut Valley Electric Company, Exeter and Hampton Electric Company, Granite State Electric Company, the New Hampshire Electric Cooperative, Inc., and Public Service Company of New Hampshire (PSNH). The electric utilities were instructed to produce a list of accounts held in the name of the State of New Hampshire which may be affected if those utilities implement load curtailment and/or feeder rotation and to identify the position of each account in the rotation.

On June 5, 1997, PSNH filed a Motion for Protective Order. In the Motion for Protective Order, PSNH alleges that it routinely seeks to protect customer lists and customer specific information. PSNH alleges that release of the information in this case could constitute a security risk to the state properties involved. PSNH seeks protection pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

[1, 2] We agree with PSNH that the customer specific information sought in the discovery requests should not be publicly disseminated, due to potential security risks that could arise from information regarding curtailment of power to particular state properties. Under the balancing test we have applied in prior cases, *e.g.*, *Re New England Telephone Company Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to the electric utilities and the State of New Hampshire of non-disclosure in this case outweigh the benefits to the public of disclosure.

This does not mean, however, that the public should not be informed about the potential for capacity and/or energy shortages. On Monday, June 9, 1997 at 11:30 a.m., the Commission will conduct a hearing at which PSNH will present evidence regarding its plans and procedures to respond to the potential for capacity and energy shortages this summer. The hearing is open to the public and a transcript of the testimony will be maintained.

Though we have not received similar requests for protection from other utilities, the concerns noted by PSNH are equally applicable to information concerning their state accounts information. This protective order will apply to all customer specific data filed in response to the Engineering Department's discovery requests.

The Commission has a duty, as the state agency authorized to regulate and monitor the electric industry, to be fully informed about the potential for a capacity and/or energy shortage in the state. *See*, RSA 365:5 and 374:4. The request for information on state accounts was made pursuant to its role as a regulator of the electric industry. The Commission anticipates, however, that it will be involved in discussions with other state agencies, as individual customers of electric utilities, to address the potential for capacity and/or energy shortages so that appropriate responses may be developed.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that the terms of this order shall apply to all customer specific data produced in response to the Engineering Department's discovery requests; 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, any party or other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this tenth day of June, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,604, 82 NH PUC 432, May 27, 1997.

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NH.PUC*06/17/97*[97348]*82 NH PUC 470*Hannaford Brothers Company, Inc.

[Go to End of 97348]

82 NH PUC 470

Re Hannaford Brothers Company, Inc.

DR 96-424
Order No. 22,623

New Hampshire Public Utilities Commission

June 17, 1997

ORDER temporarily staying a proceeding in which an industrial customer had sought to compel Public Service Company of New Hampshire to provide certain retail wheeling and other backup/standby services on an unbundled basis. Such stay is deemed appropriate given that further action on outstanding motions for rehearing and/or clarification of Order No. 22,512 (82 NH PUC 101, *supra*) likewise have been suspended temporarily, pending the outcome of mediation sessions relative to legal claims of electric utilities in the course of the commission's

electric industry restructuring proceeding.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Possible consolidation with other filings — Request for retail wheeling and other backup/standby services — Temporary stay. p. 472.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Impact of other filings — Possible consolidation of dockets — Request for retail wheeling and other backup/standby services — Temporary stay. p. 472.

3. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Unbundled backup and standby services — Retail wheeling — Possible consolidation with industry restructuring docket — Temporary stay. p. 472.

4. PROCEDURE, § 42

[N.H.] Stay and suspension — Temporary duration — Consideration of consolidation of dockets — Electric restructuring proceeding — Retail wheeling/unbundled standby service proceeding. p. 472.

5. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Request for retail wheeling and other backup/standby services as a factor — Lack of necessity for stay — Dissenting opinion. p. 472.

6. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Request for retail wheeling and other backup/standby services as a factor — Lack of necessity for stay — Dissenting opinion. p. 472.

7. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Unbundled backup and standby services — Retail wheeling — Impact of industry restructuring docket — Lack of necessity for stay — Dissenting opinion. p. 472.

8. PROCEDURE, § 42

[N.H.] Stay and suspension — Lack of necessity for — Despite possible consolidation of dockets — Discrete single-tariff issues

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versus broad policy issues — Electric restructuring proceeding — Retail wheeling/unbundled standby service proceeding — Dissenting opinion. p. 472.

APPEARANCES: Deirdre M. O'Callaghan, Esq. on behalf of Hannaford Brothers Company; Robert A. Bersak, Esq. on behalf of Public Service Company of New Hampshire; 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 December 31, 1996, Hannaford Bros. Co., Inc. (Hannaford) filed with the New Hampshire Public Utilities Commission a request for an order requiring Public Service Company of New Hampshire (PSNH) to provide separately priced Distribution and Transmission demand plus the related Administrative and Translation charges of PSNH's Backup Service Rate B (NHPUC No. 37-Electricity). On April 30, 1997, Hannaford and PSNH met and agreed upon a proposed procedural schedule which was included in an Order of Notice issued by the Commission on May 1, 1997. The Order of Notice set May 12, 1997 for a prehearing conference to address the proposed procedural schedule, entertain motions to intervene and to hear the initial positions of the Parties and Staff.

On May 7, 1997 PSNH moved to consolidate this proceeding with DR 96-150, the Commission docket investigating the restructuring of the electric industry, arguing that the petition involved a request for retail wheeling services.

On May 8, 1997, Concord Electric Company and Exeter and Hampton Electric Company moved, without subsequent objection, to intervene in the proceeding.

On May 9, 1997, PSNH moved to stay this proceeding "to allow a mediation process [regarding the Commission's order in DR 96-150 restructuring the electric industry] to go forward in an orderly fashion," and because it would "allow the parties to the mediation to devote the time, effort and resources necessary to make the process successful." Motion at ¶ 5.

At the prehearing conference on May 12, 1997, Hannaford requested that the Commission

allow it until May 14, 1997 to respond to PSNH's motions. The motion was granted and on May 14, 1997, Hannaford filed its responses to the motions.

II. POSITIONS OF THE PARTIES

A. PSNH

In its motion to consolidate this proceeding with DR 96-150, PSNH argues that Hannaford has requested retail wheeling services, an issue the Commission addressed in Order No. 22,514 in DR 96-150. PSNH also notes that its "Verified Complaint for Preliminary and Injunctive Relief and For Declaratory Judgment," filed on March 3, 1997 in United States District Court, claimed the Commission was preempted from mandating retail wheeling and the Court issued an Amended Restraining Order March 21, 1997 preventing the Commissioners from implementing Order No. 22,514.

PSNH also contended that although the Court had allowed the Commission to hear motions for rehearing of Order No. 22,514, it cautioned that the Commission should not view this ruling as a "tactical opportunity" to issue orders concerning other matters addressed in the lawsuit.

B. Hannaford

Hannaford disagreed with PSNH's characterization of its petition as a request for "mandated retail wheeling." Rather, Hannaford asserted that it had requested an amendment to a service under an existing PSNH tariff. Hannaford further indicated that a stay of this proceeding would render the matter moot because it would be required to immediately purchase the necessary generating equipment to supply it

Page 471

with back-up, standby and supplemental services at all of its current retail locations in PSNH's service territory if the Commission were to delay addressing this issue. Hannaford argued that it would be imprudent on PSNH's part to delay this proceeding or fail to provide it with the amended tariff offering because PSNH would lose all of Hannaford's service requirements, thereby reducing Hannaford's contribution to PSNH's fixed costs.

III. COMMISSION ANALYSIS

[1-4] The first issue for consideration is whether Hannaford's petition to access the transmission and distribution services and charges contained within the bundled Backup Service should be stayed to accommodate the current efforts between the State and PSNH to mediate a resolution to the dispute that has arisen as a result of orders issued in DR 96-150, *Re Statewide*

Electric Utility Restructuring Plan (Final Plan), Orders Nos. 22,514 and 22,512 (February 28, 1997). The second issue is whether this docket should be consolidated with DR 96-150.

On May 22, 1997, we granted PSNH's motion to stay our proceedings in DR 96-150 based on representations by the State, PSNH and others that a stay of the proceedings would accommodate the attempt to mediate PSNH's dispute with the State. For the same reasons set forth in Order No. 22,599 (May 22, 1997), we will stay this proceeding.

In granting the request to stay this proceeding, however, we reiterate a concern that has plagued structured settlement discussions in past proceedings, i.e., continual delays. Given that Hannaford continues to install generation at its retail facilities located throughout PSNH's service territory, and given its representation that it will also generate backup, standby and supplemental generation if the Commission fails to promptly address its request, we will grant PSNH's request to stay this proceeding until the July 2, 1997 deadline already established in Order No. 22,599. We decline to act on the motion to consolidate at this time.

Based upon the foregoing, it is hereby

ORDERED, that this proceeding is STAYED until July 2, 1997; and it is

FURTHER ORDERED, that Concord Electric Company's and Exeter and Electric Company's motions to intervene are GRANTED.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[5-8] With regard to PSNH's motion to suspend or stay this proceeding, I would deny the request. In its motion to stay this and certain other proceedings, PSNH emphasizes the need to suspend all activity in this docket to "allow the mediation process to go forward in an orderly fashion and to allow parties to the mediation to devote the time, effort and resources necessary to make that process successful." Motion at ¶ 5. While I accepted this rationale and joined my colleagues in granting limited aspects of PSNH's motion to stay DR 96-150, I cannot concur in delaying this proceeding.

DR 96-150 involves the myriad of broad and comprehensive issues involved in deregulating the entire electric industry and arguably might constitute a draw on the resources of the Company while it attempted to reach a negotiated settlement with the State.[1(108)] To the contrary, this case involves one discrete issue, one discrete tariff and one discrete customer attempting to obtain a service PSNH itself has in essence already unbundled, at least with regard to the cost of the service. Thus, I cannot conclude that this proceeding would materially drain PSNH's or Northeast Utilities' resources thereby interfering with its attempts to mediate with the State. In fact, PSNH has stipulated that they believe there are limited factual considerations at issue in this proceeding and that a stipulation of facts among the parties and Staff is likely. Thus, the only issues remaining would be those of policy and legality, both of which could be addressed by brief.

Furthermore, because Hannaford has stated that it will provide its own source of backup, standby and supplemental power if this proceeding is not addressed promptly, delay

will in all likelihood assure the loss of numerous Hannaford accounts, their attendant loads and contributions to fixed costs without an opportunity for the Commission to consider the issues in contention.

Bruce B. Ellsworth
Commissioner

June 17, 1997

FOOTNOTES

[1]The parties should not infer from this statement that this argument will justify continuing delays to DR 96-150.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,512, 82 NH PUC 101, 175 PUR4th 331, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, 175 PUR4th 193, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,599, 82 NH PUC 420, May 22, 1997.

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NH.PUC*06/17/97*[97349]*82 NH PUC 473*Preferred Carrier Services, Inc.

[Go to End of 97349]

82 NH PUC 473

Re Preferred Carrier Services, Inc.

DE 96-139
Order No. 22,624

New Hampshire Public Utilities Commission

June 17, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 474.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 474.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 474.

BY THE COMMISSION:

ORDER

On April 26, 1996, Preferred Carrier Services, Inc. (Preferred) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to

enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an

applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Preferred's petition for compliance with these standards. Staff reports that Preferred has provided all the information required by Puc 1304.02. The information provided supports Preferred's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Preferred as a New Hampshire CLEC.

Preferred has provided an affidavit for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that Preferred has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Preferred in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Preferred has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Preferred agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Preferred seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Preferred's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc

1304.02(b) is granted; 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 June 24, 1997 and to be documented by affidavit filed with this office on or before July 1, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 8, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 15,1997 and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 17, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1997.

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NH.PUC*06/17/97*[97350]*82 NH PUC 475*Telco Holdings Inc. dba Dial and Save

[Go to End of 97350]

82 NH PUC 475

Re Telco Holdings Inc. dba Dial and Save

DE 96-185
Order No. 22,625

New Hampshire Public Utilities Commission

June 17, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 475.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 475.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 475.

BY THE COMMISSION:

ORDER

On June 7, 1996, Telco Holdings Inc. d/b/a Dial & Save (Dial & Save) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Dial & Save's petition for compliance with these standards. Staff reports that Dial & Save has provided all the information required by Puc 1304.02. The information provided supports Dial & Save's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Dial & Save as a New Hampshire CLEC.

Dial & Save has requested a waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends

granting the waiver.

[1-3] We find that Dial & Save has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Dial & Save in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic

efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Dial & Save has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Dial & Save agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Dial & Save seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Dial & Save's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 June 24, 1997 and to be documented by affidavit filed with this office on or before July 1, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 8, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 15, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 17, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the commission in

accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1997.

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NH.PUC*06/17/97*[97351]*82 NH PUC 476*Tel-Save Inc. dba The Phone Company of New Hope

[Go to End of 97351]

82 NH PUC 476

Re Tel-Save Inc. dba The Phone Company of New Hope

DE 97-086
Order No. 22,626

New Hampshire Public Utilities Commission

June 17, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 477.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 477.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access —

Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 477.

BY THE COMMISSION:

ORDER

On April 30, 1997, Tel-Save Inc. d/b/a The Phone Company of New Hope (PCNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed PCNH's petition for compliance with these standards. Staff reports that PCNH has provided all the information required by Puc 1304.02. The information provided supports PCNH's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of PCNH as a New Hampshire CLEC.

PCNH has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that PCNH has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of PCNH in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because PCNH has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, PCNH agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, PCNH seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor

access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PCNH's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 June 24, 1997 and to be documented by affidavit filed with this office on or before July 1, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 8, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 15, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 17, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1997.

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NH.PUC*06/17/97*[97352]*82 NH PUC 478*Business Long Distance Inc.

[Go to End of 97352]

82 NH PUC 478

Re Business Long Distance Inc.

DE 97-092
Order No. 22,627

New Hampshire Public Utilities Commission

June 17, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 479.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 479.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 479.

BY THE COMMISSION:

ORDER

On May 16, 1997, Business Long Distance Inc. (BLD) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant

meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed BLD's petition for compliance with these standards. Staff reports that BLD has provided all the information required by Puc 1304.02. The information provided supports BLD's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of BLD as a New Hampshire CLEC.

BLD has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that BLD has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of BLD in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because BLD has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, BLD agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, BLD seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that BLD's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 June 24 1997 and to be documented by affidavit

filed with this office on or before July 1, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 8, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 15, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 17, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this seventeenth day of June, 1997.

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NH.PUC*06/30/97*[97353]*82 NH PUC 480*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97353]

82 NH PUC 480

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-104
Order No. 22,628

New Hampshire Public Utilities Commission

June 30, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract for the provision of integrated services digital network (ISDN) primary service to MONADNET.

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1. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service

— As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special contract — Conditional approval — Local exchange carrier. p. 480.

2. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Conditional approval — Local exchange carrier. p. 480.

3. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 481.

4. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 481.

BY THE COMMISSION:

ORDER

[1, 2] On June 2, 1997, New England Telephone and Telegraph d/b/a NYNEX (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) a Special Contract (Contract) with MONADNET for ISDN Primary Service. In support of its petition, NYNEX filed a cost analysis of the proposal. The five year contract currently before the Commission proposes to utilize all rates and charges for ISDN Primary Service as per NHPUC-77 Part M, Section 3, with the exception of the monthly recurring rate for the port.

The port charges for all service provided under the Special Contract will be dependent on the number of months the port remains in service as follows:

0 to 35 months = Full Tariff Rate
36 to 59 months = 90% of Tariff Rate
60 months = 80% of Tariff Rate

Termination liability is simply reflected in the higher per month rate for less than 5 year service as shown above. The cost of providing the ISDN primary port is below the 80% of tariff level rate provided for by this Contract and is supported in the original tariff filing docket number DR 93-209.

The Cost Data demonstrates that the proposed rates for the ISDN service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on June 16, 1997. No

comments regarding this filing have been received by the Commission.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with MONADNET 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded MONADNET in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in

a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

June 30, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*06/30/97*[97354]*82 NH PUC 482*Granite State Long Distance, Inc.

[Go to End of 97354]

82 NH PUC 482

Re Granite State Long Distance, Inc.

DR 97-105
Order No. 22,629

New Hampshire Public Utilities Commission

June 30, 1997

ORDER denying New England Telephone and Telegraph Company dba NYNEX intervenor status in a proceeding considering an interexchange telephone carrier's tariff filing for message telecommunications service rates.

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1. PARTIES, § 18

[N.H.] Intervenors — Factors affecting grant or denial of intervenor status — Showing of vested interest — Showing of impact on rights or privileges — Noninterference with timely proceedings. p. 482.

2. PARTIES, § 18

[N.H.] Intervenors — Factors affecting denial of intervenor status — Failure to show vested interest — Local exchange telephone carrier — In tariff proceeding of interexchange carrier. p. 482.

BY THE COMMISSION:

ORDER

On May 5, 1997, Granite State Long Distance (GSLD) filed a tariff establishing rates for the provision of Message Telecommunications Services. New England Telephone and Telegraph (NYNEX) filed for intervention on May 30, 1997, claiming that it will be affected by the docket. NYNEX asserted that, as Designated Toll Carrier for the parent company of GSLD, NYNEX needs to insure that the parent company will neither market its toll customers on behalf of GSLD nor misuse customer-specific proprietary information.

On June 5, 1997, GSLD filed an Objection to NYNEX's intervention. GSLD objects for two reasons: (1) that NYNEX's filing was too late because the GSLD tariff was filed for effect on May 30, 1997, and (2) that NYNEX's interest is outside the scope of this docket.

Pursuant to N.H. Admin. Chapter Puc 1601.05(a), tariff changes become effective only after 30 days notice to the Commission or upon order of the Commission. Because 30 days had not

elapsed and no other order had issued, GSLD's tariff was not effective on May 30, 1997. Therefore, we disagree with GSLD's argument that NYNEX's motion was untimely.

[1] Pursuant to N.H. Admin. Chapter Puc 203.02, the Commission shall grant a motion to intervene if the party has stated facts demonstrating that its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding. The same rule requires that "the interests of justice and the orderly and prompt conduct of the proceedings (will) not be impaired by allowing the intervention."

[2] We find that NYNEX has not demonstrated that its substantial interests may be affected by the proceeding. While GSLD's parent company may, in the future, misuse proprietary information or market unfairly, this proceeding concerns GSLD's tariff, not the future behavior of GSLD's parent company. We will therefore deny the motion to intervene. We caution all telecommunications competitors in New Hampshire that fair marketing practices are expected and will be enforced appropriately. While NYNEX may have an action in the future against GSLD's parent company based on actions by the parent, NYNEX has no interest at stake here.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion to Intervene is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

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NH.PUC*06/30/97*[97355]*82 NH PUC 483*Pennichuck Water Works, Inc.

[Go to End of 97355]

82 NH PUC 483

Re Pennichuck Water Works, Inc.

DR 97-058
Order No. 22,630

New Hampshire Public Utilities Commission

June 30, 1997

ORDER suspending and scheduling prehearing conferences relative to a water utility's petition for a $1.856 million (26.98%) 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. 483.

2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 25% — Necessity of suspension — To allow for adequate investigatory period — Issues to be addressed — Efficacy of consolidating core system rates and community system rates — Timing of plant additions and rate basing thereof — Reasonableness of status quo for fire protection rates — Earnings versus expenses. p. 483.

BY THE COMMISSION:

ORDER

Pennichuck Water Works, Inc. (Pennichuck) filed with the New Hampshire Public Utilities Commission (Commission), on March 31, 1997, a notice of intent to file rate schedules and on May 28, 1997, filed a petition for permanent rates, to be effective July 1, 1997 (Petition). The Petition was accompanied by testimony from Maurice L. Arel, Stephen J. Densberger, Charles J. Staab, Bonalyn J. Hartley and Donald L. Ware. Also filed that date was a Petition for Temporary Rates in the amount of $680,220 or 6.55% over current rates. Anheuser-Busch, Inc., Pennichuck's largest customer, has sought intervention.

Pennichuck serves the southern New Hampshire area, operating a core system that serves Nashua, Amherst, Merrimack, and portions of Milford, Hollis and Bedford as well as 10 independent community systems serving portions of Epping, Derry, Bedford, Milford and Plaistow. Pennichuck seeks to consolidate its various system rates into one blended rate though the operational systems themselves would not be interconnected. The proposed rate increase would result in an increase of $1,856,305 in annual revenues and would represent an average 26.98% increase in monthly bills if, as proposed by Pennichuck, no increase is assigned to fire protection. Individual customers, however, would see varying increases according to whether they are now served by the core system or particular community systems.

Pennichuck asserts that the increase in revenues is required because it is not earning a return adequate to cover its cost of capital or a reasonable return on the actual cost of its property used and useful in the public service.

[1, 2] A major issue raised by the filing is whether consolidation of the core system and the community systems' rates is appropriate, or whether individual systems' rates should reflect their actual cost to serve. Among the issues raised by such consolidation are whether cross-subsidy of one group of customers by any other group is appropriate, and the extent of such subsidy now and in the future.

Other issues raised include, *inter alia*, the degree to which Pennichuck's core system is underearning or overearning; whether the methodology used in Pennichuck's depreciation study

is appropriate and, more particularly, if the records supplied by Pennichuck are sufficient to support the proposed depreciation schedules; whether plant additions reflected in the 1996 test year rate base are prudent, and used and useful; whether plant additions in 1997 are to be considered if they were installed

after the test year; whether these 1997 plant additions are used and useful and not a violation of the "anti-CWIP" provisions of RSA 378:30-a; whether Pennichuck's proposed cost of capital is appropriate; whether sales figures used in the test year are appropriate in light of weather conditions in 1996; whether it is appropriate for Pennichuck's parent company to leverage equity infusions to Pennichuck by debt borrowings; and whether the 1993 cost of service study data used to determine that fire protection charges need not be increased is reflective of 1997 conditions. In addition to these areas, income, expenditures and pro forma adjustments will be explored as in any rate case filing.

Pennichuck requested an expedited schedule for the Petition and that the temporary rate request be heard at the time of the prehearing conference. Recent Commission practice has been to schedule temporary hearings separate from the prehearing conference so that intervenors have an opportunity to become acquainted with the filing and prepare for the hearing. A prehearing conference, therefore, will be held on July 15, 1997 at 10 a.m. followed by a technical session. A temporary rate hearing will be held on July 30, 1997 at 10 a.m. The full schedule for the permanent rate Petition will be developed jointly between the parties and Staff at the prehearing conference. Anheuser-Busch's intervention request will be addressed at that time as well.

Because the Staff and other interested parties need time to evaluate the Petition and temporary rate request, the proposed rate schedules filed by Pennichuck are hereby suspended.

Based on the foregoing, it is hereby

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 July 15, 1997 at 10:00 at which each party and Commission Staff will provide a preliminary summary of its positions with regard to the Petition; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, Pennichuck, Commission Staff and Intervenors hold a First Technical Session to review the noticed issues; 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 a copy of this Order of Notice no later than July 3, 1997, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before July 15, 1997; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rules Puc 201.05, the Commission hereby waives, in part, the fourteen day notification requirement of N.H. Admin. Rules Puc 203.01(a); 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 July 10, 1997, 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 make said Objection on or before July 15, 1997 and it is

FURTHER ORDERED, that Pennichuck shall file testimony on its temporary rate request no later than July 11, 1997, that Staff and Intervenors shall file testimony on Pennichuck's temporary rate request no later than July 23, 1997, and that a hearing on the request for temporary rates will be held July 30, 1997 at 10:00 a.m.; and it is

FURTHER ORDERED, that in addition to the legal notice required above for the Prehearing Conference, Pennichuck shall publish by July 20, 1997 a display advertisement pertaining to the Temporary Rate Hearing, details of which shall be determined in consultation between Pennichuck and the Executive Director and Secretary; and it is

FURTHER ORDERED, that Pennichuck's proposed rate schedules filed May 28, 1997 are hereby suspended.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of

June, 1997.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made one week before the scheduled event.

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NH.PUC*06/30/97*[97356]*82 NH PUC 485*Granite State Telephone, Inc.

[Go to End of 97356]

82 NH PUC 485

Re Granite State Telephone, Inc.

DF 96-387

Order No. 22,631

New Hampshire Public Utilities Commission

June 30, 1997

ORDER authorizing a local exchange telephone carrier to issue two mortgage notes of up to $1.768 million and $1.03 million to the Rural Telephone Service and the Rural Telephone Bank, respectively, so as to finance a five-year construction program.

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1. SECURITY ISSUES, § 58

[N.H.] Purposes of financing — Additions and betterments — Long-term construction program — Acquisition of facilities — Upgrading of technology — Expansion of service offerings — Local exchange telephone carrier. p. 486.

2. SECURITY ISSUES, § 94

[N.H.] Issuance of mortgage notes — To the Rural Telephone Service and the Rural Telephone Bank — For financing of long-term construction program — Local exchange telephone carrier. p. 486.

APPEARANCES: Devine, Millimet & Branch by Frederick J. Coolbroth, Esq. for Granite State Telephone, Inc.; Eugene F. Sullivan, Finance Director for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 26, 1996, Granite State Telephone, Inc. (GST), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval and authority under RSA 369:1-4 to issue promissory notes in the amount of $1,768,000 and $1,031,100 (Notes) and to mortgage its properties as security for the Notes and to confirm the mortgaging of its property as security for all outstanding notes to the Rural Telephone Service (RUS) and Rural Telephone Bank (RTB). Subsequently, on December 18, 1996, Staff made written data requests on the filing, which were answered by GST at a Technical Session with Staff on December 19, 1996. On February 11, 1997, GST filed written testimony in support of its petition, and on March 13,

1997, Staff made additional written data requests on the filing which were answered by GST on March 17, 1997. Pursuant to an order of notice issued April 10, 1997, Staff prefiled the testimony of Eugene F. Sullivan, Finance Director, on April 29, 1997. On May 1, 1997, GST filed a Motion for a continuance of the Hearing scheduled for May 1, 1997, which the Commission granted. A hearing was held on June 17, 1997.

II. POSITIONS OF GST AND STAFF

GST describes the financing as an amendment to its telephone loan contract with the United States of America, acting by and through the RUS and with the RTB, providing for the issuance of the following Notes: (i) a 16-year mortgage note to the RUS in the principal amount of $1,768,000 and (ii) a mortgage note to the RTB in the principal amount of $1,031,100 of which $49,100 is for investment

in RTB Class B Stock.

The notes will bear interest at the "cost of money" interest rate as established pursuant to applicable federal regulations, 7 CFR §1735.31 (c) and 7 CFR § 1610.10. The interest rates applicable to each loan advance will be based on an average yield of outstanding marketable obligations of the United States with comparable maturity dates. The loans' interest rates are comprised of a fixed RUS rate set with each advance and a variable RTB rate with a permanent rate assigned to the advance at the end of the fiscal year.

GST's witnesses testified that the proceeds from the proposed Notes will be used, together with internally generated funds, to finance a five-year $8,059,298 construction program for acquisition of facilities to keep pace with new technology, to meet existing and future customer demand, to expand service offerings and to provide quality service through a reliable and efficient network. GST's construction program includes a host/remote digital switch investment for the Weare and Chester exchanges and fiber optic upgrades in its exchanges, to ensure customer service without interruption in the event of a failure within the network.

Copies of the proposed mortgage notes to the RUS and RTB, coupled with the proposed Telephone Loan Contract Amendment and proposed Supplement to Restated Mortgage and Security Agreement and Financing Statements, were introduced into evidence as part of the testimony of Otto M. Nielsen, Controller and Assistant Treasurer for GST. Also entered into evidence as Exhibit 1A was an updated Construction Program & Source of Funds Statement for Years 1996-2000.

In the prefiled testimony of Eugene F. Sullivan, Commission Finance Director, Staff addressed concern that GST's financing was in excess of its capital needs. It is Staff's position that GST should not maintain an excess cash balance while incurring a higher debt level to fund its construction plan.

Staff and GST have agreed that the full amount of the financing should be approved; however, the loan should be drawn down only as needed. Staff and GST have agreed that on July 1st and January 1st in each year GST will file with the Commission a detailed statement, duly sworn to by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of the authorized financing until the expenditure of the proceeds are fully accounted for. Staff will review the statements in conjunction with GST cash balances as reported on its most recent balance sheet to ensure GST has been prudent in the drawdown of the loan advances.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed GST's petition and exhibits submitted therewith and Staff's recommendation. We find that the issuance of a mortgage note in the principal amount of $1,768,000 to the RUS and a mortgage note in the principal amount of $1,031,100 to the RTB upon the terms represented in the proposed loan documents consistent with the public good. Further, we find the proposed use of those funds to finance the Company's construction program to be consistent with the public good.

We concur with Staff that the loan should only be drawn down as necessary and that GST should use internally generated funds to some degree in its construction efforts.

Based upon the foregoing, it is hereby

ORDERED, that GST is authorized to issue a 16 year mortgage note to the RUS in the principal amount of $1,768,000 and a mortgage note to the RTB in the principal amount of $1,031,100; and it is

FURTHER ORDERED, that GST is authorized to enter into the Telephone Loan Contract Amendment; and it is

FURTHER ORDERED, that the proceeds of the issuance of the said notes shall be used, together with internally generated funds, to fund the company's construction program, and it is

FURTHER ORDERED, that Granite State Telephone, Inc. is authorized to entered into a supplement to its Restated Mortgage and Security Agreement under which substantially all of its property is mortgaged as security for all outstanding notes to the RUS and the RTB; and it is

FURTHER ORDERED, that the finalized copies of the mortgage notes with the RUS and

RTB; Telephone Loan Contract Amendment; and the Supplement to Restated Mortgage and Security Agreement and Financing Statement be filed with the commission; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Granite State Telephone, Inc. shall file with this Commission, a detailed statement, duly sworn to by its Treasurer or Assistant Treasurer showing the disposition of proceeds of said notes until the expenditures of the proceeds shall be fully accounted for.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

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[Go to End of 97357]

82 NH PUC 487

Re New Hampshire Electric Cooperative, Inc.

DR 97-061
Order No. 22,632

New Hampshire Public Utilities Commission

June 30, 1997

ORDER approving an electric cooperative's proposed 1997/98 demand-side management (DSM) programs. Commission commends the cooperative for continuing 10 programs from the prior year while at the same time reducing energy rebates by 30% and also reducing that part of the DSM budget funded by DSM surcharges by 10%.

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1. CONSERVATION, § 1

[N.H.] Demand-side management (DSM) — New program year — Electric cooperative — Continuation of prior-approved projects — Reduction in energy rebate levels — Reduction in budget items funded by DSM surcharges. p. 489.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Demand-side management (DSM) — New program year — Continuation of prior-approved projects — Reduction in energy rebate levels — Reduction in budget items funded by DSM surcharges — Electric cooperative. p. 489.

APPEARANCES: Dean, Rice & Howard by Anne Davidson, Esq. and Mark W. Dean, Esq. for the New Hampshire Electric Cooperative, Inc. and Michelle A. Caraway and James J.

Cunningham, Jr. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 1, 1997, the New Hampshire Electric Cooperative, Inc. (NHEC) filed with the New Hampshire Public Utilities Commission (Commission) its Demand-Side Management (DSM) proposal for the program year July 1, 1997 through June 30, 1998. NHEC's filing included the prefiled joint testimony of NHEC's Robert L. Reals, Jr., Manager of Demand-Side Services, and Teresa L. Muzzey, Manager of Rates & Financial Analysis.

By an Order of Notice issued April 9, 1997, the Commission scheduled a prehearing conference and a first technical session for April 29, 1997, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. On April 24, 1997, both the Conservation Law Foundation (CLF) and the Northeast Energy Efficiency Council (NEEC) filed timely Petitions to Intervene. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor. On May 12, 1997, the Commission

issued Order No. 22,592 which approved the procedural schedule and CLF's and NEEC's Petitions to Intervene.

By letter dated June 6, 1997, NHEC requested, with the concurrence of all parties actively involved in the docket, that the settlement conference scheduled for June 11, 1997 be canceled. Because Staff's prefiled testimony in this docket recommended that the Commission approve NHEC's DSM Program as filed and because neither of the other intervening parties filed testimony nor expressed objections to NHEC's DSM Program as filed, NHEC stated its belief that the docket could be most expeditiously concluded by canceling the settlement conference and conducting the hearing on the merits. The hearing on the merits was held on June 17, 1997 before the Commission at which time testimony was offered by Robert Reals and Teresa Muzzey on behalf of NHEC.

II. POSITIONS OF THE PARTIES AND STAFF

A. NHEC

NHEC proposes to continue the same ten DSM programs that were approved by Order No. 22,221 (July 2, 1996). The proposed budget for the 1997/1998 program year is $1,421,159, of which $1,206,919 is to be recovered through the DSM Surcharges. The $1,206,919 represents a ten percent (10%) reduction in the amount to be collected through the DSM Surcharges as compared to the 1996/1997 program year. The DSM revenue requirement is to be recovered over three customer classes in the following manner: Residential Rate class, $770,052; General Rate class, $387,474; and Primary General Rate class, $49,393.

The recovery of the DSM expenses is collected through a monthly DSM surcharge on a per kilowatt-hour (kWh) basis. The current and proposed surcharges are as follows:

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

New Hampshire Electric Cooperative

Customer Class	*Current Rate/kWh*	*Proposed Rate/kWh*
Residential	$0.00039	$0.00174
General	$0.00108	$0.00231
Primary General	$0.00225	$0.00270

NHEC projects an overrecovery of $130,000 for the Residential Rate class and $0 for both the General and Primary General Rate classes from the 1996/1997 program year. The proposed changes from the current DSM Surcharges result in increases in average revenue per kWh of approximately one percent (1%) for both the Residential and General Rate classes and an increase in average revenue per kWh of approximately 0.4% for the Primary General Rate class.

The only substantive modification made to the DSM Program as approved by Order No. 22,221 is a reduction in rebates of thirty percent (30%) from 1996/1997 levels. NHEC proposes the reduction in rebates per ratepayer to allow the incentive dollars to be allocated across more participants.

B. CLF

CLF did not file testimony in this proceeding though it appeared for the hearing on the merits and cross-examined NHEC's witnesses.

C. NEEC and OCA

The NEEC and the OCA did not file testimony in this proceeding nor did they appear for the hearing on the merits.

D. Staff

Staff filed the testimony of Michelle A. Caraway, Utility Analyst III on May 29, 1997. Staff recommended that the Commission approve NHEC's DSM Program as filed on April 1, 1997. Staff stated its belief that the DSM Program conformed to the Commission's February 28, 1997 *Restructuring New Hampshire's Electric Utility Industry: Final*

Plan (Final Plan) in two respects. First, the proposed 1997/1998 budget reflects a ten percent (10%) decrease in the amount of dollars to be recovered through the DSM Surcharges. This adheres with that portion of the Final Plan on Energy Efficiency which sets a cap on DSM spending at each utility's latest approved levels and require a phasing out of DSM spending over the next two years. Second, NHEC proposed rebate levels thirty percent (30%) lower than those currently in effect. This modification shifts more of the program costs from NHEC's other customers to the actual program participants.

The remainder of Staff's testimony dealt specifically with NHEC's Low Income Weatherization Program which Staff recommends be phased out as soon as the Commission's Final Plan regarding Low Income Assistance is implemented. Staff based this recommendation on that section of the Final Plan which states: "A low income assistance program to be funded through a systems benefit charge ... should ... encourage conservation and the use of energy efficiency mechanisms to make electric bills manageable." Final Plan at 95. Staff believes that it is unfair to surcharge NHEC's residential customers twice for assisting low income customers: once through the systems benefit charge and again through NHEC's DSM Surcharge.

III. COMMISSION ANALYSIS

[1, 2] After careful review of NHEC's April 1, 1997 DSM Program filing, and supporting testimony and exhibits presented at the June 17, 1997 hearing, we find that NHEC's proposed DSM Program is reasonable and is in the public good.

At this time, we believe that it is appropriate to evaluate NHEC's DSM Program in accordance with the Commission's February 28, 1997 Final Plan. Although the Commission had scheduled a hearing for May 22, 1997 at which time it would receive evidence on Motions for Rehearing regarding the Final Plan's treatment of Energy Efficiency, that hearing has been postponed to accommodate mediation efforts. Thus, without any further order modifying the Commission's intent regarding Energy Efficiency in the Final Plan, we believe that the Final Plan is the appropriate criterion upon which to base our decision regarding NHEC's 1997/1998 DSM Program.

We will approve NHEC's April 1, 1997 DSM Program. As filed, the proposed budget reflects a ten percent (10%) reduction in the revenues to be collected through the DSM Surcharges, a revision consistent with the section of the Final Plan that states that DSM budgets are capped at their latest approved levels. NHEC proposes to continue the same ten programs that were

approved last year and has not proposed any new programs which would be phased out before they could be established. Each of the ten programs proposed for the 1997/1998 program year have been screened using the Total Resource Cost test analysis, the method approved to evaluate the cost-effectiveness of energy efficiency programs in New Hampshire.

Although the proposed DSM Surcharges result in rate increases for all three rate classes, the Commission recognizes that the surcharges currently in effect for the 1996/1997 program year are artificially low due to substantial overrecoveries from the previous program year.

Finally, consistent with treatment we have recently allowed for Granite State Electric Company in Docket DR 96-322 in Order No. 22,518 (March 17, 1997), we waive the application of N.H. Admin. Rules, Puc 1203.05(a), which requires generally that rate changes be implemented on a service-rendered basis, and will allow NHEC to implement its DSM Surcharges on a bills-rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills-rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's DSM Program as filed on April 1, 1997 is APPROVED; and it is

FURTHER ORDERED, that effective July 1, 1997 on a bills-rendered basis, the Residential Class DSM Surcharge shall be

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$0.00174/kWh, the General Class DSM Surcharge shall be $0.00231/kWh and the Primary General Class DSM Surcharge shall be $0.00270/kWh; and it is

FURTHER ORDERED, that NHEC file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 96-322, Order No. 22,518, 82 NH PUC 266, Mar. 17, 1997. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 96-107, Order No. 22,221, 81 NH PUC 509, July 2, 1996. [N.H.] Re New Hampshire Electric Co-op., Inc., DR 97-061, Order No. 22,592, 82 NH PUC 406, May 12, 1997.

82 NH PUC 490

Re New Hampshire Electric Cooperative, Inc.

DR 97-096
Order No. 22,633

New Hampshire Public Utilities Commission

June 30, 1997

ORDER approving an electric cooperative's proposal to continue in effect its existing power cost adjustment clause factor of 0.612 cents per kilowatt-hour, the potential for overrecoveries notwithstanding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Power cost adjustment (PCA) clause factor — Continuation of existing PCA factor — Considerations — Rate stability — Mitigation of increasing wholesale power costs — Accelerated recovery of replacement power costs associated with the Seabrook nuclear plant outage — Other outages associated with the Millstone and Maine Yankee nuclear power plants — Possibility of overrecoveries notwithstanding — Electric cooperative. p. 491.

APPEARANCES: Dean, Rice and Howard by Mark W. Dean, Esq., for the New Hampshire Electric Cooperative, Inc. and James Cunningham and Todd Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 20, 1997, the New Hampshire Electric Cooperative, Inc. (NHEC) filed a petition with the New Hampshire Public Utilities Commission (Commission) to continue the existing Power Cost Adjustment credit of $0.00612 per kWh for the period July through December 1997. NHEC's filing included the pre-filed testimony of Heather K. Lucas, Rate Analyst. On May 22, 1997, NHEC filed rates paid to Qualifying Facilities (QFs).

By an Order of Notice issued May 29, 1997, the Commission scheduled a hearing on the merits for June 18, 1997. There were no petitions for intervention. The Office of Consumer Advocate (OCA) is a statutorily recognized party, but did not participate in the proceeding. Ms. Lucas presented testimony at the hearing.

II. POSITIONS OF THE PARTIES AND STAFF

A. *NHEC*

Ms. Lucas testified that NHEC is proposing to maintain the currently effective PCA credit of $0.00612 per kWh for the second half

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of 1997 commencing with all bills rendered on and after July 1, 1997. NHEC admits that keeping the existing credit will contribute to a substantial over-recovery by the end of the PCA period, but NHEC's primary objective in the PCA filing is to mitigate, to the extent it can, the expected increase in wholesale power costs from Public Service Company of New Hampshire (PSNH), its principal power supplier, under the Amended Partial Requirements Agreement (APRA). NHEC believes the change in the APRA will result in a rate increase of 7 percent on January 1, 1998.

Ms. Lucas explained that NHEC expects to start the upcoming PCA period with an over-collection of $1,984,355 which is $1,563,762 less than NHEC had forecasted due primarily to replacement power costs associated with the Maine Yankee nuclear outage. Power costs for the second half of 1997 are expected to be $23,923,633; therefore, NHEC's total power costs for the last six months of 1997 equal $21,939,307. NHEC projects that it will collect through base rates power costs of $23,989,550 over the second half of 1997 causing NHEC to end 1997 over-collected by $2,050,243. The $2,050,243 credit, divided by forecasted July through December 1997 sales of 261,825,120 kilowatt-hours (kWh), results in a PCA credit of $0.00783 (7.83 mills) per kWh. Interest on the over-recovery increases the credit to $0.00795 per kWh, the PCA credit level NHEC would flow to customers absent its rate stability proposal. Ms. Lucas estimates this credit level would result in a 2.2 percent decrease in average revenue per kWh.

NHEC also is proposing to accelerate recovery of replacement power costs associated with the current Seabrook refueling outage over the last six months of 1997. In DR 96-382, NHEC had proposed, and received Commission approval, to defer until 1998 one-half of those

replacement power costs, approximately $292,000. The acceleration of the replacement power costs adds $0.00112 per kWh to this period's PCA factor.

NHEC proposes the following short-term QF rates for the period July through December 1997:

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

PSNH	Base Energy Rate	7.995 cents
	Fuel & Purchased Power	(.947) cents
CVPS	Base Energy Rate	2.512 cents
NEP	Base Energy Rate	
	On-Peak Hours	2.782 cents
	Off-Peak Hours	1.766 cents
	All Hours	2.140 cents
GMP	Base Energy Rate	3.960 cents
	Fuel Charge	varies monthly

B. *Staff*

Staff's concerns focused on NHEC's rate stability adjustment which it opposes. Staff also questioned NHEC about the costs NHEC is incurring from Maine Yankee while Maine Yankee is shut down. NHEC is paying replacement power costs for the loss of Maine Yankee as the plant reduces its costs under a preserve and protect mode while it looks for a buyer of the plant. Staff believes NHEC's filing did not adequately address the cost savings associated with Maine Yankee or the potential increased savings through joint dispatch due to the delayed return date of the Millstone nuclear plants. Staff also believes the accelerated amortization of Seabrook refueling costs should not be approved.

III. COMMISSION ANALYSIS

[1] The Commission has reviewed the testimony, exhibits and transcripts in this proceeding, including the recommendation of the hearings examiner. Clearly, numerous factors could affect the overall change in power costs on January 1, 1998, such as the return to service date of the Millstone Unit nuclear plants or the Maine Yankee nuclear facility, for which NHEC has an ownership share of 0.7356 percent. Despite these uncertainties and the concerns about potential cost savings associated with the preserve and protect level of operation at Maine Yankee, we believe it is in the best interests of NHEC's customers to allow NHEC to moderate the substantial increase in power costs associated with the APRA which become effective January 1, 1998. We agree with Staff that there

are potential cost savings associated with the preserve and protect mode at Maine Yankee, but it is clear that NHEC will incur higher power charges, in the order of $600,000, due to the Maine Yankee outage if the plant remains out for the remainder of 1997 as now appears likely.

We are concerned about the increase in replacement power costs associated with the Maine Yankee outage and will, therefore, notify NHEC that we expect NHEC in its next PCA filing to be prepared to address what measures it is taking to mitigate those costs.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's proposal for a Power Cost Adjustment credit of $0.00612 per kWh is APPROVED effective for the period July 1, 1997 through December 31, 1997; and it is

FURTHER ORDERED, that the Qualifying Facility rates are APPROVED as filed; and it is

FURTHER ORDERED, that NHEC file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

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NH.PUC*06/30/97*[97359]*82 NH PUC 492*Concord Electric Company

[Go to End of 97359]

82 NH PUC 492

Re Concord Electric Company

Additional applicant: Exeter and
Hampton Electric Company

DR 97-103
Order No. 22,634

New Hampshire Public Utilities Commission

June 30, 1997

ORDER approving proposed fuel adjustment clause (FAC) and purchased power adjustment clause (PPAC) rates of two affiliated electric utilities, with FAC credits of 0.643 cents per kilowatt-hour (kWh) and 0.648 cents per kWh for Concord and Exeter, respectively, and PPAC charges of 1.091 cents per kWh and 1.158 cents per kWh for Concord and Exeter, respectively. The adjustments represent decreases overall, partly due to an increase in projected sales and reduced levels of undercollections.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Charges versus credits — Continuation of charge — But at reduced rate — Factors — Increase in projected sales — Reductions in undercollections — Decreases in wholesale rates — Affiliated electric utilities. p. 494.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Credits — Continuation of — At higher levels — Factors — Cost updates — Decreases in demand charges — Affiliated electric utilities. p. 494.

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 — Compliance with accepted pricing standards. p. 494.

APPEARANCES: Leboeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; and Henry J. Bergeron and Todd M. Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

Page 492

I. PROCEDURAL HISTORY

On May 30, 1997, 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 (PPAC) and short-term purchased power rates for qualifying facilities (QFs) for the period of July 1 through December 31, 1997. On June 20, 1997, the Commission held a duly noticed consolidated hearing to review

the Companies' FAC and PPAC rate filings.

II. POSITIONS OF THE PARTIES AND STAFF

A. *The Companies*

UNITIL presented calculations supporting CEC's request for a FAC credit of ($0.00643) per kWh and a PPAC rate of $0.01091 per kWh. The combined effect of the two rates is to decrease a typical 500 kWh residential customer's bill by $1.38 per month. UNITIL also presented calculations in support of E&H's request for a FAC credit of ($0.00648) per kWh and a PPAC rate of $0.01158 per kWh. The combined effect of the two rates is to decrease a typical 500 kWh residential customer's bill by $0.66 per month.

UNITIL also provided detail supporting the calculation of its Non-Participant Protection Adjustment (NPA) for the Retail Competition Pilot Program and explained how the NPA protects non-participating customers from unrecovered power supply costs due to customer participation in CEC's and E&H's retail competition Pilot Program. UNITIL witness Linda S. Hafey also provided an explanation of the Companies' Mitigation Proceeds Credit (MPC), the Sales Margin Retention Credit (SMRC), and the Participation Incentive Credit (PIC).

UNITIL witness Sheryl L. Wookey presented the July 1997 through December 1997 UNITIL Power Corporation (UPC) production plan, associated costs, and estimated short term avoided cost rate in her direct testimony. The UPC production plan is the basis for UPC's fuel, purchased power, and transmission service costs, and is used in developing UPC's wholesale rates which it charges CEC and E&H under the UNITIL System Agreement for Firm Service.

UPC's filed, wholesale billing rates for firm service from July through December 1997 are as follows:

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

7/1/97-12/31/97
  Demand Charge      $26.68 per kW/Month
  Base Energy Charge 0.579 cents per kWh
  Fuel Charge Rates  1.889 cents per kWh
```

UPC's wholesale rates represent an overall decrease in comparison to the last six month period and reflect a 4.63 percent decrease in UPC's Demand Charge, a 4.73 percent decrease in its Fuel Charge and a partially offsetting 19.28 percent increase in the non-fuel related UPC Base Energy Charge.

In this proceeding, CEC and E&H propose Demand Charge decreases which are due primarily to 1) the increase in projected sales for July - December over which to spread the fixed demand costs and 2) a reduction in the under recovery anticipated on June 30, 1997 compared to the previous period. The Fuel Charge is expected to decrease due to a reduction in the amount of under recovery expected June 30, 1997. The Base Energy Charge is expected to increase due to

increased use of the Great Bay contract during the period.

The Companies also filed revised tariffs for short-term power purchase rates for Qualifying Facilities as follows:

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

Energy Rates On Peak 3.27 cents per kWh
             Off Peak 2.23 cents per kWh
            All Hours 2.59 cents per kWh
       Capacity Rate $6.34 per kW-year
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B. *Commission Staff*

Staff did not oppose the Companies' filings but conducted cross examination on 1) the status of the Companies' efforts to renegotiate contracts with suppliers as a way of offsetting losses associated with the Pilot Program's Participation Incentive Credit, 2) sales to other suppliers in the Pilot Program as a means of offsetting losses associated with the difference between the market price as established by the Commission (MP) and the incremental energy cost (IEC), 3) the change in projected sales growth for Exeter, and 4) the costs which are currently being accrued in anticipation of the planned outage for Vermont Yankee.

III. COMMISSION ANALYSIS

[1-3] Having reviewed all the testimony and exhibits in this case, including the responses provided by the Companies, we accept the May 30, 1997 filings of the Companies. We find that the FAC for the July 1 through December 31, 1997 period will be a credit of ($0.00643) per kWh for CEC and a credit of ($0.00648) per kWh for E&H. For the same period, the PPAC for CEC will be $0.01091 per kWh and $0.01158 per kWh for E&H. For a typical CEC residential customer using 500 kWh per month, the net result of the PPAC and FAC changes is a $1.38 decrease to the monthly bill. For a typical E&H residential customer using 500 kWh per month, the net result of the PPAC and FAC changes is a $0.66 decrease 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, 1997 through December 31, 1997, shall be a credit of ($0.00643) per kWh while its PPAC rate shall be $ 0.01091 per kWh; and it is

FURTHER ORDERED that E&H's FAC rate for the period July 1 through December 31, 1997, shall be a credit of ($0.00648) per kWh while its PPAC rate shall be $ 0.01158 per kWh;

and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised tariff pages in compliance with this order on or before July 10, 1997.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 1997.

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NH.PUC*07/01/97*[97360]*82 NH PUC 494*EnergyNorth Natural Gas, Inc.

[Go to End of 97360]

82 NH PUC 494

Re EnergyNorth Natural Gas, Inc.

DR 97-072
Order No. 22,635

New Hampshire Public Utilities Commission

July 1, 1997

ORDER adopting settlement as to a natural gas local distribution company's 1997-98 demand-side management programs for large scale commercial and industrial customers. In taking advantage of energy audits, customers are now required to make a copayment for such rather than have the company shoulder all associated costs.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — 1997-98 program year — As to large scale commercial and industrial customers — Energy audits and thermostat rebates as primary components — Necessity of customer copayments for audit services — Necessity of all program components passing cost/benefit tests — Local gas distribution company — Settlement. p. 496.

2. GAS, § 7

[N.H.] Operation — Demand-side management — 1997-98 program year — As to large scale commercial and industrial customers — Energy audits and thermostat rebates as

primary components — Necessity of customer copayments for audit services — Necessity of all program components passing cost/benefit analyses — Local distribution company — Settlement. p. 496.

3. CONSERVATION, § 1

[N.H.] Demand-side management plans — Local gas distribution company — Monthly financial reports — Consolidation of residential and large scale commercial and industrial annual program filings — But maintenance of separate program budgets. p. 496.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Richard A. Samuels, Esq. for EnergyNorth Natural Gas, Inc. and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 15, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its Large Scale Commercial and Industrial (C&I) Demand-Side Management (DSM) Program effective for the period July 1, 1997 through June 30, 1998. ENGI's filing included the prefiled testimony of Donald E. Carroll, Vice President of Gas Supply.

By an Order of Notice issued April 24, 1997, the Commission scheduled a prehearing conference for May 15, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. There were no Motions to Intervene filed. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor. On May 27, 1997, the Commission issued Order No. 22,602 approving the procedural schedule.

ENGI proposes a total budget of $157,000 for its Large Scale C&I DSM Program which consists of energy audits, technical reports and rebates on setback thermostats. The total resource cost (TRC) test, the method approved by the Commission to evaluate the cost-effectiveness of energy efficiency programs in New Hampshire, performed for the setback thermostats produced a benefit-cost ratio of 1.31. No TRC test was performed for the audit portion of the DSM Program. ENGI does not propose to recover lost revenues during the 1997/1998 program year associated with installations of conservation measures or a performance incentive during the 1998/1999 program year. ENGI projects an overrecovery for June 30, 1997 of approximately

$154,240 and proposes a Conservation Charge of $0.000 per therm, a decrease from the current effective Conservation Charge of $0.002 per therm.

Pursuant to the approved procedural schedule, ENGI and Staff engaged in formal discovery and technical sessions. On June 4, 1997, Staff filed the direct testimony of Michelle A. Caraway, Utility Analyst III. On June 9, 1997, ENGI filed the rebuttal testimony of Donald E. Carroll. On June 11, 1997, ENGI and Staff participated in a settlement conference.

Subsequent to the settlement conference, ENGI and Staff entered into a Settlement Agreement (Settlement). The Settlement resolves all of the issues in this proceeding and an unsigned copy was submitted to the Commission on June 16, 1997. A hearing was held on June 19, 1997 before a Hearings Examiner at which time a signed, original Settlement and testimony supporting the Settlement were presented to the Commission.

II. SETTLEMENT AGREEMENT

ENGI and Staff agreed that the Large Scale C&I DSM Program, as set forth in ENGI's April 15, 1997 filing, should be approved subject to the following modifications:

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1. Participants in the energy audit portion of the DSM Program shall be required to contribute ten percent (10%) of the cost of such audits. Revenues from such customer contributions may be used to perform additional audits, supplement ENGI's marketing efforts for the DSM Program, or for additional monitoring and evaluation (M&E) expenses.

2. The DSM Program shall not be offered to new C&I customers on the distribution system expansion that ENGI is currently undertaking in Milford.

3. ENGI shall evaluate each portion of its 1998/1999 DSM Program by applying a Total Resource Cost (TRC) test or other benefit-cost analysis methodology approved by the Commission. ENGI's 1997/1998 DSM Program shall be revised so that the plan for M&E can be used to validate future benefit-cost analyses and recovery of net lost revenues.

4. The spending levels set forth in the budget for ENGI's DSM Program may be adjusted as ENGI deems appropriate by shifting dollars between the different types of audits being offered. In addition, if the final amount of the over-collection from ENGI's current DSM Program (which is being used to fund the DSM Program in this docket) plus any interest thereon exceeds the total proposed budget for the Large Scale C&I DSM Program, then ENGI may increase its budget by such additional amounts.

5. If participation levels in the DSM Program are substantially lower than anticipated in the DSM proposal, ENGI may seek Commission approval for changes in the approved program. In the event that ENGI seeks such changes, Staff shall submit to the

Commission any comments it may have regarding such filing within fourteen (14) days of such filing and provide a copy of such comments to ENGI. ENGI and Staff agree to request that the Commission take action with regard to such filing by ENGI within fourteen (14) days of submission of any such comments by Staff.

6. The Large Scale C&I DSM Program shall remain in effect from July 1, 1997 through September 30, 1998 or until the over-collection in the current program year has been spent, whichever comes first. On or before July 15, 1998, but only to the extent that gas utility-sponsored DSM programs are still appropriate in light of the status of retail customer choice at the time, ENGI shall file a single DSM Program to be effective October 1, 1998 through September 30, 1999 covering ENGI's residential, commercial and industrial customers.

7. ENGI and Staff recommend that the Commission waive Puc 1203.05(a) to the extent that it may apply to implementation of the DSM Program, so that the program may be implemented on a bills-rendered basis effective as of July 1, 1997.

III. COMMISSION ANALYSIS

[1-3] After careful review of the Settlement, testimony and exhibits offered at the June 19, 1997 hearing, and the Hearings Examiner's report filed June 26, 1997, we find that ENGI's proposed Large Scale C&I DSM Program, as modified by the Settlement, is reasonable and in the public good.

A substantive modification made to the original filing as part of the Settlement is the implementation of a customer co-payment for the cost of the audit. This is a commendable resolution to this point of contention between ENGI and Staff. The Commission believes that conservation measure and audit costs should gravitate towards payment by actual participants as energy efficiency markets become more competitive and less utility-sponsored.

The Settlement extends the program year by three additional months so that it will end concurrently with ENGI's ENERGYWI$E Program on September 30, 1998. The ENERGYWI$E Program is ENGI's DSM Program for residential and small C&I customers which was approved by Order No. 22,389 (October 31, 1996). We believe the extension will enable ENGI to file one DSM program which consolidates the C&I DSM opportunities currently made available through two separate programs. Additionally, one DSM program, which incorporates the needs of residential and

C&I customers, should relieve some of the administrative burden of submitting two filings with separate procedural schedules. However, we still expect that separate budgets, DSM programs and Conservation Charges will be presented for both residential and C&I customers.

We are concerned that ENGI was unable to provide TRC test results for the audit portion of

the program. Benefit-cost analyses are an integral component of the evaluation of DSM programs. Given ENGI's limited installation experience to date, we shall direct ENGI to maintain its M&E records in a format sufficient to allow Staff review in order to validate future benefit-costs analyses performed by ENGI.

As stated on the record during the hearing, the survey to be developed as part of ENGI's M&E will attempt to measure customers' tolerance for co-payments and free-riderships of both the audit and setback thermostat portions of the DSM Program. A measure of customers' co-payment tolerance will enable ENGI to develop an audit program which best utilizes available funds. Additionally, a measure of free-ridership will improve the quality of the TRC test analyses to be provided with the 1998/1999 DSM Program.

Although the Settlement does not provide for financial reporting during the program year, at the hearing on the merits, Staff requested that ENGI provide monthly reports regarding spending levels and revenue collections throughout the program year in a format similar to the reports provided by ENGI for the ENERGYWI$E Program. ENGI agreed to provide these reports. Therefore, we shall direct ENGI to provide monthly reports detailing the reconciliation of DSM expenses and revenues with applicable interest on the over/underrecovery.

Finally, consistent with treatment we have recently allowed for the Granite State Electric Company in Docket DR 96-322 in Order No. 22,518 (March 17, 1997), we waive the application of N.H. Admin. Rules, Puc 1203.05(a), which requires generally that rate changes be implemented on a service-rendered basis, and will allow ENGI to implement its Conservation Charge on a bills-rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills-rendered basis, and is in the public interest because it eliminates consumer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED,that the proposed Large Scale C&I DSM Program, as amended by the Settlement Agreement, is APPROVED; and it is

FURTHER ORDERED, that ENGI provide monthly reports for the Large Scale C&I DSM Program in a format consistent to those filed for the ENERGYWI$E Program; and it is

FURTHER ORDERED, that ENGI's Conservation Charge of $0.000 per therm be effective July 1, 1997 on a bills-rendered basis; and it is

FURTHER ORDERED, that ENGI file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-214, Order No. 22,389, 81 NH PUC 827, Oct. 31, 1996. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-072, Order No. 22,602, 82 NH PUC 429, May 27, 1997. [N.H.] Re Granite State Electric Co., DR 96-322, Order No. 22,518, 82 NH PUC 266, Mar. 17, 1997.

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NH.PUC*07/01/97*[97361]*82 NH PUC 498*EnergyNorth Natural Gas, Inc.

[Go to End of 97361]

82 NH PUC 498

Re EnergyNorth Natural Gas, Inc.

DR 97-057
Order No. 22,636

New Hampshire Public Utilities Commission

July 1, 1997

ORDER granting a natural gas local distribution company additional protective treatment as to commercially sensitive cost data contained in a proposed special rate contract for the provision of transportation service for Hitchiner Manufacturing Company, Inc.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to proposed special rate contract — Relative to commercially sensitive cost data — Benefits of nondisclosure as outweighing those of disclosure — Local gas distribution company. p. 498.

BY THE COMMISSION:

ORDER

On March 27, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of a Special Contract with Hitchiner Manufacturing Co., Inc. (Hitchiner). ENGI filed a Motion for Protective Order and Confidential Treatment on April 11, 1997, seeking confidentiality for certain portions of a

market analysis performed by ENGI referred to as the Milford Study. On April 23, 1997, Sprague Energy (Sprague) filed for limited intervenor status.

An Order of Notice was issued April 7, 1997, and a prehearing conference was held April 28, 1997. The Commission issued Order No. 22,591 on May 12, 1997, approving a modified procedural schedule, granting Sprague limited intervenor status and granting ENGI's Motion for Protective Order and Confidential Treatment of the Milford Study as modified at the prehearing conference.

On May 22, 1997, ENGI filed a second Motion for Protective Order regarding information requested by the Commission Staff (Staff) on cost calculations for construction of the extension of its natural gas distribution system to the Town of Milford. ENGI provided an unredacted copy of ENGI's response to that request under a separate cover.

ENGI states that the response to Staff's data request contains confidential cost calculations which fall within the exemption from public disclosure set forth in RSA 91-A:5,IV and N.H. Admin. Rule Puc 204.08. ENGI also states that it does not disclose the cost calculations to anyone outside of its corporate affiliates and representatives.

[1] The Commission recognizes that the information identified above is critical to the review of the proposed special contract by the Commission, the Commission Staff and the Office of Consumer Advocate. The Commission also recognizes that the information contained in the data response is sensitive commercial information that could impair the competitive bidding process on ENGI construction projects. If that were to occur, ENGI and its ratepayers and shareholders could be harmed by an increase in construction costs. Thus, based on the Company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to EnergyNorth of non-disclosure in this case outweigh the benefits to the public of disclosure. The information should, therefore, be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's Second Motion for Protective Order and Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is

subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-057, Order No. 22,591, 82 NH PUC 404, May 12, 1997.

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[Go to End of 97362]

82 NH PUC 499

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,637

New Hampshire Public Utilities Commission

July 1, 1997

ORDER granting a water utility's motion to compel a municipality to respond to certain data requests submitted in the discovery phase of an eminent domain proceeding.

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1. PROCEDURE, § 17

[N.H.] Discovery and inspection — Power to require production of evidence — Submission of data requests — Grant of motion to compel response — Proceeding in eminent domain. p. 500.

BY THE COMMISSION:

ORDER

The Town of Hudson (Hudson) filed a Declaration of Taking against Consumers New Hampshire Water Company (Consumers) with the New Hampshire Public Utilities Commission (Commission) on July 11, 1996. Discovery is ongoing, pursuant to a procedural schedule approved by the Commission, with data requests and responses exchanged between Consumers and Hudson (as well as with intervenors). On April 21, 1997, the Commission denied a Motion to Compel filed by Consumers on April 3, 1997.

On April 17, 1997, Consumers filed a Further Motion to Compel Responses, asking that the Commission order Hudson to respond to data requests CS 1-31, 32 and 33. Consumers stated that in response to the designated data requests which asked Hudson to provide copies of bids from potential suppliers/operators, Hudson claimed confidentiality and asserted that disclosure would compromise the bidding process because Consumers, itself a potential supplier/operator, would gain an unfair competitive advantage. Consumers argued that the information is relevant to the financial and technical feasibility of Hudson's plans to provide water service, which the Commission must review to determine if the proposed taking is in the public interest.

On April 21, 1997, Hudson submitted its Objection to Consumers' Further Motion to Compel and its Motion to Approve Confidentiality Agreement. Hudson's Objection stated its position that creating a competitive advantage for Consumers or, in the alternative, precluding Consumers from bidding on the supply/operation contract would not serve the interests of ratepayers as it could prevent a potentially more favorable outcome from the bidding process. Hudson proposed that Consumers should receive the requested information after submitting a responsive contingent bid. Consumers could decide at a later date whether to activate the contingent bid for actual participation in the bidding process. In addition, Hudson requested the Commission to approve a

proposed confidentiality agreement whereby the Commission Staff and the parties would have access to the requested information immediately after Hudson receives the proposed contingency bid from Consumers.

By letter dated May 9, 1997, the Commission scheduled a conference to resolve the dispute. During the conference on May 15, 1997, three options were discussed as possible resolutions to the dispute. By letter dated May 20, 1997, Hudson informed the Commission that, in order to protect its ratepayers, it was unwilling to accept any of the three options proposed. By letter dated May 22, 1997, Consumers requested that the Commission rule on its Further Motion to Compel.

[1] We will grant Consumers' request to compel production of the information requested in data requests CS 1-31, 32, and 33. The information may be relevant to the issue of the financial and technological feasibility of Hudson's proposed taking. To the extent that Consumers decides not to submit a responsive bid prior to receiving the requested information, Consumers runs the risk of being precluded from participating in the bidding process by Hudson in the future given that Hudson has full control of the bidding process and could decide to refuse to accept a later

bid from Consumers. We will not insert ourselves into Hudson's bidding process. Accordingly, Consumers and Hudson must make their business decisions in light of their respective judgments of the potential risks and benefits associated with our decision herein.

Finally, we are persuaded the data responses should be confidential to preserve the integrity of the bidding process, especially as it relates to other bidders.

Based on the foregoing, it is hereby

ORDERED, that Consumers' Further Motion to Compel is GRANTED; and it is

FURTHER ORDERED, that answers to data requests CS 1-31, 32 and 33 will be afforded protected treatment.

By order of the Public Utilities Commission of New Hampshire this first day of July, 1997.

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NH.PUC*07/01/97*[97363]*82 NH PUC 500*U S West Interprise America Inc.

[Go to End of 97363]

82 NH PUC 500

Re U S West Interprise America Inc.

DE 97-079
Order No. 22,638

New Hampshire Public Utilities Commission

July 1, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 501.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and

nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 501.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 501.

BY THE COMMISSION:

ORDER

On May 30, 1997, U S West Interprise America INC. (USW) filed with the New

Page 500

Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed USW's petition for compliance with these standards. Staff reports that USW has provided all the information required by Puc 1304.02. The information provided supports USW's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of USW as a New Hampshire CLEC.

USW has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that USW has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of USW in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this

finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because USW has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, USW agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, USW seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that USW's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 July 8, 1997 and to be documented by affidavit filed with this office on or before July 15, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 22, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 29, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 31, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this first day of July, 1997.

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82 NH PUC 502

Re MCImetro Access Transmission Services Inc.

DE 96-339
Order No. 22,639

New Hampshire Public Utilities Commission

July 1, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 502.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 502.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 502.

BY THE COMMISSION:

ORDER

On October 23, 1996, MCImetro Access Transmission Services Inc. (MCI) filed with the

New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed MCI's petition for compliance with these standards. Staff reports that they have provided all the information required by Puc 1304.02. The information provided supports MCI's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of MCI as a New Hampshire CLEC.

[1-3] We find that MCI has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of MCI in its

intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because MCI has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, MCI agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, MCI seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MCI's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 July 8, 1997 and to be documented by affidavit filed with this office on or before July 15, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 22, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 29, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 31, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this first day of July, 1997.

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NH.PUC*07/03/97*[97365]*82 NH PUC 503*Granite State Electric Company

[Go to End of 97365]

82 NH PUC 503

Re Granite State Electric Company

DR 97-101, DR 97-102
Order No. 22,640

New Hampshire Public Utilities Commission

July 3, 1997

ORDER approving an electric utility's proposed changes in its fuel and purchased power adjustment clause rates. Accordingly, the utility's fuel adjustment clause factor is increased to 1.055 cents per kilowatt-hour (kWh) while its purchased power adjustment clause credit is reduced to 0.145 cents per kWh. Short-term avoided-cost capacity and energy rates for qualifying facilities also are addressed.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Purchased power component — Institution of *credit* — Reduction in credit — Factors — State franchise taxes — Reconciliation of prior-period performance — Electric utility. p. 507.

Page 503

2. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rates — Fuel clause component — Increase in fuel clause factor — Causes — Unscheduled nuclear plant outages — Recovery of franchise taxes — Elimination of five-year rolling average adjustment — Electric utility. p. 507.

3. COGENERATION, § 25

[N.H.] Rates — Purchases of power from qualifying facilities — Avoided-cost basis — Capacity and energy charges — Type of distribution as a factor — On- versus off-peak rates — Electric utility. p. 507.

APPEARANCES: Carlos A. Gavilondo, Esquire on behalf of Granite State Electric Company; James J. Cunningham Jr. and Todd M. Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 29, 1997 Granite State Electric Company (GSEC or the Company) filed with the New Hampshire Public Utilities Commission (Commission) tariff pages, testimony and schedules supporting changes to its Purchased Power Cost Adjustment (PPCA), Fuel Adjustment Clause (FAC) and power purchase rates for qualifying facilities (QFs). On June 9, 1997, the Company filed revised FAC schedules which included an update for May 1997 actual results. The changes in GSEC's PPCA are effective for bills rendered for meters read for the period July 1, 1997 through June 30, 1998. 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, 1997 through December 31, 1997.

On June 12, 1997, the Commission held a duly noticed public hearing to review the PPCA, FAC and QF rates filed by GSEC.

II. POSITIONS OF THE PARTIES AND STAFF

A. *GSEC*

At the hearing the Company proposed a PPCA factor of credit of $0.00145 per kWh, a reduction of $0.00049 per kWh from the existing PPCA factor of credit $0.00096 per kWh. It proposes an FAC factor of $0.01055 per kWh, an increase of $0.00029 per kWh from the existing FAC factor of $0.01026 per kWh and the following short-term avoided capacity and energy rates for QFs:

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

Energy Rates Per kWh	*On Peak*	*Off-Peak*	*Average*
Subtransmission Distribution	$0.03650	$0.02864	$0.03227
Primary Distribution	$0.03920	$0.03004	$0.03427
Secondary Distribution	$0.04059	$0.03075	$0.03530
Capacity Rates Per kWh	*Capacity Payment*		
Subtransmission	$2.84 per kW-month		
Primary Distribution	$3.11 per kW-month		
Secondary Distribution	$3.25 per kW-month		

The value of capacity used to determine Granite State's QF capacity payments is $32.98 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 12, 1997 hearing, GSEC presented witnesses in support of its proposals. Mr. Peter T. Zschokke, Manager Retail Rates for New England Power Service Company, supported GSEC's proposed PPCA factor. A panel of witnesses, Ms. Mary Lynch, Natural Gas Supply Administrator for New England Power Company and Mr. Jose A. Rotger, Senior Rate Analyst for New England Power Service Company, supported GSEC's proposed FAC factor and QF rates for the second half of 1997. Ms. Lynch adopted and supported the prefiled testimony of Mr. Jeffrey VanSant, Vice President and Director of Fuel Supply and Risk Management for New England Power Company on the fuel price projections for the second half of 1997 of New England Power Company (NEP), Granite State Electric Company's wholesale supplier.

Mr. Zschokke explained that the proposed PPCA credit of $0.00145 per kWh is a combination of two factors: one is a reconciliation of PPCA factors for prior periods and the other is a proposal for a PPCA factor for the projected time period July 1997 through June 1998.

The prior period reconciling PPCA factor is $0.00039 per kWh and the projected period PPCA factor is $0.00106 per kWh. The combined PPCA factor that will be in place for the twelve month period ending June 30, 1998 is called W-95(S)(R3) and is a credit of $0.00145 per kWh. This factor includes the provision for recovery of the 1% New Hampshire franchise tax, and an adjustment relating to the kilowatt-hour sales of Pilot Customers to ensure that the Pilot Program does not increase or decrease GSEC's PPCA from the level that would have been incurred absent the Pilot Program.

Ms. Lynch and Mr. Rotger summarized the Company's proposed QF rates and the proposed FAC factor. The proposed FAC factor is $0.01055 per kWh, an increase of $0.00029 per kWh from the existing factor of $0.01026 per kWh. The increase is primarily attributable to increased fuel costs as a result of the unscheduled outages of Maine Yankee and Millstone 3, two low-cost nuclear units. The increase in fuel costs is partially offset by estimated oil prices and estimated under-collections which are lower than the estimates reflected in the existing FAC factor. These reductions were partially offset by the unscheduled outage of Maine Yankee. The FAC presently in effect assumed that Maine Yankee would be in service through June, 1997; this unit, however, was taken out of service in December 1996 and GSEC estimates that it will remain out of service through the end of the forecast period covered in this filing. Other amounts included in the Company's proposed FAC factor are as follows: recovery of the 1% NH franchise tax, reduction pertaining to kilowatt-hour sales of Pilot Program customers and the elimination of the 5-year rolling average adjustment (i.e. the five-year "sales/purchases ratio" approach used to forecast kWh sales which has been used in prior cases).

At the hearing on June 12, 1997, the Company was questioned extensively about the Maine Yankee outage and its impact on the proposed PPCA and FAC factors. Exhibit 3 was reserved for follow-up record requests and the Company provided responses to all record requests on June 20, 1997.

B. *Staff*

Regarding the proposed PPCA factor, Staff was primarily concerned about the outage at the Maine Yankee nuclear facility and the impact that this outage has on Operating and Maintenance costs (O&M). More particularly, Staff questioned what portion of the estimated $50 million overhaul to the steam generator pertaining to O&M costs may have been passed on to GSEC ratepayers. Staff also questioned what portion of the estimated $41 million in cuts to Maine Yankee O&M have been passed on to GSEC ratepayers. Regarding the $50 million overhaul, Staff was concerned about the possibility that GSEC's share of the $50 million overhaul of the Maine Yankee steam generators might have been included in NEP's Tariff 1 rates which were approved in NEP's latest W-

95(S) rate case in mid 1995 and, hence, would have already been passed along to GSEC

ratepayers. Staff concern was based on the recent actions taken by the Maine Public Utilities Commission to require a management audit of the Maine Yankee operations because of its concern about the prudence of certain decisions made at the plant, including the decision by Maine Yankee to overhaul the steam generators. Under the scenario of an imprudence finding, Staff believed that overhaul costs should not be passed along to GSEC ratepayers.

Regarding power reliability, under the scenario of an extended summer heat wave, Staff was concerned about potential brown-outs, particularly in light of the outage at Maine Yankee, the outages at the Millstone plants, and the shutdown of the Connecticut Yankee. The Company responded that a number of different options are being considered — from checking capacitors on the distribution lines to working with environmental officials to ensure that the units that it has available to generate will be available and meet all environmental criteria. Also, the Company has signed up 540 customers on the performance interruptible credit provision in all three jurisdictions (Massachusetts, Rhode Island and New Hampshire), which provide about 150 megawatts of interruptible load. In addition, the Company is working with NEPOOL in terms of public messages for customers. At the hearing, the Company provided a report that was filed with the Massachusetts Department of Public Utilities which summarizes these and other activities that are being pursued by New England Power and GSEC.

Staff's final concern about the PPCA factor was that, under the scenario that House Bill 602 (pertaining to substitution of the consumption based tax in lieu of the New Hampshire franchise tax) is passed, the Company's proposed PPCA factor may be overstated. The Company's filing includes a provision for New Hampshire Franchise Taxes. In testimony at the hearing, Company witness Mr. Zschokke indicated that the PPCA reconciliations would be adjusted to properly reflect the elimination of the Franchise Tax as of the date House Bill 602 becomes law.

Regarding the proposed FAC factor, Staff was concerned about the outage at the Maine Yankee nuclear facility and the impact that this outage has on replacement costs and whether any portion of the replacement costs should be passed on to GSEC ratepayers. Staff noted that the Maine Public Utilities Commission has recently required a management audit of the Maine Yankee operations because of its concern about the prudence of certain decisions made at the plant. Under the scenario of an imprudence finding, Staff was concerned about passing on replacement costs to GSEC ratepayers.

Regarding the treatment of NH franchise taxes, specifically as it relates to the pending House Bill 602, Staff believed that there would be no change in the FAC because of House Bill 602. This is the case since the FAC is for the period July 1, 1997 through December 31, 1997 and the change in Franchise Tax would not occur until January of 1998 or later.

Regarding the treatment of the 5-year rolling average adjustment in its FAC filing, Staff believed that the Company should reinstate the adjustment, an adjustment that has been used in prior FAC filings. Staff believed that the 5-year rolling average adjustment which utilizes an historical approach to forecasting kWh sales (i.e. by using a five-year ratio of sales to purchases) is a valid forecast approach. Staff believed it outweighs the immaterial amount of the adjustment. This adjustment is estimated by the Company to increase the proposed FAC to $0.01058 per kWh, an increase of $0.00003 per kWh from the proposed FAC of $0.01055 per kWh. Based on the above, Staff recommended the reinstatement of the 5-year rolling average adjustment.

Staff recommended that the Commission approve the Company's proposed PPCA factor of $0.00145 per kWh with the condition that the Company include in its ongoing PPCA reconciliations any reductions resulting from the implementation of House Bill 602 pertaining to New Hampshire franchise taxes. Staff recommended that the Commission approve the FAC factor of $0.01058 per kWh (which factor includes reinstatement of the 5-year rolling average adjustment) and that the Company

report to the Commission as soon as it becomes aware of any finding of imprudence by Maine Yankee and the impact of same on the GSEC's FAC factor. Staff recommended that the Commission approve the Company's proposed QF rates. These rates are based on GSEC's QF capacity rate of $32.98 per kW-year. This rate is the estimated market value of short term capacity sales and purchases recently consummated by NEP.

III. COMMISSION ANALYSIS

[1-3] The Commission has reviewed the record in this case including the Company responses to issues raised at the hearing on Maine Yankee, New Hampshire Franchise Taxes, House Bill 602 and the 5-year rolling average adjustment adjustments. Regarding the $50 million cost to overhaul the Maine Yankee steam generators, the Commission notes that Exhibit 3, PPCA, PUC-1 showed that the overhaul costs were not included in NEP's costs used for the 1995 test year, and, hence, were not reflected in NEP's wholesale rates nor in GSEC's purchased power bill from NEP. Regarding the $41 million in recent cuts in Maine Yankee O&M costs, Exhibit 3, PPCA, PUC-1 shows that today's O&M forecast, reduced for the cuts, is more than what was provided for in NEP's costs used for the 1995 test year ($42.1 million versus $34.7 million in NPE's 1995 test year). We believe that the Company's proposed PPCA factor adequately addresses the concerns raised at the hearing and we will approve the proposed PPCA factor of $0.00145 per kWh. The Commission notes that, for a typical residential ratepayer using 500 kilowatt-hours per month, the proposed PPCA factor results in a reduction of $0.24 in the ratepayer's monthly bill. In addition, the Commission believes that the proposed QF rates are fair and reasonable and will approve the proposed rates.

Regarding the FAC factor, if the Maine Public Utilities Commission finds that Maine Yankee replacement power costs are imprudent in whole or in part, the Commission believes that GSEC should make such information available to the Commission along with the impact that such finding has on the Company's FAC. In connection with the 5-year rolling average adjustment, the Commission will approve the Company's request to forego this adjustment. The Commission notes that the adjustment amount is minor and, although the Commission believes, as does Staff, that the use of actual historical data in developing forecast kWh sales appears to have merit in this instance, the Commission will approve the FAC factor as proposed of $0.01055 per kWh. The Commission notes that, for a typical residential ratepayer using 500

kilowatt-hours per month, the adjusted FAC factor results in an increase of $0.15 in the ratepayer's monthly bill. Based on the above and based on our review of the complete record in this case, we believe that the Company's filing is fair and reasonable and in the public interest and we approve these rates.

Based upon the foregoing, it is hereby

ORDERED, that the Purchased Power Cost Adjustment (PPCA) for GSEC for bills rendered for meters read on or after July 1, 1997 through June 30, 1998 shall be a credit $0.00145 per kWh; and it is

FURTHER ORDERED, that the Fuel Adjustment Clause (FAC) for GSEC for bills rendered for meters read on or after July 1, 1997 through December 31, 1997 shall be $0.01055 per kWh; and it is

FURTHER ORDERED, that GSEC pay Qualifying Facilities for the period July 1, 1997 through December 31, 1997 the following rates:

Page 507

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

Energy Rates Per kWh	*On Peak*	*Off-Peak*	*Average*
Subtransmission Distribution	$0.03650	$0.02864	$0.03227
Primary Distribution	$0.03920	$0.03004	$0.03427
Secondary Distribution	$0.04059	$0.03075	$0.03530

Capacity Rates Per kWh	*Capacity Payment*
Subtransmission	$2.84 per kW-month
Primary Distribution	$3.11 per kW-month
Secondary Distribution	$3.25 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 third day of July, 1997.

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NH.PUC*07/07/97*[97366]*82 NH PUC 508*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97366]

DR 97-120
Order No. 22,641

New Hampshire Public Utilities Commission

July 7, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract for the provision of integrated services digital network (ISDN) primary service to Dartmouth Hitchcock Medical Center.

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1. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special contract — Conditional approval — Local exchange carrier. p. 508.

2. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Conditional approval — Local exchange carrier. p. 508.

3. RATES, § 584

[N.H.] Telephone rate design — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 509.

4. SERVICE, § 449.1

[N.H.] Telephone — Integrated services digital network (ISDN) primary service — As type of foreign exchange service — ISDN rates as dependent on port and monthly duration factors — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 509.

BY THE COMMISSION:

ORDER

[1, 2] On June 11, 1997, New England Telephone and Telegraph d/b/a NYNEX (NYNEX) filed with the New Hampshire Public

Utilities Commission (Commission) a Special Contract (Contract) with Dartmouth Hitchcock Medical Center(DHMC) for ISDN Primary Service. In support of its filing, NYNEX submitted a cost analysis of the proposal. The five year contract currently before the Commission proposes to utilize all rates and charges for ISDN Primary Service as per NHPUC-77 Part M, Section 3, with the exception of the monthly recurring rate for the port.

The port charges for all service provided under the Special Contract will be dependent on the number of months the port remains in service as follows:

0 to 35 months = Full Tariff Rate
36 to 59 months = 90% of Tariff Rate
60 months = 80% of Tariff Rate

Termination liability is simply reflected in the higher per month rate for less than 5 year service as shown above. The cost of providing the ISDN primary port is below the 80% of tariff level rate provided for by this Contract and is supported in the original tariff filing in DR 93-209.

The Cost Data demonstrates that the proposed rates for the ISDN service exceed the relevant costs. Thus Staff has recommended that the Commission approve this Special Contract.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on June 25, 1997. No comments regarding this filing have been received by the Commission.

We have reviewed the filing and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with DHMC is APPROVED; and it is

FURTHERED ORDERED, that the Commission retains authority to approve any assignment by NYNEX of its rights and obligations under this Special Contract; and it is

FURTHERED ORDERED, that during any rate case or rate redesign filed by NYNEX during the life of this Special Contract, the Commission will consider whether any changes

should be made to the revenue requirements or cost studies as a result of the rates afforded DHMC in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth

Commissioner

July 7, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*07/07/97*[97367]*82 NH PUC 510*U S West Interprise America, Inc.

[Go to End of 97367]

82 NH PUC 510

Re U S West Interprise America, Inc.

DE 97-079
Order No. 22,642

New Hampshire Public Utilities Commission

July 7, 1997

PETITION by telecommunications carrier for protective treatment of certain financial and market research documents filed as part of an application for certification as a competitive local exchange carrier; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — As to financial statements — As to underlying market research — Certificate proceeding — Competitive local exchange telephone carrier. p. 510.

2. CERTIFICATES, § 123

[N.H.] Telecommunications — Request for authority to operate as a competitive local exchange telephone carrier — Protective treatment — As to financial and market research documents. p. 510.

BY THE COMMISSION:

ORDER

[1, 2] On May 30, 1997, US WEST Interprise America, Inc. (Interprise) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to N.H. Admin. Chapter Puc 208.08, a Motion requesting confidentiality for certain financial documents (hereinafter collectively the Information) filed as Exhibits 4 and 5 as part of Interprise's application for authorization as a Competitive Local Exchange Carrier (CLEC). Interprise does not indicate that it has sought concurrence from the Office of the Consumer Advocate (OCA) and the Commission Staff.

In its motion, Interprise argues that the Information should be afforded protective treatment because, using our analysis in *Re New England Telephone Co.*, DR 95-069, Order No. 21,731 dated July 10, 1995 (*Re NET*), it is within the exemptions permitted by RSA 91-A:5,IV, as demonstrated by the information submitted pursuant to N.H. Admin. Rules, Puc 204.08(b)(1) through (b)(4). Specifically, Interprise has provided the documents as required in Puc 204.08(b)(1) and cited the statutory support required by Puc 204.08(b)(2). Interprise states

that the Information consists of 5-year projected financial resources and costs of its proposed operations in New Hampshire and is not publicly available. The Information is based upon proprietary market research conducted by Interprise which required significant effort and cost. The Information therefore meets the requirements of Puc 204.08(b)(4).

Interprise describes the benefits of non-disclosure as the enhancement Interprise's ability to compete with other telecommunications providers, thereby forcing established competitors to improve service or lower prices to the public, and thus meeting the requirements of Puc 204.08(b)(3).

We recognize that the Information is useful for critical review of the CLEC application by the Commission and Commission Staff.

The Information, insofar as it contains valuable marketing information which could be obtained by competitors providing alternatives to the services Sprint provides, the Information is entitled to confidentiality. As we stated in our order No. 21,731 in *Re NET* "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."

Under the balancing test we have applied in prior cases, *Re NET*, 74 NH PUC 307 (1989), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991) *et al.*, the benefits of non-disclosure appear to outweigh the benefits of disclosure. The Information should be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that Interprise's Motion for Confidential Treatment of 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 ongoing 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 seventh day of July, 1997.

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*07/07/97*[97368]*82 NH PUC 511*Hampstead Area Water Company, Inc.

[Go to End of 97368]

82 NH PUC 511

Re Hampstead Area Water Company, Inc.

DE 96-201
Order No. 22,643

New Hampshire Public Utilities Commission

July 7, 1997

ORDER approving inception rates for water service in a recently franchised area of the Town of

Sandown.

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1. RATES, § 595

[N.H.] Water rate design — Development of inception rates — For service to newly franchised area — Quarterly billings — Both fixed and volumetric charge components — Rate base, working capital, and return requirements. p. 512.

APPEARANCES: Stephen J. Noury for Hampstead Area Water Company, Inc.; Henry J. Bergeron for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 20, 1996 Hampstead Area Water Company, Inc. (Hampstead) filed a petition to

expand its franchise area into a limited area in the Town of Sandown, New Hampshire to provide water service to Stoneford, a subdivision under construction. The petition also implicitly requested the Commission to establish rates therefor pursuant to RSA Chapter 378.

On April 8, 1997 the Commission issued Order No. 22,551 granting the requested franchise expansion pursuant to RSA 374:22 and 26. The Order also scheduled a hearing for May 7, 1997 on the issue of the rates to be charged in the expanded franchise territory.

II. COMMISSION ANALYSIS

[1] The testimony presented at the May 7, 1997 hearing established that Stoneford is a housing development that was originally granted subdivision approval in the mid 1980s. The project was subsequently foreclosed upon by the Cornerstone Bank and sold to Hampstead's parent company, Lewis Builders Development, Inc. (Lewis Builders). Lewis Builders installed the water distribution system and constructed seventy-five homes. Lewis Builders contributed $300 per home towards the construction of the water system for a total contribution of $22,500. It sold the system to Hampstead at book value, taking back a thirty year note at an interest rate of

8.5% for 100% of the purchase price.

Staff testified that for the Stoneford customers, Hampstead was entitled to annual revenues in the amount $24,924 based on net plant in service of $87,269, a cash working capital allowance of $2,735 a rate of return of 8.5% and annual operating expenses of $17,274. Hampstead concurred in this recommendation. Hampstead plans to bill its customers on a quarterly basis. The quarterly bills will consist of a volumetric charge of $3.78 per 100 cubic feet and a fixed charge of $13.21. These rates will result in a typical quarterly bill of $83.14 (assuming usage of 1850 cubic feet per quarter) or an annual charge of $332.36.

Based on the record evidence, we find that the recommended rates result in a reasonable return on the prudently constructed utility plant which we find used and useful in service to the public.

Based upon the foregoing, it is hereby

ORDERED, that Hampstead Area Water Company, Inc. may bill its 75 Stoneford customers a quarterly fixed charge of $13.21 and a volumetric charge of $3.78 per 100 cubic feet, designed to result in annual revenues of $24,924.37.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampstead Area Water Co., Inc., DE 96-201, Order No. 22,551, 82 NH PUC 332, Apr. 8. 1997.

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NH.PUC*07/07/97*[97369]*82 NH PUC 512*Dunbarton Telephone Company, Inc.

[Go to End of 97369]

82 NH PUC 512

Re Dunbarton Telephone Company, Inc.

DF 97-111
Order No. 22,644

New Hampshire Public Utilities Commission

July 7, 1997

ORDER authorizing a local exchange telephone carrier to issue two mortgage notes of up to $610,000 and $355,950 to the Rural Telephone Service and the Rural Telephone Bank, respectively, so as to finance a five-year construction program.

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1. SECURITY ISSUES, § 58

[N.H.] Purposes of financing — Additions and betterments — Long-term construction program — Acquisition of facilities — Upgrading of technology — Expansion of service offerings — Local exchange telephone carrier. p. 513.

Page 512

2. SECURITY ISSUES, § 94

[N.H.] Issuance of mortgage notes — To the Rural Telephone Service and the Rural Telephone Bank — For financing of long- term construction program — Local exchange telephone carrier. p. 513.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 5, 1997 Dunbarton Telephone Company, Inc. (DTC or Company), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking approval and authority under RSA 369:1-4 to issue its promissory notes in the amount of $610,000 and $355,950 (Notes), to mortgage its property as security for the Notes, and to confirm the mortgaging of its property as security for all outstanding notes to the Rural Utilities Service (RUS) and Rural Telephone Bank (RTB).

II. POSITIONS OF DTC AND STAFF

DTC proposes to amend its telephone loan contract with the United States of America, acting by and through the RUS and with the RTB providing for the issuance of the following Notes: (i) a mortgage note to the RUS in the principal amount of $610,000 and (ii) a mortgage note to the

RTB in the principal amount of $355,950 of which $16,950 is for investment in RTB Class B Stock.

The notes will bear interest at the "cost of money" interest rate as established pursuant to applicable federal regulations, 7 CFR §1735.31(c) and 7 CFR §1610.10. The interest rates applicable to each loan advance will be based on an average yield of outstanding marketable obligations of the United States with comparable maturity dates. The loans' interest rates are comprised of a fixed RUS rate set with each advance and a variable RTB rate with a permanent rate assigned to the advance at the end of the fiscal year.

Proceeds from the proposed Notes will be used, together with internally generated funds, to finance a five-year, $1,099,000 program for construction of facilities to meet existing and future customer demand, and to provide quality service through a reliable and efficient network. DTC's construction program includes: 1) a redundant toll fiber route to NYNEX point of connection to ensure toll reliability; 2) fiber and field mounted electronic node additions to increase network capacity; and 3) a new warehouse/garage building to meet its inventory/equipment storage needs.

Copies of the proposed mortgage notes to the RUS and RTB, along with the proposed Telephone Loan Contract Amendment and proposed Restated Mortgage, Security Agreement and Financing Statements, were filed by DTC with the Commission in support of the petition.

In its review of DTC's petition, Staff has concerns that DTC's financing may be in excess of its capital needs. It is Staff's position that DTC should not maintain an excess cash balance while incurring a higher debt level to fund its construction plan. Therefore, Staff recommends that the full amount of the financing should be approved; however, the loan should be drawn down only as needed. On January 1st and July 1st in each year DTC should file with the Commission a detailed statement, duly sworn by its Treasurer or its Assistant Treasurer, showing the disposition of the proceeds of the authorized financing until the expenditures of the proceeds are fully accounted for. Staff will review the statements in conjunction with DTC cash balances as reported on its most recent balance sheet to ensure DTC has been prudent in the drawdown of the loan advances.

III. COMMISSION ANALYSIS

[1, 2] Based upon DTC's petition, all exhibits submitted therewith and Staff's recommendation, we find that the issuance of a mortgage note in the principal amount of $610,000 to the RUS and a mortgage note in the principal amount of $355,950 to the RTB upon the terms represented in the proposed loan documents is

consistent with the public good.

We concur with Staff that the loan should be drawn down only as necessary and that DTC

should use internally generated funds to some degree in its construction efforts.

Based upon the foregoing, it is hereby

ORDERED, that DTC is authorized to issue a mortgage note to the RUS in the principal amount of $610,000 and a mortgage note to the RTB in the principal amount of $355,950; and it is

FURTHER ORDERED, that DTC is authorized to enter into the Telephone Loan Contract Amendment; and it is

FURTHER ORDERED, that the proceeds of the issuance of the said notes shall be used, together with internally generated funds, to fund the company's construction program, and it is

FURTHER ORDERED, that Dunbarton Telephone Company, Inc. is authorized to enter into a supplement to its Restated Mortgage and Security Agreement under which substantially all of its property is mortgaged as security for all outstanding notes to the RUS and the RTB; and it is

FURTHER ORDERED, that the finalized copies of the mortgage notes with the RUS and RTB; Telephone Loan Contract Amendment; and the Supplement to Restated Mortgage and Security Agreement and Financing Statement be filed with the Commission; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year Dunbarton Telephone Company, Inc. shall file with this Commission, a detailed statement, duly sworn to by its Treasurer or Assistant Treasurer showing the disposition of proceeds of said notes until the expenditures of the proceeds shall be fully accounted for.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1997.

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NH.PUC*07/07/97*[97370]*82 NH PUC 514*Northern Utilities, Inc.

[Go to End of 97370]

82 NH PUC 514

Re Northern Utilities, Inc.

DR 97-008
Order No. 22,645

New Hampshire Public Utilities Commission

July 7, 1997

ORDER adopting settlement resolving a complaint as to a natural gas local distribution company's failure to extend natural gas service into an area of the Town of Salem so as to replace existing propane service. Under the agreement, the company is to extend natural gas

service to the affected subdivision by November 1, 1997, with the subdivision making a contribution in aid of construction of $8,000 to the company.

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1. SERVICE, § 199

[N.H.] Extensions — By gas utility — Of natural gas service to replace propane service — Into residential subdivision — No utility responsibility for appliance conversions — Provisions for contributions in aid of construction — Settlement. p. 516.

2. SERVICE, § 188

[N.H.] Extensions — By gas utility — Of natural gas service to replace propane service — Customer contributions — By special arrangement at less than tariffed rates — Terms for refunds — Settlement. p. 516.

3. VALUATION, § 248

[N.H.] Property not paid for — Contributions in aid of construction — By special arrangement at less than tariffed rates — Extensions of natural gas service to replace propane service — Deferral of decision on rate base treatment. p. 516.

Page 514

APPEARANCES: LeBoeuf, Lamb, Greene and MacRae by Paul B. Dexter, Esq. for Northern Utilities; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for the Copper Beech Homeowners Association; 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 15, 1997, the Copper Beech Homeowners Association (Copper Beech) filed with the New Hampshire Public Utilities Commission (Commission) a complaint alleging that Northern Utilities, Inc. (Northern) had failed to fulfill a promise to provide natural gas service to

the subdivision in the Town of Salem in which the members of Copper Beech are residents. Copper Beech also sought a rate adjustment, together with reparations, to reflect natural gas service rather than the propane gas service its members currently receive. Northern provides propane gas service in the Copper Beech subdivision through a distribution system fed by a number of propane tanks located without an easement on the property of one of the homeowners.

By an Order of Notice issued February 13, 1997, the Commission scheduled a prehearing conference for April 3, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. There were no motions to intervene filed, though the Office of the Consumer Advocate is a statutorily recognized intervenor. On April 22, 1997, the Commission issued Order No. 22,569 approving the procedural schedule.

On April 17, 1997, Copper Beech filed the direct testimony of Laurence R. Palmisano, Jr. On May 1, 1997, Copper Beech filed a Motion to Suspend Procedural Schedule pending the filing of a settlement agreement, which, on May 9, 1997, the Commission granted. On June 2, 1997, Staff filed the Settlement Agreement (Settlement) on behalf of Copper Beech, Northern and Staff. On June 6, 1997, the Commission held a hearing on the merits.

II. SETTLEMENT AGREEMENT

The Settlement was entered into among Copper Beech, Northern and Staff. The terms, which are more fully detailed in the Settlement, are as follows:

1. On or before November 1, 1997, Northern will extend its existing gas main to provide natural gas service to the Copper Beech subdivision and Copper Beech will accept natural gas service when it is made available by Northern. Service will be rendered pursuant to the rates and terms and conditions generally applicable to Northern's residential customers.

2. Northern will make any necessary conversions of meters to allow customers to accept natural gas service.

3. Northern will arrange for its propane division to remove the existing propane facilities from the property of Mr. Trainor, a Copper Beech resident.

4. Upon approval of this Settlement by the Commission, Northern will begin the actions necessary to effect the extension of its gas main to serve the Copper Beech subdivision. Extension of the gas main is contingent upon Northern receiving construction-related permits. If Northern is unable to provide service to the Copper Beech subdivision on or before November 1, 1997 because of delays in receiving any necessary permit, it will not be in breach of this Settlement. In the event of such a delay in receiving a necessary permit, Northern will continue to seek all necessary permits to allow service to commence as soon as practicable after November 1, 1997. This Settlement does not constitute a grant of permission by Mr. Trainor for the maintenance of propane facilities on his property after November 1, 1997.

5. Copper Beech agrees to pay Northern $8,000 for the extension of the gas main needed to serve the Copper Beech

subdivision as a contribution in aid of construction (CIAC). Payment will be made prior to Northern beginning construction of the gas main extension to be used to serve the Copper Beech subdivision. The payment will be subject to refund, in full or in part, based on the cost-effectiveness of the main extension to the Copper Beech subdivision.

6. Copper Beech agrees to make any necessary conversions of its members' gas-fired appliances to accept natural gas service.

7. Copper Beech agrees to continue to accept propane gas service from Northern under the currently effective terms and conditions of its tariff until natural gas service is available to the Copper Beech subdivision.

8. Approval of this Settlement does not constitute a finding or ruling concerning the recoverability through rates of the costs Northern incurs to extend the gas main to the Copper Beech subdivision. The determination of recoverability of the costs of the main extension will be made no earlier than in Northern's next base rate case. At such time, Northern will not include in rate base the portion of the cost of the main extension equal to any projected shortfall.

III. COMMISSION ANALYSIS

[1-3] After careful review of the Settlement and testimony and exhibits presented at the June 6, 1997 hearing, we find that the Settlement satisfactorily resolves a number of issues involving Copper Beech and Northern that could have otherwise resulted in extensive litigation. Additionally, we believe a departure from the tariff is just and consistent with the public interest.

The Settlement results in two variations from Northern's tariff. First, the $8,000 Contributions in Aid of Construction (CIAC) from Copper Beech for the main extension is less than the amount required by the tariff and, second, in the event refunds of contributions are to be made, the members of Copper Beech will be refunded their full CIAC before any other customers that have contributed towards the main extension.

The Settlement results in a special contract subject to review under RSA 378:18. Pursuant to RSA 378:18, a utility may render service at rates other than those fixed by its schedules of general application (i.e., the utility's tariff) if special circumstances exist which render such departure just and consistent with the public interest. There clearly are special circumstances present to justify this deviation from tariff rates.

The Settlement provides that existing ratepayers are protected in a general rate case should any revenue shortfall be created by the Copper Beech main extension. In addition, a number of

cross- subsidies will be eliminated. First, to the extent that Northern's New Hampshire Division customers have subsidized Northern's Salem Division customers in recent cost of gas adjustment (CGA) proceedings, those subsidies will now be eliminated. Order No. 22,390 (October 31, 1996) and Order No. 22,579 (April 30, 1997) approved Northern's proposal to shift gas costs to the New Hampshire Division by assigning the New Hampshire Division's average cost of gas rate to the Copper Beech customers and allocating the difference between the actual costs and the assigned costs to the New Hampshire Division. Second, the Salem Division, consisting of two independent propane systems (the Copper Beech subdivision and Pelham Plaza), will now consist solely of the Pelham Plaza. This eliminates the cross-subsidy that has existed between these two systems due to the difference between the costs of retail and wholesale propane gas needed to serve each system as testified to by Northern during the April 23, 1997 hearing on Northern's Salem Division 1997 Summer CGA (Docket DR 97-048).

Along with providing natural gas service to the Copper Beech subdivision, the Settlement also provides potential customers along the main extension with an additional energy alternative. One such customer, a commercial developer, has agreed to pay a CIAC to Northern with the understanding that any refund of the contribution would be made only after the CIAC received by the members of Copper Beech had been fully refunded. The developer was informed that the refund provision deviates from Northern's tariff and was a result of the Settlement.

Additionally, the Settlement resolves the issue of the propane tanks located without an easement on the property of one of the members of Copper Beech. The Settlement provides for the removal of the propane tanks once the natural gas main is in-service.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement/Special Contract is APPROVED; and it is

FURTHER ORDERED, that upon provision of natural gas service to the Copper Beech subdivision, the residents will become customers of Northern's New Hampshire Division; and it is

FURTHER ORDERED, that the Salem Division, previously consisting of the Copper Beech subdivision and Pelham Plaza, be henceforth designated the Pelham Division.

By order of the Public Utilities Commission of New Hampshire this seventh day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 97-008, Order No. 22,569, 82 NH PUC 366, Apr. 22, 1997. [N.H.] Re Northern Utilities, Inc. — New Hampshire Division, DR 96-295, Order No. 22,390, 81 NH PUC 829, Oct. 31, 1996. [N.H.] Re Northern Utilities, Inc. — Salem Division, DR 97-048, Order No. 22,579, 82 NH PUC 383, Apr. 30, 1997.

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82 NH PUC 517

Re WESCO Utilities Water Company Inc.

DR 97-025
Order No. 22,646

New Hampshire Public Utilities Commission

July 8, 1997

ORDER adopting procedural schedule relative to a water utility's petition for a $2,644 (27.2%) rate increase.

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1. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 25% — Adoption of procedural schedule. p. 517.

BY THE COMMISSION:

ORDER

[1] On April 22, 1997, Wesco Utilities Water Company (WESCO) filed with the New Hampshire Public Utilities Commission (Commission), along with supporting testimony and exhibits, a petition for an increase in annual revenue of $2,644 or 27.2%. WESCO did not seek

temporary rates. On May 27, 1997, the Commission issued Order No. 22,603 which suspended the proposed rates, scheduled a prehearing conference for June 24, 1997, and set a deadline for intervention requests. No requests for intervention were submitted to the Commission and one customer attended the prehearing conference and asked to be placed on the service list.

At the prehearing conference, Staff requested and was granted by the Commission the opportunity to prepare a proposed procedural schedule following the prehearing conference. On June 26, 1997, Staff submitted the following agreed-upon schedule:

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

Staff Data Requests to WESCO	July 3, 1997
Data Responses	July 11, 1997
Staff Testimony	July 22, 1997
Settlement Conference	August 4, 1997
Hearing on the merits	August 19, 1997

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the case. We will insert a date, however, for filing a settlement agreement, if one is reached. Any settlement agreement is due no later than August 12, 1997.

Based upon the foregoing, it is hereby

ORDERED, that the proposed procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re WESCO Utilities Water Co., Inc., DR 97-025, Order No. 22,603, 82 NH PUC 430, May 27, 1997.

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NH.PUC*07/08/97*[97372]*82 NH PUC 518*ST Long Distance, Inc.

[Go to End of 97372]

82 NH PUC 518

Re ST Long Distance, Inc.

DE 97-073
Order No. 22,647

New Hampshire Public Utilities Commission

July 8, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 518.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 518.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 518.

BY THE COMMISSION:

ORDER

[1-3] On April 15, 1997, ST Long Distance, Inc. (STLD) filed with the New Hampshire

Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all

Page 518

information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed STLD's petition for compliance with these standards. Staff reports that STLD has provided all the information required by Puc 1304.02. The information provided supports STLD's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of STLD as a New Hampshire CLEC.

We find that STLD has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of STLD in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because STLD has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, STLD agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, STLD seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that STLD's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 July 15, 1997 and to be documented by affidavit filed with this office on or before July 22, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 29, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 5, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 7, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1997.

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NH.PUC*07/08/97*[97373]*82 NH PUC 520*WinStar Wireless of New Hampshire, Inc.

[Go to End of 97373]

82 NH PUC 520

Re WinStar Wireless of New Hampshire, Inc.

DE 97-077
Order No. 22,648

New Hampshire Public Utilities Commission

July 8, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial

criteria. p. 520.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 520.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 520.

BY THE COMMISSION:

ORDER

[1-3] On April 22, 1997, WinStar Wireless of New Hampshire, Inc. (WWNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed WWNH's petition for compliance with these standards. Staff reports that WWNH has provided all the information required by Puc 1304.02. The information provided supports WWNH's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of WWNH as a New Hampshire CLEC.

WWNH has provided a sworn statement that they do not require advance payments or deposits from their customers and requested a waiver of the surety bond requirement in Puc 1304.02(b). Staff recommends granting the waiver.

We find that WWNH has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of WWNH in its intended service area, NYNEX's current

service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition,

fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because WWNH has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, WWNH agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, WWNH seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that WWNH's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that the request for waiver of the surety bond required in Puc 1304.02(b) is granted; 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 July 15, 1997 and to be documented by affidavit filed with this office on or before July 22, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 29, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 5, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 7, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this eighth day of July, 1997.

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NH.PUC*07/08/97*[97374]*82 NH PUC 521*Public Service Company of New Hampshire

[Go to End of 97374]

82 NH PUC 521

Re Public Service Company of New Hampshire

DR 96-390
Order No. 22,649

New Hampshire Public Utilities Commission

July 8, 1997

ORDER approving an electric utility's special rate contract with an industrial customer, Seacoast Mills, Inc. The contract, for interruptible service, is deemed necessary for assuring load retention, so as to make the utility's rates competitive with the customer's costs of self-generation.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Incentives for retaining industrial load — Prevention of bypass and self-generation — Means for achieving — Special rate contracts — Electric utility and sawmill customer. p. 522.

2. RATES, § 339

[N.H.] Electric rate design — Use of special rate contracts — As device for retaining industrial load — Prevention of bypass and self-generation — Assurances of utility rates

Page 521

remaining competitive with customer's costs of self-generation. p. 522.

3. RATES, § 345

[N.H.] Electric rate design — Large power and industrial customers — Use of discounts and special rate contracts — As incentive for load retention — Prevention of bypass and self-generation — Special contract for interruptible service — Sawmill customer. p. 522.

4. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special rate contract — With industrial customer — Purpose — Load retention — Prevention of bypass and self-generation — Sawmill customer. p. 522.

BY THE COMMISSION:

ORDER

On November 26, 1996, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a request pursuant to RSA 378:18 for approval of Special Contract No. NHPUC-136 (NHPUC-136) between PSNH and Seacoast Mills, Incorporated (Seacoast). Seacoast, SIC code 242, located in Brentwood, New Hampshire, is a sawmill that processes white pine logs into planed lumber. PSNH's filing included the special contract, testimony, and a technical statement in support of the discounted rates for Seacoast in both redacted and unredacted form. On January 27, 1997, the Commission granted PSNH's Motion for Protective Order (Order No. 22,489) allowing protective treatment for certain information considered confidential in the filing.

PSNH's primary objective in filing NHPUC-136 is to retain Seacoast as a full-requirements customer. The special contract provides for interruptible service which is priced to be competitive with Seacoast's cost to generate. Seacoast currently has generation installed at its facility which is sized to meet all its electricity needs. PSNH asserts that, absent the contract, Seacoast will separate from PSNH's system and generate its own electricity. PSNH's Sawmill Generation Deferral (SGD) and Load Retention (LR) rates, which offer identical discounts for this customer, are not sufficient to retain Seacoast's load. These tariffed rates are designed for applications in which the customer does not already have generation on site; therefore, the capital cost of the generator is factored into the pricing of those rates.

PSNH asserts that Seacoast presents an unusual situation in that its cost to generate electricity is extremely low because it excludes the amortization of generation equipment. PSNH has modeled the simple payback of Seacoast using its own generator against the savings under Rate SGD and estimates that Seacoast would realize a less than one-year payback by using its own generation and disconnecting from PSNH.

Under the terms of Special Contract No. NHPUC-136, PSNH will provide Seacoast with fixed customer and demand charges that escalate over time and an energy charge that is 1.1 cents per kWh above the sum of total FPPAC costs and the Nuclear Decommissioning Charge for the term of the contract. In the event that Seacoast fails to interrupt, PSNH reserves the right to bill Seacoast at standard tariffed rates.

NHPUC-136 is a five-year special contract. The effective date of the agreement is the latest of October 1, 1996, the date upon which the Commission orders the agreement to become

effective, or the date upon which PSNH has certified that Seacoast is capable of interrupting its service and providing standby generation to supply its load. Either party has the right to terminate the agreement, without penalty, prior to the end of its scheduled term, but no sooner than the date that retail competition for electricity is implemented for at least 70% of the retail customers in the state of New Hampshire, upon six months written notice.

[1-4] Based on our review of the petition

and Staff's recommendation, we will approve NHPUC-136. We believe the Company has shown that special circumstances exist in this situation, as articulated above, so that a departure from the general rate schedule is just and consistent with the public interest. Under RSA 378:18-a, before approving a special contract, we are required to find that tariffed rates are not sufficient to retain the load of the customer. Seacoast clearly meets that criterion. The type of operations Seacoast engages in, coupled with its already installed generation, would enable Seacoast to disconnect from PSNH and to receive substantial savings over either Rate SGD or Rate LR. Thus, absent this special contract, Seacoast would depart from PSNH's system and would no longer contribute toward PSNH's fixed costs.

NHPUC-136 will provide benefits to PSNH and its customers during the transition to competition by retaining Seacoast's contribution toward PSNH's fixed costs. This special contract will also allow Seacoast the flexibility of purchasing generation from the competitive market once the 70% threshold is met. For the purposes of this special contract, we will not request that PSNH and Seacoast modify the 70% threshold, but PSNH and others should be aware that our approval of NHPUC-136 should not be construed as endorsing any particular threshold level of retail competition should other special contracts be filed with the Commission.

We will require PSNH to report to us the date when it has certified that Seacoast is capable of interrupting its load. If PSNH does not expect Seacoast to certify before the effective date of this Order, PSNH shall notify us in writing. We will also require PSNH to report to us if Seacoast does not interrupt when requested to do so by PSNH, the reasons why it has not interrupted and whether PSNH intends to respond to the non-compliance by placing Seacoast on the applicable standard tariffed rate.

Should any party seek a hearing upon review of this special contract order, it should file a motion stating with specificity why it believes one is appropriate.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-136 between PSNH and Seacoast Mills, Incorporated is APPROVED; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order to be published once in a statewide newspaper of general circulation, such publication to be no later than July 15, 1997 and to be documented by affidavit filed with this office on or before July 22, 1997; 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 29, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 5, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 7, 1997 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 July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-390, Order No. 22,489, 82 NH PUC 46, Jan. 27, 1997.

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NH.PUC*07/10/97*[97375]*82 NH PUC 524*U S West Interprise America Inc.

[Go to End of 97375]

82 NH PUC 524

Re U S West Interprise America Inc.

DE 97-079
Order No. 22,650

New Hampshire Public Utilities Commission

July 10, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 524.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 524.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 525.

BY THE COMMISSION:

ORDER

The petitioner has advised the New Hampshire Public Utilities Commission (Commission) that it did not notify the public by July 8, 1997 pursuant to Order *Nisi* No. 22,638 which was issued July 1, 1997. Therefore, this order is issued to establish new dates for the *Nisi* process.

On May 30, 1997, U S West Interprise America INC. (USW) filed with the Commission a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed USW's petition for compliance with these standards. Staff reports that USW has provided all the information required by Puc 1304.02. The information provided supports USW's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of USW as a New Hampshire CLEC.

USW has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1, 2] We find that USW has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of USW in its intended service area, NYNEX's current service area, is in the public good, thus meeting the

requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because USW has satisfied the requirements of Puc 1304.01(a), we will grant certification.

[3] As part of its application, USW agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, USW seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that USW's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 24, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 31, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 7, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 11, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this tenth day of July, 1997.

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NH.PUC*07/11/97*[97376]*82 NH PUC 525*Concord Electric Company

[Go to End of 97376]

82 NH PUC 525

Re Concord Electric Company

DR 97-123
Order No. 22,651

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Merrimack County Nursing Home for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 526.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 526.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 526.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Concord Electric Company (CECo) filed Contract No. 7, a voluntary, one-year interruptible load agreement between CECo and Merrimack County Nursing Home (the customer). Contract No. 7 allows the customer to interrupt up to 200 kW of its load when called upon by CECo during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 7 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by CECo and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

CECo also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 7 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 7 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend CECo and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we direct CECo to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 7 between Concord Electric Company and Merrimack County Nursing Home is APPROVED; and it is

FURTHER ORDERED, that Concord Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 7 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that CECo file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level

and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/11/97*[97377]*82 NH PUC 527*Concord Electric Company

[Go to End of 97377]

82 NH PUC 527

Re Concord Electric Company

DR 97-124
Order No. 22,652

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Penacook Fibre Company for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 527.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p.

527.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 527.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Concord Electric Company (CECo) filed Contract No. 8, a voluntary, one-year interruptible load agreement between CECo and Penacook Fibre Company (the customer). Contract No. 8 allows the customer to interrupt up to 550 kW of its load when called upon by CECo during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 8 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by CECo and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

CECo also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 8 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 8 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend CECo and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we direct CECo to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 8 between Concord Electric Company and Penacook Fibre Company is APPROVED; and it is

FURTHER ORDERED, that Concord Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and

to approve Contract No. 7 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that CECo file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/11/97*[97378]*82 NH PUC 528*Concord Electric Company

[Go to End of 97378]

82 NH PUC 528

Re Concord Electric Company

DR 97-125
Order No. 22,653

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Shaw's Supermarkets for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 528.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 528.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 528.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Concord Electric Company (CECo) filed Contract No. 9, a voluntary, one-year interruptible load agreement between CECo and Shaw's Supermarkets (the customer). Contract No. 9 allows the customer to interrupt up to 50 kW of its load when called upon by CECo during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 9 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by CECo and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

Page 528

CECo also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 9 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 9 is in the public interest. We have held hearings on the capacity

situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend CECo and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we direct CECo to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 9 between Concord Electric Company and Shaw's Supermarkets is APPROVED; and it is

FURTHER ORDERED, that Concord Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 7 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that CECo file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/11/97*[97379]*82 NH PUC 529*Exeter and Hampton Electric Company

[Go to End of 97379]

82 NH PUC 529

Re Exeter and Hampton Electric Company

DR 97-126
Order No. 22,654

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Phillips Exeter Academy for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 530.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 530.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service —

Page 529

Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 530.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Exeter & Hampton Electric Company (E&H) filed Contract No. 1, a voluntary, one-year interruptible load agreement between E&H and Phillips Exeter Academy (the customer). Contract No. 1 allows the customer to interrupt up to 50 kW of its load when called upon by E&H during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 1 is classified with NEPOOL as

Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by E&H and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

E&H also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 1 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 1 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend E&H and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we direct E&H to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 1 between Exeter & Hampton Electric Company and Phillips Exeter Academy is APPROVED; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 1 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that E&H file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Exeter & Hampton Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/11/97*[97380]*82 NH PUC 531*Exeter and Hampton Electric Company

[Go to End of 97380]

82 NH PUC 531

Re Exeter and Hampton Electric Company

DR 97-127
Order No. 22,655

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Shaw's Supermarkets of Plaistow for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 531.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 531.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 531.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Exeter & Hampton Electric Company (E&H) filed Contract No. 2, a voluntary, one-year interruptible load agreement between E&H and Shaw's Supermarkets of

Plaistow (the customer). Contract No. 2 allows the customer to interrupt up to 50 kW of its load when called upon by E&H during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 2 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by E&H and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

E&H also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 2 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 2 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend E&H and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we will direct E&H to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 2 between Exeter & Hampton Electric Company and Shaw's Supermarkets of Plaistow is APPROVED; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company's request to waive

the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 2 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that E&H file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Exeter & Hampton Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/11/97*[97381]*82 NH PUC 532*Exeter and Hampton Electric Company

[Go to End of 97381]

82 NH PUC 532

Re Exeter and Hampton Electric Company

DR 97-128
Order No. 22,656

New Hampshire Public Utilities Commission

July 11, 1997

ORDER approving an electric utility's special rate contract with Shaw's Supermarkets of Stratham for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 532.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 532.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 532.

BY THE COMMISSION:

ORDER

[1-3] On June 20, 1997, Exeter & Hampton Electric Company (E&H) filed Contract No. 3, a voluntary, one-year interruptible load agreement between E&H and Shaw's Supermarkets of Stratham (the customer). Contract No. 3 allows the customer to interrupt up to 50 kW of its load when called upon by E&H during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 3 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible

Page 532

load based on the estimated average load relief achieved during the interruption which will be calculated by E&H and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

E&H also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 3 retroactive to June 18, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 3 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4. We commend E&H and the customer for their assistance.

While we believe the use of a special contract is warranted in this situation, we direct E&H to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 3 between Exeter & Hampton Electric Company and Shaw's Supermarkets of Stratham is APPROVED; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 3 retroactively to June 18, 1997 is DENIED; and it is

FURTHER ORDERED, that E&H file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level

and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Exeter & Hampton Electric Company 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 July 17, 1997 and to be documented by affidavit filed with this office on or before July 25, 1997; and it is

FURTHER ORDERED, that any interested party may file written comments or request an opportunity to be heard in this matter no later than July 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on July 25, 1997, 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, 1997.

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NH.PUC*07/14/97*[97382]*82 NH PUC 533*Portland Natural Gas Transmission System

[Go to End of 97382]

82 NH PUC 533

Re Portland Natural Gas Transmission System

DSF 96-152
Order No. 22,657

New Hampshire Public Utilities Commission

July 14, 1997

ORDER authorizing a natural gas pipeline carrier to construct 110 miles of large-diameter gas pipeline facilities crossing both public waters and public lands.

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1. CERTIFICATES, § 42

[N.H.] When required — Construction of facilities — Crossing of public waters and public lands as a factor — Commission jurisdiction as to associated licensing. p. 534.

2. GAS, § 5

[N.H.] Construction and equipment — Installation of pipeline facilities — Multiple site locations — Crossing of public waters and

public lands as a factor. p. 535.

3. CONSTRUCTION AND EQUIPMENT, § 6

[N.H.] Pipeline facilities — Large-diameter design — Multiple site locations — Crossing of public waters and public lands as a factor — Natural gas pipeline carrier. p. 535.

BY THE COMMISSION:

ORDER

I. INTRODUCTION

On May 2, 1996, Portland Natural Gas Transmission System (PNGTS), pursuant to New Hampshire RSA 162-H,, submitted an application for an Energy Facility Certificate to construct a large diameter natural gas pipeline and related facilities through various portions of the State of New Hampshire. The Site Evaluation Committee (SEC) opened Docket No. SEC 96-01 to investigate the application. Maritimes and Northeast Pipeline, L.L.C. (M&N) filed on September 25, 1996 an application for an Energy Facility Certificate to construct a large diameter natural gas pipeline and related facilities through various portions of the State of New Hampshire. The SEC opened Docket No. SEC 96-03 to investigate the application.

Pursuant to RSA 162-H:4 II:

> "The committee shall incorporate in any permit issued hereunder such terms and conditions as may be specified to the committee by any such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however the committee shall not issue any permit hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction."

[1] The Public Utilities Commission has jurisdiction over construction and maintenance of pipelines which cross public waters of the state and state owned land. RSA 371:17 provides as follows:

> "Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public

waters of this state, or over, under or across any of the land owned by this state, it shall petition the commission for a license to construct and maintain the same. For the purposes of this section, `public waters' are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the commission may prescribe. Every corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the commission for a license in the same manner prescribed for a public utility."

The subject docket, DSF 96-152, was opened for the purpose of performing the required investigation and issuing an appropriate order to the SEC on the findings of those investigations.

II. DESCRIPTION OF FACILITIES

Throughout the course of the investigation, the applications were amended to incorporate additional facilities, significant alterations to the proposed location of facilities, and a proposal for the installation of joint facilities submitted by PNGTS and M&N. All of the modifications to the application were accepted for consideration by the SEC.

The final proposal consists of approximately 292 miles of 24- inch and 30-inch diameter natural gas pipeline (including laterals and ancillary equipment) extending from an interconnection with TransCanada Pipelines Limited at the Canadian border at Pittsburg, New Hampshire, to an interconnection with the Tennessee Gas Pipeline Company at Dracut, Massachusetts. Approximately 110 miles of the pipeline is in the State of New Hampshire.

The New Hampshire portions of the pro-

ject can be divided into two distinct segments, identified as the northern and southern routes. PNGTS proposes to construct approximately 78 miles of 24- inch outside diameter pipeline in Coos County extending from the Canadian border at Pittsburg, New Hampshire east to the Maine Border. This segment will cross through the towns of Pittsburg, Stewartstown, Colebrook, Columbia, Stratford, Northumberland, Stark, Dummer, Milan, Berlin, Gorham and Shelburne. (Northern Route).

PNGTS and M&N jointly propose to construct approximately 31 miles of 30-inch outside diameter natural gas pipeline from the Maine Border to Dracut, Massachusetts. This portion of the proposed pipeline will cross through Newington, Portsmouth, Greenland, Stratham, Exeter, East Kingstown, Newton and Plaistow. (Southern Route).

In addition to mainline facilities, the application includes facilities identified as laterals to Groveton and Newington, New Hampshire and Haverhill, Massachusetts. The Groveton lateral consists of approximately 0.7 mile of 8-inch diameter pipeline and the Newington lateral consists of approximately 1.4 miles of 16-inch pipeline as-well-as new meter stations in Groveton and

Newington. The Haverhill, Massachusetts Lateral consists of approximately .6 mile (NH portion only), 20-inch outside diameter lateral and appurtenant facilities traversing Plaistow, New Hampshire.

III. COMMISSION INVESTIGATION

The Commission investigation was conducted concurrently with the SEC investigation. The Administrator of the Safety Division reviewed or was present to listen to the following in order to evaluate the proposal: original and subsequent applications, data responses, written public comment, oral comment submitted during informational hearings, and testimony presented at the adversarial hearings. In addition, on-site visits of selected locations were conducted to provide additional insight into those particular geographical areas.

[2, 3] The Commission investigation was conducted with recognition that numerous state agencies exercise jurisdiction over land and water bodies to be licensed, and that the granting of a license is not exclusive in any decision on the issuance of a Certificate of Site and Facility and conditions thereof. With this recognition, the Commission investigation focused on areas other than, environmental, archeological, fish and wildlife, or transportation issues. Final decisions on those issues will be addressed by the SEC in the certificate proceeding.

The Commission investigation focused on the potential impact of the construction and operation of the pipeline facilities on public safety and functional use of the land and water bodies traversed. The criteria used to evaluate public safety was derived from four sources. The first source is the U.S. Department of Transportation (DOT), Research and Special Programs Administration, (RSPA) Subchapter D-Pipeline Safety, Part 192 Transportation of Natural and Other Gas by Pipeline: minimum Federal safety standards (49 CFR Part 192). This document prescribes the minimum standards for the design, construction, operation and maintenance of natural gas pipelines. The second source utilized is the New Hampshire Public Utilities Commission, (NHPUC), N.H. Code of Administrative Rules, Chapter PUC 500, Rules For Gas Service. The third source employed in the evaluation involves review of documents related to standard pipeline engineering practices. The fourth and final source of information used in the criteria includes the public comment filed in this and the related SEC proceeding.

IV. COMMISSION ANALYSIS

After review of all the evidence submitted in the related proceedings, and subject to the conditions stated below, we find that the proposed pipeline crossings will not unreasonably impact public safety or public functional use of any ponds, tidewater bodies, streams, or state owned land. This finding is predicated on the condition that all facilities within the jurisdiction of the license will be installed below grade, in accordance with federal and state regulations, and designed and constructed consistent with sound engineering practice.

In addition, the license is conditional upon the applicant receiving all necessary state and federal agency permits, and the receipt of a final certificate and conditions thereof from the SEC.

Based upon the foregoing, it is hereby

ORDERED, that licenses, as specified by RSA 371:17, for the crossings delineated in Table 4.3 Waterbodies Crossed by the Revision(a), Table D-2.1 REVISED PNGTS Water Crossings-Northern New Hampshire (cont'd) and Table 4-5 Perennial and Intermittent Waterbodies Crossed by the Joint Pipeline Project and Railroads Crossed in New Hampshire, appended to this document, are granted; and it is

FURTHER ORDERED, that the facilities be installed in accordance with requirements imposed by the SEC; and it is

FURTHER ORDERED, that the licenses are conditional upon applicant receiving all necessary state and federal agency permits, and the receipt of a final certificate and conditions thereof from the SEC.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1997.

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NH.PUC*07/14/97*[97383]*82 NH PUC 536*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97383]

82 NH PUC 536

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-114
Order No. 22,658

New Hampshire Public Utilities Commission

July 14, 1997

ORDER granting interim protective treatment of certain financial documents submitted by a local exchange telephone carrier in the course of its filing for tariff changes to its message telecommunications service rates. The protective order is limited to a four-day period, during which the carrier must supplement its proof of need for permanent confidentiality.

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1. RATES, § 584

[N.H.] Telephone rate design — Message telecommunications service — Proposed changes to rate credit threshold — Underlying financial information — Interim protective treatment — Local exchange carrier. p. 536.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain financial documents — Submitted as part of a proposed tariff revision — Effect of inadequate showing of need for confidentiality — Protective treatment on limited, interim basis only — Necessity of filing supplemental evidence demonstrating sensitivity of information — Local exchange carrier. p. 536.

BY THE COMMISSION:

ORDER

[1, 2] On June 6, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to N.H. Admin. Chapter Puc 208.08, a motion requesting confidentiality for certain financial documents (hereinafter collectively the Information) relating to NYNEX's requests for tariff changes to its Message Telecommunications Service/Switchway day rate period credit threshold and to eliminate the service establishment charges for Business Package and Business Package Plus Services. The Commission Staff takes no position regarding the motion and the Office of Consumer Advocate also takes no position.

Puc 204.08(b) specifies the particular information which NYNEX must provide to the Commission in order for the Commission to exercise its authority, pursuant to Puc 204.08(a), to grant a motion for protective treatment. Puc 204.08(b) requires NYNEX to provide evidence

that: (1) the information is not general public knowledge or published elsewhere; and (2) measures have been taken to prevent dissemination of the information in the ordinary course of business. In its motion, NYNEX states that the Information is not made available to the public in the ordinary course of business, nor is it public knowledge. This statement is not adequate evidence that measures have been taken to prevent dissemination of the information.

NYNEX further states that disclosure of the Information would result in competitive harm,

arguing that therefore the requirements of Puc 204.08(b)(4)b are met. However, NYNEX fails to provide facts demonstrating the competitive harm. NYNEX gives no examples of how competitors would make use of this information to the detriment of NYNEX. Without such a demonstration, NYNEX has not met the burden of Puc 204.08(b)(4)b.

NYNEX further argues, citing our Order No. 21,731 in DE 96-069, that the Information should be protected pursuant to Puc 204.08(b)(4)b because NYNEX's competitors in the increasingly competitive telecommunications industry would gain an advantage, whereas "if NYNEX were not a regulated entity, the information would not be available for public inspection." However, the information sought to be protected in DE 96-069 pertained to special contracts between NYNEX and individual customers whereas the Information here is general revenue information. In the former case, competitors could gain an advantage in their efforts to win customers and individual customers could gain an advantage in negotiating other, similar, special contracts. The potential for competitive harm was evident. In this case, the potential for competitive harm is unclear based upon NYNEX's filing.

NYNEX could seek protective treatment under Puc 204.08(b)(4)c by demonstrating that disclosure of the information would result in an invasion of privacy. Here, no privacy interest is affected.

NYNEX states that the Information "pertains to the provision of competitive services and includes information not reflected in tariffs of general application such as customer-usage characteristics"; the information "contains revenue analyses and competitively-sensitive, customer-usage information for various toll services." NYNEX's statement implies that the Information therefore meets the requirements of Puc 204.08(b)(4)d. However, while the language NYNEX uses to describe the Information is somewhat similar to the language in Puc 204.08(b)(4)d, the actual language of that section requires that the information consist of "(D)etails of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application." The information for which NYNEX seeks protection is not special contract information.

We find that NYNEX has not provided adequate evidence for our review. In order to grant NYNEX an opportunity to supplement its pleading to meet the standard outlined above, we will continue confidential treatment of the Information until July 18, 1997. If NYNEX is unable to meet the standard, we will deny its motion.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX may file a supplement to its motion for protective treatment on or before July 18, 1997; and it is

FURTHER ORDERED, that the Information shall receive protective treatment until further order of the Commission.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of July, 1997.

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*07/14/97*[97384]*82 NH PUC 538*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97384]

82 NH PUC 538

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Sprint Spectrum L.P.

DE 97-099
Order No. 22,659

New Hampshire Public Utilities Commission

July 14, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 538.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 538.

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement

— Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 538.

BY THE COMMISSION:

ORDER

[1-3] On May 27, 1997, New England Telephone and Telegraph Company (NYNEX) and Sprint Spectrum L.P. (Sprint) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement).

The agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. NYNEX and Sprint will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

The Staff recommends approval of the Agreement between NYNEX and Sprint based on a review of the summary and actual agreement for compliance with the TAct. Staff points out that the Agreement is substantially consistent with the terms of previously approved interconnection agreements and that all prices are the same as other agreements between NYNEX and cellular companies.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations. We find that approval is consistent with the public interest in achieving a more competitive telecommunications market. Therefore, we will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and

Sprint is approved; 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 July 21, 1997 and to be documented by affidavit filed with this office on or before July 28, 1997; 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 4, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 11, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 13, 1997, 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 July, 1997.

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NH.PUC*07/14/97*[97385]*82 NH PUC 539*Public Service Company of New Hampshire

[Go to End of 97385]

82 NH PUC 539

Re Public Service Company of New Hampshire

DE 97-117
Order No. 22,660

New Hampshire Public Utilities Commission

July 14, 1997

ORDER authorizing an electric utility to construct and maintain electric lines and fiber optic cables using existing transmission lines crossing over public waters at five locations in Nashua, Manchester, Hudson, Litchfield, and Merrimack.

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1. ELECTRICITY, § 7

[N.H.] Authorization for new power lines — Installation of fiber optic cable — Use of existing transmission lines — Multiple site locations — Crossing of public waters as a factor. p. 541.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Cable lines — Fiber optic cables — Use of existing transmission lines — Multiple site locations — Crossing of public waters as a factor — Electric utility. p. 541.

BY THE COMMISSION:

ORDER

On June 10, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition pursuant to RSA 371:17 to construct and maintain electric lines and fiber optic cable at existing transmission line crossings over public waters at five (5) locations in the Cities of Nashua and Manchester and the Towns of Hudson, Litchfield, and Merrimack, New Hampshire.

In order to meet the requirements of service to the public, PSNH has constructed and currently maintains electric transmission lines over and across certain public waters, which lines are an integral part of its electric system. The definition of public waters contained in 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 has determined that these subject crossings are over and across public waters.

PSNH has stated, and staff has verified, that all five of the existing transmission line crossings have been previously licensed by the Commission. The installation of these five fiber optic cable sections is for upgrading the reliability and capacity of the communications system

used in PSNH's electric system operations. These fiber optic cable sections are a continuation of the 5-COM project specified in Docket DE 96-370. A summary listing of the subject crossings is listed below in Table-A, which includes for each crossing the PSNH line number and voltage, crossing location, and docket and order numbers for each crossing
previously licensed. PSNH has stated that as the installation methods used to place the fiber optic cable will avoid any impacts to any wetlands in the areas of the crossings, no permit is required from the Department of Environmental Service's Wetlands Board. The following (Table-A) summarizes information regarding these crossings:

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

Table-A

Summary of PSNH Petition Information

LineLine No.	*Voltage*	*Location*	*NHPUC Docket*	*NHPUC Order*
379 (1)	345 kV	Merrimack River, Litchfield/Merrimack	DE-5805	9,883
K165 (2)	115 kV	Merrimack River, Nashua/Hudson	DE-74244	11,691
K165 (2)	115 kV	Merrimack River, Litchfield/Merrimack	DE-5747	9,829
K165 (2)	115 kV	Merrimack River, Litchfield/Merrimack	DE-7622	12,219
372 (2)	34.5 kV	Merrimack River Manchester	DE-7622	12,219

(1) OPGW
(2) ADSS

On one of the existing crossings, PSNH proposes to replace one of the existing overhead shield wires with a new shield wire containing a core of glass optical fibers, known as Fiber Optic Groundwire (OPGW) cable. This type of installation does not affect the existing clearance between the water and the lowest cable presently crossing the water. The one location where the OPGW cable is to be installed will be on Line 379 crossing the Merrimack River in Litchfield and Merrimack. The other four crossings will use under built, all dielectric, self supporting fiber optic cable, known as ADSS cable. The minimum required clearances above the water surfaces were determined referencing the National Electrical Safety Code (NESC) Rule 232. The four crossings at which ADSS cable will be installed are:

1) Line K165 (Bridge Street Tap) crossing the Merrimack River in Nashua and Hudson, NH. The length is approximately 475´. Based on a constant river width of 475´ the one mile impoundment is approximately 57.6 acres. This requires a minimum clearance of 25.5´, the actual clearance will be 36.7´.

2) Line K165 (Busch Tap) crossing the Merrimack River between Litchfield and Merrimack, NH. The length is approximately 539´. Based on a constant river width of 539´ the one mile impoundment is approximately 65.3 acres. This requires a minimum clearance of 25.5´, the actual clearance will be 36.6´.

3) Line K165 (Reeds Ferry to Hudson) crossing the Merrimack River in Litchfield and Merrimack, NH. The length is approximately 519´. Based on a constant river width of 519´ the one mile impoundment is approximately 62.9 acres. This requires a minimum clearance of 25.5´,

the actual clearance will be 28.2´.

4) Line 372 crossing the Merrimack River in Manchester, NH. The length is approximately 617´. Based on a constant river width of 617´ the one mile impoundment is approximately 75 acres. This requires a minimum clearance of 25.5´, the actual clearance will be 36.1´. This ADSS cable will be installed on the Northerly side of the existing transmission structures, the southerly side of the towers contains an ADSS cable previously licensed through the Commission.

[1, 2] PSNH has attested and Staff agrees that the construction of the fiber optic cables will meet or exceed the requirements of the NESC. PSNH has stated that the use and enjoyment by the public of said public waters will not be diminished in any material respect as a result of the overhead line and cable crossings.

The Commission finds the fiber optic cable crossings and electric line crossings necessary for PSNH to meet the reasonable requirements of service to the public. However, the public should be offered, consistent with RSA 371:20, the opportunity to respond in support of, or in opposition to, PSNH's petition.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that PSNH is authorized, pursuant to RSA 371:17, *et seq.*, to construct and maintain electric lines and fiber optic cable over and across public waters at five (5) locations in the Cities of Nashua and Manchester and the Towns of Hudson, Litchfield, and Merrimack, New Hampshire, unless the Commission directs otherwise prior to the proposed effective date; and it is

FURTHER ORDERED, that all reconstruction hereafter performed conform to the requirements of the NESC 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 a copy of this Order *Nisi* to be published once in a newspaper of general circulation in the aforementioned Towns and Cities, such publications to be no later than July 21, 1997 and to be documented by affidavit filed with this office on or before July 28, 1997; and it is

FURTHER ORDERED, that PSNH notify the aforementioned Towns and Cities of this matter by serving a copy of this order on the Town/City Clerks by First Class U.S. Mail, said notification to be verified by affidavit filed on or before July 28, 1997; 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 4, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 11, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 13, 1997, 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 July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 74-224, Order No. 11,691, 60 NH PUC 345, Jan. 3, 1975. [N.H.] Re Public Service Co. of New Hampshire, DE 76-22, Order No. 12,219, 61 NH PUC 97, Apr. 21, 1976.

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NH.PUC*07/16/97*[97386]*82 NH PUC 542*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97386]

82 NH PUC 542

Re New England Telephone and Telegraph Company dba NYNEX

DE 97-013
Order No. 22,661

New Hampshire Public Utilities Commission

July 16, 1997

ORDER lifting the suspension of the procedural schedule that had been adopted in Order No. 22,531 (82 NH PUC 290, *supra*) for reviewing a local exchange telephone carrier's compliance with the provisions of § 271 of the Telecommunications Act of 1996. The suspension is lifted for purposes of considering the carrier's filing of a statement of generally available terms and conditions, and a new procedural schedule is approved as well.

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1. TELEPHONES, § 3

[N.H.] Operating practices — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine compliance with thereto — Lifting of suspension of procedural schedule — Adoption of new procedural schedule — To review a proposed statement of generally available terms and conditions — Local exchange carrier. p. 542.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Local exchange telephone carrier — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine compliance with thereto — Lifting of suspension of procedural schedule — Adoption of new procedural schedule — To review a proposed statement of generally available terms and conditions. p. 542.

BY THE COMMISSION:

ORDER

[1, 2] The New Hampshire Public Utilities Commission (Commission) opened this docket in order to develop a thorough record regarding the application pursuant to §271 of the Telecommunications Act of 1996 (TAct) which New England Telephone and Telegraph Company (NYNEX) intends to file with the FCC and which requires Commission review. NYNEX notified the Commission that it intended to use a statement of generally available terms and conditions (SGAT) to demonstrate compliance with the §271 checklist and, on March 24, 1997, the Commission issued Order 22,531 establishing a procedural schedule. On April 30, 1997, the Commission granted NYNEX's request to suspend the procedural schedule. By letter dated May 5, 1997, NYNEX announced its intention to demonstrate checklist compliance using interconnection agreements rather than via an SGAT. In that same letter, NYNEX indicated that it would file an SGAT for the Commission's review, not as part of its §271 preparation but as a direct filing pursuant to §252(f) of TAct, on July 1, 1997. NYNEX made the filing on July 11, 1997.

Review of an SGAT pursuant to §252(f) occurs within an expedited schedule. In order to permit maximum opportunity for review, we will lift the suspension of this docket for the purpose of this SGAT filing. Our completion of this SGAT review will not close this docket; examination of NYNEX's §271 filing will continue as part of this docket.

This SGAT filing does not trigger the 90-day notice period required in our Order No. 22,610. We expect, as NYNEX suggested in its request for suspension, that completion of the procedural schedule in this case will occur at least 60 days prior to its §271 filing at the FCC.

NYNEX has proposed a procedural schedule which we modify in one respect, as follows:

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


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July 11, 1997    SGAT, cost studies and
                 testimony by NYNEX
August 1, 1997   Data Requests to NYNEX
                 from all parties
August 22, 1997  Data Responses from NYNEX
Sept. 3-5, 1997  Technical Sessions
Sept. 8-9, 1997  Technical Sessions
Sept. 12, 1997   Position Papers
Sept. 30 through Hearings
Oct. 2, 1997
October 10, 1997 Briefs (optional)
October 20, 1997 Commission Decision
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Based upon the foregoing, it is hereby

ORDERED, that the suspension of this docket is hereby lifted; and it is

FURTHER ORDERED, that the procedural schedule outlined herein for the purpose of review of the SGAT is approved.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of July, 1997.

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NH.PUC*07/21/97*[97387]*82 NH PUC 543*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97387]

82 NH PUC 543

Re New England Telephone and Telegraph Company dba NYNEX

DE 97-075
Order No. 22,662

New Hampshire Public Utilities Commission

July 21, 1997

ORDER authorizing a poll to be conducted of the residents of Danbury as to whether extended area telephone service (EAS) should be instituted between that exchange and the one in Bristol. Although the commission had previously found that the development of local exchange competition and further growth of interexchange competition militated against any further expansion of EAS, it notes the special circumstances of Danbury, which is unlikely to become the object of any competition. Moreover, no resident is able to call schools, medical facilities, or other basic services without incurring a toll charge as telecommunications services are presently configured.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 545.

2. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 545.

3. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Proposal for expanded EAS calling area — Polling of customers — Factors — Present calling exchange as not reaching true community of interest — Inability to use local calling to reach schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize — Justification for deviation from policy of no EAS expansion. p. 546.

4. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Proposal for expanded EAS calling area — Polling of customers — Factors — Present calling exchange as not reaching true community of interest — Inability to use local calling to reach schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize

Page 543

— Justification for deviation from policy of no EAS expansion. p. 546.

5. MONOPOLY AND COMPETITION, § 92

[N.H.] Telecommunications — Particular types of service — Extended area service (EAS) — Proposal for expanded EAS calling area — Justification for exception to policy of no EAS expansion — Toll and local exchange competition as unlikely to materialize — No threat to competitors — Present calling exchange as not reaching true community of interest. p. 546.

APPEARANCES: Marc Manna, et al. For the Town of Danbury, Victor D. DelVecchio, Esq. for New England Telephone and Telegraph Company (NYNEX), E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 17, 1997, Marc Manna, *et al*. filed a petition with the New Hampshire Public Utilities Commission (Commission) requesting that the 768 local calling area, also known as Extended Area Service (EAS), for Danbury be expanded to include the Bristol 744 exchange. On June 4, 1997, the Commission issued an Order of Notice scheduling a hearing for June 26, 1997 and indicating that the petition raises issues concerning, among other things, whether the desired expansion acts to safeguard the rights of consumers, ensures continued quality of service, protects public safety or preserves and enhances universal service. In addition, the Commission identified as an issue whether expanding the local calling area would have a negative effect upon competition.

On June 26, 1997, the Commission heard comments from members of the public, from NYNEX, and from the Staff of the Commission (Staff).

II. POSITIONS OF THE PARTIES AND STAFF

A. *Marc Manna, et al.*

A number of Danbury residents submitted comments, both written and oral, in support of expanding the Danbury exchange. The primary reason put forth for requesting the expansion was that Danbury is unable to call any nearby towns at all. The current calling area requires the residents of Danbury to pay toll charges to reach all other exchanges. Residents asserted that all services to the town are located outside the town. Therefore, in order to reach schools, banks, pharmacies, physicians, dentists, grocery, and entertainment resources, residents must incur toll charges.

On behalf of the town, Marc Manna presented signed petitions requesting the change. In addition, the Commission noted the receipt of numerous letters in support, including a letter from the Danbury Selectmen, the Newfound Area School District Superintendent, and principals of the area elementary and middle schools.

During the public comments, the residents of Danbury revealed that they wish a two way EAS route between Danbury and Bristol. They indicated their willingness to pay the increased basic service charges which would result from increasing the number of access lines reachable, thus moving them from Rate Group 1 to a higher rate group.

With regard to guidelines used by the Commission to determine whether an EAS area should be expanded, commenters objected to the requirement of a 50% positive response. The

commenters proposed a simple majority of those who return ballots.

B. *NYNEX*

NYNEX stated its belief that a competitive market is likely to provide alternative solutions to customers' desires for different calling areas.

However, NYNEX argued that the Commission's Order No. 22,107 in DRM 94-001 (the EAS Order) incorrectly found that the Telecommunications Act of 1996 (the TAct) prohibits changes to existing EAS boundaries. NYNEX pointed out that although expansion of a local calling area necessarily reduces the toll market available for toll competition, the expanded local area is itself subject to competition under the TAct. In addition, NYNEX cited § 601(c) of the TAct. That section instructs that Congress does not intend to modify or supersede any state laws except where expressly provided in the TAct. Therefore, NYNEX argues that the Commission has the authority to continue to consider individual EAS petitions.

If the Commission were to decide to consider individual EAS petitions, NYNEX urged the use of the guidelines developed in Docket 82-70 on a one way basis to determine that a strong community of interest exists, that no adverse economic impact falls on the company, and that the majority of customers in the exchange want the expansion of calling area.

C. *Staff*

Staff presented a summary of the EAS expansion process, stressing that the effect of increasing the local calling area is to increase the fee for basic service for every customer in the exchange. Staff argued that the Commission's two-year, in-depth investigation of EAS in Docket No. DRM 94-001 correctly concluded that competition, given time to grow in New Hampshire, will give customers the power to choose their own customized calling areas. This investigation analyzed the number of consumer complaints about EAS and state-wide data regarding calling patterns of N.H. customers, considered issues of equity and preservation of monthly basic service rates, and evaluated seven proposed plans for revising EAS. Staff cited the Commission's statement in the EAS order that "(T)he most responsive approach to consumers' complaints regarding toll charges is to consider the means at our disposal for increasing competition in the intrastate toll market." The Commission made good on that statement, according to Staff, by authorizing intraLATA presubscription, which became effective on June 2, 1997. Additionally, Staff pointed out that the Commission's EAS order urged telephone carriers to develop creative solutions to the EAS problems which exist, but that the carriers have not responded, even with Optional Calling Plans.

Should the Commission choose to address this individual petition rather than wait for the benefits of competition, Staff argued that the old EAS guidelines are inappropriate now because

of the requirement for "revenue neutrality" to NYNEX, i.e. protection from any negative impact resulting from expanded EAS. Staff's position is based on the rationale that an aggressive competitive carrier could capture much of NYNEX's current toll revenues, driving NYNEX's toll revenues down and thereby necessitating only a small surcharge to achieve revenue neutrality in an EAS expansion. An affirmative majority would therefore be easier to obtain. However, the result of the affirmative majority would be to take all the traffic away from the competitor and give it back to NYNEX, thus harming the competitive environment. Staff recommended giving competition a chance to develop sufficiently to address EAS, causing high toll bills to decrease while not imposing any basic service increase on customers who do not make numerous toll calls.

III. COMMISSION ANALYSIS

We appreciate all the thoughtful comments and arguments made in this case. We commend members of the community for involving themselves in a complex but important issue.

[1, 2] In compliance with the order in *Re New England Telephone and Telegraph Company*, 67 NH PUR 475 (1982), Docket DR 82-70, we established guidelines for evaluating petitions to expand local calling areas. The guidelines required (1) evidence of the existence of a community of interest, (2) determination of the extent of net lost toll revenues to the telephone company, and (3) a vote in the affirmative of a majority of the total number of customers in the exchange.

In DRM 94-001, we conducted an

investigation of local calling areas which culminated in Order No. 22,107 issued April 15, 1996. In that order we decided that changes to EAS should not be instituted by regulation. Instead, we found that increased competition in the toll market as a result of intraLATA presubscription (ILP) and other changes mandated by the TAct would effectively expand EAS by creative offerings of competing carriers. We also determined that the TAct, in particular Section 253, appeared to preclude regulatory expansion of EAS, whether by rulemaking or by consideration of individual petitions under the EAS guidelines and that the TAct inhibited our ability to continue to use the EAS guidelines.[1(109)]

On June 18, 1996, we clarified Order No. 22,107 as follows:

> To the extent our Order can be read as prohibiting the filing of EAS petitions for all time, we should clarify our intent. Companies continue to have the right to petition for a rulemaking on any issue, which we have the discretion to accept or reject. RSA 541-A:4. Our prior Order was not meant in any way to limit that statutory authority. In addition, though we stated in our Order that we would no longer entertain petitions for expanded EAS, we should state rather that we do not intend to handle petitions for EAS as we have

in the past. If a LEC seeks a change in its calling area, it will bear a greater burden than in the past, having to demonstrate to the Commission that competitors will not be harmed and that the expansion is consistent with state and federal law. GST's arguments concerning the proper interpretation of Section 253 of the Tact would be considered at such a proceeding. Order No. 22,204 at p. 4.

[3-5] We analyze the Danbury petition in light of our prior decisions, interpretation of the TAct by the FCC in orders issued in August 1996 and May 1997, subsequent to our 1996 EAS orders, and changes in the telecommunications industry in New Hampshire since June 1996.

Danbury's citizens, not the Local Exchange Carrier (LEC), submitted this petition for expanded EAS. Therefore, the petition does not appear to be a competitive response. Rather, the petition resembles a customer complaint because Danbury citizens claim they incur high toll bills in order to place calls to essential services, such as schools, medical facilities, banks, etc. Nevertheless, the standard we articulated in Order Nos. 22,107 and 22,204 remains reasonable in the current environment and we will start by analyzing the petition in light of state and federal law and the potential for harm to competitors of expanding the exchange area.

State and federal law prompts us to a "community of interest" approach to the suitability of an EAS expansion. However, we will no longer apply the old EAS guidelines which quantified community of interest as an average of three or more calls per customer per month with 40% of the customers making at least two calls per month.[2(110)] Instead we look to recent FCC case law. In CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Report and Order,* FCC 97-157 (released May 8, 1997) (hereinafter referred to as the Universal Service Order), the FCC provides a definition of community of interest. Discussing affordability, in Paragraph 114, the FCC found that the scope of the local calling area directly and significantly impacts affordability and is a factor to be weighed when determining the affordability of rates. Elaborating, the FCC found that merely determining the number of subscribers to which one has access for local service in a local calling area is insufficient to determine that the calling area reflects the community of interest. A calling area which reflects the community of interest, in the FCC's opinion, is one which "allows subscribers to call hospitals, schools and other essential services without incurring a toll charge." Applying this definition to the issue of affordability, the FCC stated that " ... affordability is affected by the amount of toll charges a consumer incurs to contact essential service providers such as hospitals, schools, and government offices that are located outside of the consumer's local calling area ... . Thus, we find that a determination of rate affordability should consider the range of a subscriber's local calling area, particularly whether the subscriber

must incur toll charges to contact essential public service providers."

We agree with the FCC's common sense definition of community of interest in regard to the adequacy of a local calling area. Using this definition to facilitate examination of the Danbury

petition, the Danbury local calling area has the following characteristics:

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

Exchange Group/Monthly Charge	1/$10.96
Other Exchanges reached	None
Number of Access Lines Reached	624
Educational Facilities Reached	
Public Middle School	None
Public High School	None
Internet	None
Medical Facilities Reached	
Doctor	None
Hospital	None
Pharmacy	None
Banking Facility Reached	None
Central Business Area	
3(111) Reached	None

It seems apparent from this examination that the Danbury exchange does not encompass a community of interest.

We do not intend to create a bright line test from this exercise; this is a tool for review, nothing more. We have applied this examination to other New Hampshire exchanges with relatively limited calling areas. We have been unable to identify any other exchange in an equally deficient situation.

Applying the second prong of the standard we articulated in Order No. 22,204, we find that enlarging the Danbury calling area to include Bristol would not jeopardize competitors. In this market, where competitors are not likely to be harmed and where robust competition is not likely to develop in the near future, we believe intervention by the Commission is appropriate. First, such an expansion will remove only Danbury-Bristol calling revenue from the competitive toll market; this is not a statewide re-allocation of toll revenues. Second, because we instituted intraLATA toll presubscription, not only NYNEX but all intraLATA toll providers will be affected. Therefore, this change will be competitively neutral and, even without the FCC's discussion of the community of interest standard, Section 253, in our opinion, is not violated. Third, although in our Order No. 22,107 we specifically encouraged "telecommunications companies to develop creative solutions to the EAS problems that exist, perhaps in the form of new optional calling plans," NYNEX has not proposed any such solution to resolve the EAS problem for the people of Danbury.

We find that the situation in Danbury is exceptional and warrants an expansion of EAS. Because we are not constrained to follow the old EAS guidelines and given the modest scope of the change, we will permit the expansion of the Danbury calling area if approved by the Danbury community in conformance with the provisions articulated below.

We will not permit NYNEX to impose a surcharge on customers to eliminate the negative economic impact which may be associated with the implementation of EAS on the petitioned

route to Bristol. As we have noted above, the telecommunications landscape has changed and thus the goal of revenue neutrality in resolving EAS problems is elusive in today's more competitive environment. Therefore, a surcharge must be considered on a case-by-case basis.

Even without imposition of a surcharge, expansion of Danbury's EAS will necessitate an increase in the basic rate because the town's rate group would change. Because all affected customers should be given an opportunity to participate in that choice, we will order balloting on the issue in Danbury. Although we intend to implement 2-way EAS between Danbury and Bristol if the ballot is successful, we do not order a vote in Bristol because the Bristol rate group would be unaffected by the Danbury expansion. The voting method we formulate here is intended to be an experiment. The former guideline requirement of an affirmative vote of 50% of the customer base was quite difficult to achieve using the method of balloting via bill inserts. We will therefore adopt a different voting method in this docket, but do not order it as the method to be used for all future EAS petitions.

In order to insure maximum effective participation, the ballots will be designed,

distributed, and tabulated by the Commission. A vote shall be considered conclusive if ballots are returned by 25% or more of the customer base. The outcome of a conclusive vote will be determined by a simple majority of the returned ballots.

The balloting shall be conducted according to the following schedule:

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

Ballots sent by Commission August 11, 1997
Ballots returned           September 5, 1997
Ballots tabulated          September 12, 1997
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Based upon the foregoing, it is hereby

ORDERED, that a vote on the EAS issue shall be conducted as noted above and based on the price of the rate group Danbury customers would pay, if Bristol was included in the local calling area; and it is

FURTHER ORDERED, that NYNEX shall provide a list of Danbury customers with names, addresses and telephone numbers and, to the extent technically possible, in mailing label or PC format by July 29, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1997.

FOOTNOTES

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

[2]Twice before, in 1984 and 1989, Danbury has met the quantified community of interest test with Bristol. Each time, a majority of the customer base in Danbury failed to vote affirmatively for the extended calling area.

[3]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into Extended Area Service, DRM 94-001, Order No. 22,204, 81 NH PUC 480, June 18, 1996. [N.H.] Re Preliminary Investigation into Local Calling Areas (Extended Area Service), DRM 94-001, Order No. 22,107, 81 NH PUC 288, Apr. 15, 1996.

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NH.PUC*07/21/97*[97388]*82 NH PUC 548*Exeter and Hampton Electric Company

[Go to End of 97388]

82 NH PUC 548

Re Exeter and Hampton Electric Company

Additional parties: Hall Farm Realty Trust;
Public Service Company of New Hampshire

DE 96-363
Order No. 22,663

New Hampshire Public Utilities Commission

July 21, 1997

ORDER determining that Exeter and Hampton Electric Company (E&H) should be the one to

provide service to a residential subdivision in the Town of Atkinson, even though such area actually is located within the franchised service territory of Public Service Company of New Hampshire (PSNH). Commission explains that E&H already has been serving the area in question and has sufficient facilities in place to continue such service, while PSNH would have to undertake extensive, noncost-effective, aesthetically adverse extension projects in order to serve the area.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Changes in existing boundary lines — Transfer of area from franchised supplier to existing service provider — Factors — Location of existing facilities — Noncost-effectiveness of alternative extensions — Electric service. p. 551.

Page 548

2. FRANCHISES, § 53

[N.H.] Amendment — Changes in existing service area boundary lines — Transfer of area from franchised supplier to existing service provider — Factors — Proximity of existing facilities — Noncost-effectiveness of alternative extensions — Customer preference — Electric service. p. 551.

3. SERVICE, § 180

[N.H.] Extensions — Factors affecting approval or disapproval — Distance — Franchised utility as having facilities farther away — Closest facilities as owned by nonterritorial utility — Necessity of changing existing boundary lines — Other considerations — Aesthetic impact of extensions — Uneconomic duplication of facilities — Customer preference — Electric service. p. 551.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; LeBoeuf, Lamb, Greene and MacRae by Susan L. Geiser, Esq. on behalf of Exeter and Hampton Electric Company; Michael Saviano on behalf of Hall Farm Realty Trust; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 7, 1996, Exeter & Hampton Electric Company (Exeter and Hampton) and Hall Farm Realty Trust (Trust) filed with the New Hampshire Public Utilities Commission (Commission) a joint petition to authorize Exeter and Hampton to provide electric service to a subdivision (Subdivision) under development by the Trust in a limited area of the Town of Atkinson. The Subdivision is primarily located in an area of the state designated as the service territory of Public Service Company of New Hampshire (PSNH).[1(112)] *See Re New Hampshire Gas and Electric Company*, 30 NH PUC 142 (1948).

On March 24, 1997 PSNH filed a motion to intervene. At the April 10, 1997 prehearing conference PSNH was recognized as a necessary party to the proceeding and the motion was granted. The Office of the Consumer Advocate, a statutorily recognized party did not participate in the proceeding.

II. FINDINGS OF FACT

The parcels of land in question are located in the Town of Atkinson in the service territory of PSNH immediately bordering the service territory of Exeter and Hampton. In 1988, apparently prior to subdivision of the parcel, the owner of the parcel, Michael Saviano, requested service from Exeter and Hampton for a residence to be constructed on the parcel. Mr. Saviano testified that Exeter and Hampton informed him his parcel was located in PSNH's service territory and he should request service from PSNH. Mr. Saviano further testified that he contacted PSNH and PSNH ultimately informed him that it could not provide service to his parcel. PSNH purportedly informed him he should contact Exeter and Hampton given the proximity of his land to Exeter and Hampton's existing facilities.

Although no written record of this refusal to serve was produced, based on the time frame of the request, PSNH was under the protection of the United States Bankruptcy Court. We therefore find that it is more likely than not that PSNH did in fact refuse to provide service to Mr. Saviano in 1986.[2(113)] Mr. Saviano subsequently contacted Exeter and Hampton and related his experience in requesting service from PSNH. He requested service for the home to be constructed on the parcel, whereupon service was provided by Exeter and Hampton.

Exeter and Hampton thus already provides service to a parcel located in the Subdivision and would make a minor extension of three poles, although the extension will be placed underground for aesthetic reasons, to provide

service to the 56 planned townhouse condominiums. This would be done at a cost of approximately $2,000 to the customer with the money being refunded as other customers go on line.

PSNH plans to serve the Subdivision via a 3000 to 5000 foot 19.9 kV extension from its existing 34.5 kV lines on Route 111. The extension would require PSNH to construct a major portion of these facilities within Exeter and Hampton's service territory at an overall initial cost of approximately $14,500, through an area that currently has no lines. Although PSNH owns and operates a 2.4 kV distribution line located at the entrance road to the Subdivision, PSNH would not extend this facility to the Subdivision out of concern for the reliability of service. PSNH further testified that it was not its intent to use the 3000 to 5000 foot 19.9 kV line extension to enhance the reliability of its existing 2.4 kV facilities at this point in time. Therefore, the only use of this line extension would be to provide service to the Subdivision.

III. POSITIONS OF THE PARTIES AND STAFF

A. *Exeter and Hampton and the Trust*

Relying on the New Hampshire Supreme Court's decision in *Appeal of Public Service Company of New Hampshire*, 141 N.H. 13 (1996), Exeter and Hampton and the Trust took the position that pursuant to RSA 374:22 and RSA 374:26 it was in the "public good" to allow the Subdivision to be served by Exeter and Hampton.

Exeter and Hampton argued that the only use of PSNH's proposed 3000 to 5000 foot 19.9 kV line extension was to provide service to these 56 condominiums because the proposed route of the line extension along Route 111 only provided access to Exeter and Hampton's service territory except for the parcel in question herein. Thus, Exeter and Hampton argued that it was not in the best economic interest of New Hampshire ratepayers for PSNH to construct this line for such a limited load. Exeter and Hampton also contended that such an extension would result in the unnecessary construction of redundant lines by the two companies because Exeter and Hampton would need to construct such facilities for customers located on Route 111. Exeter and Hampton also raised a concern that PSNH's facilities might interfere with the provision of service to its customers because PSNH's facilities would be higher in voltage than Exeter and Hampton's and, therefore, to preserve Exeter and Hampton's service quality, any crossing of the two lines would require the additional expense of raising PSNH's higher voltage lines.

Exeter and Hampton also claimed that it was not required to compensate PSNH for this franchise area if the Commission were to allow it to provide service to the area in question.

B. *PSNH*

PSNH took the position that the Trust and Exeter and Hampton bore the burden of demonstrating that it is in the public interest to revoke the exclusive franchise of Public Service Company of New Hampshire and that they had failed to meet that burden. PSNH further contended that when both the facts and the legal standard under a public good analysis are considered, the Commission should decide in PSNH's favor. PSNH also contended it was entitled to compensation if its franchise were "revoked."

C. *Staff*

Staff took the position that it was in the public interest for Exeter and Hampton to provide service to the Subdivision. Staff based its position on PSNH's decision not to upgrade the 2.4 kV line and rather to construct the 3000 to 5000 foot line extension along Route 111. Staff considered the Exeter and Hampton extension the most economically viable, logical alternative that was consistent with the orderly expansion of both distribution systems. Staff emphasized that it had only considered the issue from the perspective of the appropriate engineering of a distribution system, i.e., regardless of artificial barriers such as franchise borders.

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IV. COMMISSION ANALYSIS

[1-3] Based on the record in this case and the authority granted to the Commission pursuant to RSAs 374:22 and 26, we believe the public good is best served if Exeter and Hampton provides service to the Subdivision. Service by Exeter and Hampton is logical given the proximity of its facilities to the Subdivision, and given that it is currently serving the Subdivision's owner. PSNH's proposal to construct facilities through Exeter and Hampton's service territory to serve the Subdivision is not desirable as it would cost more than the Exeter and Hampton extension, would result in redundant facilities with potentially adverse aesthetic consequences, and may create future confusion as to which distribution company would serve customers in the section of Exeter and Hampton's territory occupied by the redundant PSNH facilities.

This case is similar to DE 96-243, Lake Tarleton Land Management Corporation, in which we made a public good determination that certain lots in Connecticut Valley Electric Company's (CVEC) service territory should be served by extending facilities of the New Hampshire Electric Cooperative (NHEC). *See*, Order No. 22,362. In the Lake Tarleton case, NHEC was serving a customer in CVEC's service territory and proposed to serve additional lots nearby through a line extension which would cost much less than a CVEC line extension. Here, as in Lake Tarleton, our public good analysis includes consideration of the proximity of facilities that would actually be used to serve the customers, as well as the economics of each company's proposal. In addition to those factors, we have also considered the aesthetic impact of PSNH's plan to construct redundant facilities in Exeter and Hampton's service territory, as well as the potential for future confusion that could result from such redundancy.

In reaching this decision, we are not revoking PSNH's right to serve this Subdivision, nor are we removing existing load from PSNH's system. Rather, we are considering a customer's request that new load be served by Exeter and Hampton's distribution company. Since PSNH does not have an exclusive right to serve the Subdivision, *see Appeal of Public Service Company of New Hampshire*, 141 N.H. 13 (1996), this decision does not involve a compensable taking.

Based upon the foregoing, it is hereby

ORDERED, that it is for the public good for Exeter & Hampton Electric Company to provide service to the subdivision in the Town of Atkinson currently being developed by Hall Farm Realty Trust.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1997.

DISSENTING OPINION OF
COMMISSIONER ELLSWORTH

I cannot join my colleagues in this decision. The 56 customers who are the subject of this docket are clearly within PSNH's franchise territory. The record confirms that PSNH currently serves customers in this area and, in fact, has an existing distribution line which is closer to the potential customers' location than is Exeter & Hampton's. My interpretation of RSA 374:28 persuades me that the Commission should order a discontinuance of service within a franchise territory only when the franchisee has declined or unreasonably failed to render service in that territory, or when service is inadequate. I find no such record in this proceeding.

PSNH indicates that it will probably not use the existing distribution line but will instead install a new higher voltage line from its existing 34.5 kV line on Route 111. I would find that this is a reasonable planning decision which will enhance the reliability of its existing 2.4 kV distribution line even in the absence of this proposed development. I cannot find that it is PSNH's admission of an inability to serve from its existing distribution system.

I am not persuaded that the extension of the 19.9 kV line across Exeter & Hampton's service territory will interfere with the provision of Exeter & Hampton service to its customers. I would require that PSNH install its 19.9 kV line in a manner which will assure that Exeter & Hampton can reach future customers without interference and without incurring additional

costs to its customers.

In my opinion, this is a clear case where PSNH can and should provide service to the customers in its franchised area.

Bruce B. Ellsworth
Commissioner

July 21, 1997

FOOTNOTES

[1]The record indicates that a minor portion of the original estate is located in Exeter and Hampton's service territory, but the proposed cluster development would not include the construction of any residences on this portion of land.

[2]In fact, the testimony revealed that Mr. Saviano was informed by PSNH that a $3,800 line extension deposit could not be returned to him after PSNH's decision to deny him service because he was a creditor in the bankruptcy proceeding. This is consistent with the record of the bankruptcy proceeding.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Lake Tarleton Land Management Corp., DE 96-243, Order No. 22,362, 81 NH PUC 763, Oct. 15, 1996.

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NH.PUC*07/21/97*[97389]*82 NH PUC 552*Statewide Electric Utility Restructuring Plan

[Go to End of 97389]

82 NH PUC 552

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,664

New Hampshire Public Utilities Commission

July 21, 1997

ORDER extending the procedural stay approved in Order No. 22,599 (82 NH PUC 420, *supra*), in which the commission had temporarily suspended further action on outstanding motions for rehearing and/or clarification of Order No. 22,512 (82 NH PUC 101, *supra*). Commission determines that continuation of the suspension period is reasonable since mediation sessions, which were the purpose behind the stay, had occurred and there was near unanimous party support for additional mediation time to resolve outstanding issues relating to the commission's electric industry restructuring plan.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Before federal court — Required mediation sessions — Temporary suspension of underlying commission proceedings pending resolution — Continuation of suspension period. p. 553.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Before federal court — Required mediation sessions — Temporary suspension of underlying commission proceedings pending resolution — Extension of suspension period. p. 553.

3. PROCEDURE, § 42

[N.H.] Stay and suspension — Temporary duration — Deferral of further discovery — Extension of temporary suspension period — Pending completion of required mediation sessions — Electric restructuring proceeding. p. 553.

4. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Compliance filing requirements — Denial of rehearing of — Factors — Commission discretion. p. 553.

5. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Compliance filing requirements — Denial of rehearing of — Factors —

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Commission discretion. p. 553.

6. PROCEDURE, § 32

[N.H.] Rehearing — Denial of — Factors — Commission discretion — As to compliance filing requirements — In electric restructuring proceeding. p. 553.

BY THE COMMISSION:

ORDER

In Order 22,599 the New Hampshire Public Utilities Commission (Commission) temporarily suspended the rehearing schedule in this proceeding and deferred further rulings on related legal issues.[1(114)] *See* Order 22,599. The purpose of taking that action was to accommodate the requests of certain parties, including Public Service Company of New Hampshire (PSNH), who stated that such a suspension would facilitate a mediation process to which the Governor's Office of Energy and Community Services (ECS) had already agreed. This order addresses PSNH's request to further suspend this proceeding until August 5, 1997. It also addresses a motion for rehearing filed by Cabletron Systems, Inc. (Cabletron) relative to the aforementioned relief granted by the Commission in Order 22,599.

PSNH's request is supported by all parties involved in the mediation process, except Cabletron. According to PSNH, those parties include the State of New Hampshire, Senators Fraser and King, Representatives Below and Bradley, the Office of Consumer Advocate, the City of Manchester, the New Hampshire Retail Merchants Association, the Campaign for Ratepayers Rights, the New Hampshire Business and Industry Association, the Conservation Law Foundation, and Bellwether Solutions.

Cabletron objects to PSNH's request and argues that the Commission lacks the requisite statutory authority to suspend these proceedings. According to Cabletron, any such order is *ultra vires*. Cabletron also argues that PSNH has failed to satisfy the criteria previously established by the Commission to further delay these proceedings because no evidence was submitted that "meaningful and significant progress" has been made in mediation. Also, Cabletron argues that the mediation sessions can continue at the same time the Commission proceeds with the rehearing process.

[1-3] Having considered the arguments advanced by Cabletron as well as the contrary position of PSNH, *et al.*, we have decided to temporarily extend the relief granted in Order No. 22,599 for the limited purpose of accommodating those who are participating in the mediation process. We have been persuaded to take this action partly by the broad support that PSNH's request has from all but one of the parties in the mediation and also to afford parties to the mediation additional time to resolve the important issues at hand. In extending the stay, however, we maintain our intention to apply the previously enunciated standard to any future request. Accordingly, we will again suspend the rehearing schedule until August 5, 1997 as requested by PSNH and will defer issuing any orders which address outstanding rehearing or clarification requests until after we conduct another status conference on August 4, 1997 at 1:30 P.M.

[4-6] Next, we consider a motion for rehearing filed by Cabletron with respect to the relief granted in Order 22,599. Cabletron alleges that the Commission has no authority to shape compliance filing requirements as it did in that order. Specifically, Cabletron argues that the order constitutes an ultra vires act contrary to RSA Chapter 374-F. This argument overlooks the historic discretion afforded to the Commission to act in the public interest. *See Browning-Ferris Industries of NH, Inc. v. State*, 115 N.H. 190 (1975). In our previous order, we held that the Commission possessed discretion to define compliance filing requirements in light of the current circumstances, including the PSNH lawsuit. We decline to revisit that issue and stand by our

previous conclusion; however, we agree that such discretion cannot be exercised in a manner that contradicts the overall policy objectives of RSA Chapter 374-F.

Although Cabletron may not agree with the way we have chosen to exercise our discretion, that does not negate our statutory authority to take the action. Moreover, the statutory language at issue clearly evinces the Legislature's intent to confer upon the Commission wide discretion in defining compliance filing requirements. *See* RSA 374-F:4, III ("The Commission shall require ... compliance filings, which shall include open access tariffs and such other information *as the [C]ommission may require ...")* (emphasis added). Accordingly, Cabletron's motion for rehearing is denied. Based upon the foregoing, it is hereby

ORDERED, that we extend the relief granted in Order No. 22,599 as set forth herein; and it is

FURTHER ORDERED, that Cabletron's motion for rehearing of Order No. 22,599 is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1997.

FOOTNOTES

[1]Except as noted above, the relevant procedural history leading to this order is summarized in Order No. 22,599 (May 22, 1997).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,599, 82 NH PUC 420, May 22, 1997.

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NH.PUC*07/21/97*[97390]*82 NH PUC 554*Public Service Company of New Hampshire

[Go to End of 97390]

82 NH PUC 554

Re Public Service Company of New Hampshire

DR 97-014
Order No. 22,665

New Hampshire Public Utilities Commission

July 21, 1997

ORDER extending the temporary stay that had been granted in Order No. 22,604 (82 NH PUC 432, *supra*) vis-a-vis an electric utility's fuel and purchased power adjustment clause filing.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 59

[N.H.] Procedure — Stay of proceedings — Fuel and purchased power adjustment clause filing — Temporary stay — Extension of suspension period — To further facilitate mediation of restructuring-related issues — Electric utility. p. 555.

2. RATES, § 640

[N.H.] Procedure — Fuel and purchased power adjustment clause filing — Temporary stay of further action — Extension of suspension period — To allow for continued mediation of restructuring-related issues — Electric utility. p. 555.

3. PROCEDURE, § 42

[N.H.] Stay — Of further action on fuel and purchased power adjustment clause filing — Temporary duration — Extension of temporary suspension period — To allow for continued mediation of restructuring-related issues — Electric utility. p. 555.

Page 554

BY THE COMMISSION:

ORDER

[1-3] On March 14, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period June 1, 1997 through November 30, 1997, along with supporting testimony and exhibits. By Order No. 22,604 dated May 27, 1997 we granted a request by PSNH to stay consideration of the issues in this proceeding and leave the existing FPPAC rate in place to accommodate the parties to a mediation process involving DR 96-150.

On July 2, 1997 PSNH with the support of a majority of parties to the mediation process requested that we continue the stay and FPPAC rate placed in effect by Order No. 22,604 until August 5, 1997. Because of the support of this action expressed by a majority of the parties and the fact that there is no immediate need to move forward with this process we will grant the requested relief.

Based upon the foregoing, it is hereby

ORDERED, that the FPPAC rate shall be a credit of $0.00481 per kWh effective June 1, 1997, fully reconcilable to that date when the issues raised in this proceeding are addressed; and it is

FURTHER ORDERED, that the credit of $0.00481 per kWh shall remain in effect until further ordered; and it is

FURTHER ORDERED, that a hearing be held on at 1:30 on August 4, 1997 to consider whether to continue the stay granted herein; and it is

FURTHER ORDERED, that the existing short-term avoided costs are to remain effective until further ordered.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,604, 82 NH PUC 432, May 27, 1997.

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NH.PUC*07/22/97*[97391]*82 NH PUC 555*Nuclear Emergency Planning

[Go to End of 97391]

82 NH PUC 555

Re Nuclear Emergency Planning

DE 97-134
Order No. 22,666

New Hampshire Public Utilities Commission

July 22, 1997

ORDER, pursuant to petition by the state's Office of Emergency Management, assessing North Atlantic Energy Service Corporation $1.322 million for the estimated costs of maintaining the state's radiological emergency response plan for the Seabrook nuclear power plant.

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1. COMMISSIONS, § 58

[N.H.] Fees and assessments against utilities — For the development and maintenance of a nuclear emergency response plan — In conjunction with the state's Office of Emergency Management — Assessment specific to the Seabrook nuclear plant. p. 556.

2. ATOMIC ENERGY

[N.H.] Necessity of nuclear emergency response plan — Supervision by the state's Office of Emergency Management — Costs of developing and maintaining plan — Assessments on utilities — Assessment specific to the Seabrook nuclear plant. p. 556.

Page 555

BY THE COMMISSION:

ORDER

The New Hampshire Office of Emergency Management (NHOEM) submitted a letter on June 30, 1997 (with subsequent revisions) 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 (RERP) for Seabrook Station Nuclear Power Plant. The request addresses the estimated annual costs associated with personnel, training, associated expenses and equipment expenses incurred by local municipalities, state agencies and outside support agencies that have responsibilities with respect to the Seabrook Station RERP.

The total requested assessment for the Fiscal Year 1998 consists of two parts: (1) $1,322,678 for State agency and outside support agency costs; and (2) the direct provision of certain equipment and/or services in support of the RERP. The financial support consists of the following:

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

10 Personnel-Permanent	$ 401,297
16 Non-Classified Employees	$ 31,254
18 Duty Officer	$ 3,500
20 Current Expenses	$ 56,200
28 Rent	$ 31,266
30 Equipment	$ 14,000
40 Indirect Cost	$ 23,802
46 Consultants	$ 33,000
49 O H M	$ 250,000
50 Personnel-Temporary/Overtime	$ 64,094
60 Fringe Benefits	$ 143,824
70 In State Travel	$ 15,000
80 Out of State Travel	$ 7,000
91 Rockingham County	$ 44,156
92 Vehicle Lease	$ 6,000
94 Local Support	$ 139,685
96 State Agencies	$ 25,100
97 Other Support Agencies	$ 33,500
TOTAL ASSESSMENT	$ 1,322,678

The NHOEM requests that payments of the above assessment be made in response to monthly invoices prepared by NHOEM. NHOEM will provide the State Treasurer with the July invoice to be forwarded to North Atlantic. Effective August 18th, monthly invoices will be prepared and submitted directly to North Atlantic by NHOEM. Payment will be remitted within thirty (30) days after receipt of each invoice to the NH Office of Emergency Management. Failure to remit payment in a timely manner will result in the assessment of a late penalty fee. The NHOEM also requests that it be allowed to transfer funds between classes as necessary in accordance with State of New Hampshire Administrative Rules.

[1, 2] RSA 107-B sets forth the Commission's jurisdiction over the assessment of these costs. It provides in pertinent part:

107-B:1 Nuclear Emergency Response Plan.

I. The director of emergency management shall, in cooperation with affected local units of government, initiate and carry out a nuclear emergency response plan as specified in the licensing regulations of each nuclear electrical generating plant. The chairman of the public utilities commission shall assess a fee from the utility, as necessary, to pay for the cost of preparing the plan and providing the equipment and materials to implement it.

107-B:3 Assessment.

I. The cost of preparing, maintaining, and operating the nuclear planning and response program shall be assessed against each utility which has applied for a license to operate or is licensed to operate a nuclear generating facility which affects municipalities under RSA 107-B:1, II, in such proportions as the chairman of the public utilities commission determines to be fair and equitable.

The NHOEM submits, and the supporting schedules support, that the above stated costs will provide the resources and personnel required by the various State agencies and outside agencies.

Pursuant to RSA 107-B:1, I have reviewed

Page 556

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 RERP and providing equipment and/or services necessary to implement it. I, therefore, approve the assessment of $1,322,678 for Fiscal Year 1998 and the direct provision of equipment and/or services as specified above.

The NHOEM proposed billing mechanism is reasonable. Accordingly, NHOEM is authorized to submit the July invoice to the State Treasurer for billing, and, commencing on August 18th, to prepare monthly invoices and submit them directly to North Atlantic. Within thirty (30) days of receipt of each invoice, North Atlantic will prepare a check made payable to: Treasurer, State of New Hampshire, and remit payment to the New Hampshire Office of Emergency Management. The NHOEM is also authorized to reserve the right to transfer funds between classes as necessary in accordance with State of New Hampshire Administrative Rules. It should be noted that the Fiscal Year 1997 assessment was $67,471 in excess of actual costs.

Based upon the foregoing, it is hereby

ORDERED, that $1,322,678 for Fiscal Year 1998 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 be assessed against North Atlantic pursuant to RSA 107-B; and it is

FURTHER ORDERED, that the NHOEM is authorized to require North Atlantic to make payments against the total financial assessment of $1,322,678 on a per invoice basis; and it is

FURTHER ORDERED, that the July invoice be submitted to the State Treasurer for forwarding to North Atlantic; and it is

FURTHER ORDERED, that these invoices be prepared and submitted directly to North Atlantic by NHOEM commencing August 18th (with an information copy to be provided to the

Chairman of the Commission); and it is

FURTHER ORDERED, that North Atlantic make payment within thirty (30) days of receipt of the invoice or be assessed a late penalty fee; and it is

FURTHER ORDERED, that the NHOEM is authorized to transfer funds between classes as necessary in accordance with State of New Hampshire Administrative Rules.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1997.

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NH.PUC*07/22/97*[97392]*82 NH PUC 557*EnergyNorth Natural Gas, Inc.

[Go to End of 97392]

82 NH PUC 557

Re EnergyNorth Natural Gas, Inc.

DR 97-057
Order No. 22,667

New Hampshire Public Utilities Commission

July 22, 1997

ORDER approving a natural gas local distribution company's proposed special rate contract for the provision of transportation service for Hitchiner Manufacturing Company, Inc. The contract is designed to help finance the system expansion necessary for meeting the customer's requirements.

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1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — For industrial customer — Via special rate contract — Components — Nine-year term — Minimum volume take — Financial analyses as relying on the discounted cash flow method — System expansion — Local distribution company. p. 559.

2. SERVICE, § 199

[N.H.] Extensions — Local gas distribution company — System expansion plans — Purpose and funding of — Transportation

service to industrial customer — Special rate contract — Conversion contributions. p. 559.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc. 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 27, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of Special Contract No. 97-01 with Hitchiner Manufacturing Co., Inc. (Hitchiner). ENGI filed a Motion for Protective Order and Confidential Treatment on April 11, 1997, seeking confidentiality for certain portions of a market analysis (Business Plan) performed by ENGI. On April 23, 1997, Sprague Energy (Sprague) filed for limited intervenor status.

An Order of Notice was issued April 7, 1997, and a prehearing conference was held April 28, 1997. The Commission issued Order No. 22,591 on May 12, 1997 approving a modified procedural schedule, granting Sprague limited intervenor status and granting ENGI's Motion for Protective Order and Confidential Treatment as modified at the prehearing conference.

On May 22, 1997, ENGI filed a Second Motion for Protective Order and Confidential Treatment regarding information requested by the Commission Staff (Staff) on cost calculations for the construction of the extension of its natural gas distribution system to the Town of Milford. The Commission issued Order No. 22,636 on July 1, 1997 granting ENGI's Second Motion for Protective Order and Confidential Treatment.

On July 8, 1997, the Commission held a hearing on the merits of ENGI's filing.

II. POSITIONS OF THE PARTIES AND STAFF

A. ENGI

ENGI's witness Michelle L. Chicoine, Vice President, Treasurer and Chief Financial Officer, testified regarding the methodology used to evaluate the financial viability of the system expansion, how the terms of the Special Contract differ from the applicable tariff, and the overall

benefits of the system expansion.

ENGI used a Net Present Value method, also referred to as the Discounted Cash Flow Method, in performing its cost benefit analysis. The use of this method was recommended by Staff in Docket DR 91-212, ENGI's last general rate case, and recently used and approved by the Commission in Docket DR 96-089, Northern Utilities, Inc.'s Special Contract with the University of New Hampshire (UNH) and the system expansion required to serve UNH in the Towns of Durham and Madbury (see Order No. 22,297 dated August 26, 1996).

The term of the Special Contract requires Hitchiner to transport a minimum of two million therms annually over a period of nine years or a minimum of 18 million therms. The Special Contract states that Hitchiner will compensate ENGI for any shortfall at the specified rate. The nine-year term of the Special Contract was determined based upon the expected break-even point of the system expansion necessary to serve Hitchiner including projected costs and revenues for all customers on the new line.

Hitchiner has agreed to pay a fixed rate of $0.122 per therm. Hitchiner qualifies for the Large Volume 70-Firm Transportation tariff rate and the Special Contract rate was determined based upon the weighted average of the margin contributed on an annual basis by current Large Volume 70-Firm Transportation customers. The rate remains fixed regardless of any changes in the tariffed rates during the life of the Special Contract.

Hitchiner will be assessed the surcharge for the closure of the Gas Street Relief Holder

and any future environmental surcharges approved by the Commission. Hitchiner will not be assessed Demand-Side Management (DSM) surcharges or be eligible to participate in any of ENGI's DSM programs. Hitchiner will also not be assessed the Firm Transportation Cost of Gas Adjustment rate.

ENGI argues that the expansion plan makes natural gas available to franchised service areas not currently served by ENGI and satisfies Hitchiner's request for gas service in order to maintain and expand its operations in New Hampshire. ENGI further argues that existing ENGI customers will experience positive benefits by spreading fixed costs over an increased customer base, thereby moderating future revenue requirements and enhancing economies of scale.

B. SPRAGUE

Sprague did not participate in the proceeding and did not appear at the hearing.

C. STAFF

Staff witnesses Michelle A. Caraway and Stephen P. Frink, Utility Analysts for the

Economics and Finance Departments of the Commission, respectively, testified in support of the Special Contract and ENGI's use of the Discounted Cash Flow method in evaluating the proposed expansion.

Staff testified that although it was necessary to incorporate ENGI's analysis of the system expansion into Staff's analysis of the Special Contract, Staff was not making a recommendation at this time as to whether the capital costs of the system expansion should be included in rate base. Staff maintained that it will be ENGI's burden to prove during its next general rate case that any expenditures associated with the system expansion were prudent and the facilities are used and useful in relation to the revenues derived.

Staff expressed concern regarding ENGI's ability to track costs and revenues associated with the system expansion to Milford based on ENGI's inability to determine the revenues associated with new customers obtained from the Londonderry/Derry expansion, its last major distribution system expansion. Staff recommends that key information needed to evaluate the conversion estimates provided in the Business Plan be maintained by ENGI in such a way that the actual costs and revenues can be compared to the projected costs and revenues. The Business Plan contains engineering cost estimates, marketing strategies and estimated revenue streams associated with the eight-mile expansion to serve Hitchiner. The Business Plan is the document which utilized Staff's recommendations made during ENGI's last general rate case (DR 91-212) on how to evaluate major system expansions. Staff stated that the primary reasons for maintaining this information are to provide the empirical data necessary to validate conversion estimates, to evaluate marketing strategies, and to determine the break-even point of the project. Staff also stressed that the information must be maintained in such a manner that revenues are not only aggregated, but can be differentiated based on the year new customers came on-line.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the Special Contract, testimony and exhibits offered at the July 8, 1997 hearing, and the Hearings Examiner's report and recommendation, we find that ENGI's Special Contract with Hitchiner is reasonable and in the public good. We find the terms and conditions of the Special Contract to be just and consistent with the public interest, pursuant to RSA 378:18, and find that the methodology employed by ENGI in its financial analysis in support of the proposed system expansion is a method acceptable to the Commission to evaluate the cost-effectiveness of major capital investments. The system expansion would not be economically feasible but for the must-take provision in the Special Contract which necessitates a deviation from ENGI's current effective tariff.

Pursuant to RSA 378:28, it will be ENGI's burden to prove when it next seeks permanent rates that any expenditures associated with the system expansion were prudent and the facilities are used and useful. If such prudence and

used and usefulness are demonstrated in a rate case, the revenues and costs associated with the system expansion will be included in the calculation of ENGI's total revenue requirement at that time. Such revenue requirement will be the basis for setting rates to all rate classes, with the exception that the Hitchiner rate will not be impacted since its rate is established under the terms of the Special Contract.

We agree with Staff that actual costs and revenues associated with this system expansion should be tracked in such a way that the actual costs and revenues can be compared with the projected costs and revenues submitted in this proceeding. These records should be maintained until the break-even point of the system expansion has been achieved. However, we recognize that maintaining such records becomes more difficult and less reliable in each successive year. Therefore, given that ENGI has estimated that ninety percent (90%) of the annual therm usage will be captured within five (5) years, we will require ENGI to maintain such records for a minimum of five (5) years and would require that ENGI will continue to maintain those records until such time as the break-even point has been achieved or the information is no longer reliable and/or pertinent.

Based upon the foregoing, it is hereby

ORDERED, that the Special Contract No. 97-01 between EnergyNorth Natural Gas, Inc. and Hitchiner Manufacturing Company, Inc. is APPROVED; and it is

FURTHER ORDERED, that ENGI shall maintain a record of the actual costs and revenues associated with the system expansion for the reasons outlined in Staff's testimony for a period of five (5) years or until the system expansion has achieved a positive cash flow, whichever comes first; and it is

FURTHER ORDERED, that ENGI shall submit a report to the Commission providing actual construction costs of the system expansion and associated customer additions and revenues, these costs and revenues to be compared to the baseline projected costs and revenues submitted in this proceeding. This report shall be submitted to the Commission on an annual basis beginning December 1, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-057, Order No. 22,591, 82 NH PUC 404, May 12, 1997. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-057, Order No. 22,636, 82 NH PUC 498, July 1, 1997. [N.H.] Re Northern Utilities, Inc., DR 96-089, Order No. 22,297, 81 NH PUC 662, Aug. 28, 1996.

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NH.PUC*07/22/97*[97393]*82 NH PUC 560*Northern Utilities, Inc.

[Go to End of 97393]

82 NH PUC 560

Re Northern Utilities, Inc.

Additional applicant: Public Service Company of New Hampshire

DR 97-097
Order No. 22,668

New Hampshire Public Utilities Commission

July 22, 1997

ORDER approving an amended interruptible gas sales contract between a natural gas local distribution company and an electric utility, for supplying the Newington Station generating plant. The amendments are minimal and for the most part merely extend the term of the contract from that approved in Order No. 21,323 (79 NH PUC 449).

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1. RATES, § 384

[N.H.] Natural gas rate design — Interruptible service — Sales to electric utility — Via special contract — Amendment of — Coverage of plant conversion costs — Continuation of provisions for "streaming" — Extension of con-

tract term — Increase in transportation rate component. p. 561.

2. SERVICE, § 332

[N.H.] Natural gas — Interruptible sales service — Via special contract with electric utility — Minor amendment of — Local distribution company. p. 561.

BY THE COMMISSION:

ORDER

[1, 2] On May 19, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) an Amendment to the Newington Station Cost Recovery Amended and Restated Interruptible Gas Sales and Interruptible Transportation Agreement (Agreement) between Northern and Public Service Company of New Hampshire (PSNH). The Amendment modifies the Agreement between Northern and PSNH which the Commission approved by Order No. 21,323 (August 15, 1994) in Docket DR 94-090.

By Order No. 20,488 (May 26, 1992), the Commission approved an interruptible gas sales contract between Northern and PSNH. The contract allowed Northern to supply PSNH's Newington Station with natural gas. Newington Station is a utility boiler which was converted to dual fuel and can operate on either oil or natural gas. The contract was subsequently modified in 1994 to reflect Federal Energy Regulatory Commission's unbundling of the interstate pipeline sales and storage services, Commission approved transportation policies and the meeting of Newington Station's load through the use of gas streaming. The modified contract was approved by the Commission by Order No. 21,323.

The currently effective Agreement expired on May 16, 1997. The Agreement, in Article 5, contemplated that Northern and PSNH would renegotiate the Agreement prior to the expiration of the initial term. Northern and PSNH have renegotiated and have determined that only minor changes to the Agreement are required. Thus, Northern has filed the Amendment with the Commission for its approval. The Amendment extends the expiration date to the earlier of the recovery of both Northern's and PSNH's conversion costs or March 31, 1998, which is the date the pipeline that Northern uses to provide service to PSNH is scheduled to be taken out of service. The Amendment also increases the sales margin and the transportation rate from $0.05 per million British Thermal Units (MMBtu) to $0.10 per MMBtu.

In a memorandum to the Commission dated July 17, 1997, Staff recommended that the Commission approve the Amendment to the Agreement reached between Northern and PSNH. Staff stated that it reviewed the contents of the filing along with informal discovery materials. Staff believes that the Amendment provides for only minor modifications to the Agreement approved by the Commission in Order No. 21,323 and will allow Northern the opportunity to continue to recover its conversion costs associated with Newington Station. Northern represented to Staff that as of March 31, 1998, it anticipates that the unrecovered balance for the system investment and carrying charges will be approximately $312,000. However, Northern expects to request Commission approval of an extension of the Agreement through at least October 1998 which will allow Northern to continue to make sales to PSNH by using existing facilities for deliveries from the south and that Northern anticipates selling the metering station to Portland Natural Gas Transmission Systems (PNGTS) coincident with the date PSNH begins taking service from PNGTS. Northern believes sufficient proceeds from this sale will be applied to the unrecovered balance to complete recovery of its investment.

As noted in Staff's memorandum, the OCA has not taken a position regarding the Amendment to the Agreement.

We find the Amendment to the Agreement reached between Northern and PSNH to be in the public good. We agree with Staff that the Amendment maintains the spirit and purpose of the original gas sales contract entered into and approved in May 1992 and revised in August

1994. As such, we will approve the Amendment with an effective date of May 17, 1997.

By the terms of the Amendment, the Agreement is due to expire upon recovery of both Northern's and PSNH's Newington Station conversion costs or on March 31, 1998, whichever occurs earlier.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Amendment, filed with the Commission on May 19, 1997, is APPROVED with an effective date of May 17, 1997; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of N.H. Admin. Rules, Puc 1601.02(c) that requires that Special Contracts be filed at least fifteen days in advance of the effective date, so that the Amendment to the Agreement will be retroactively effective as of May 17, 1997; and it is

FURTHER ORDERED, that any subsequent request for revisions to the Agreement shall be filed with the Commission thirty days prior to the proposed effective date to allow sufficient time for Commission review; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, Northern 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 July 29, 1997 and to be documented by affidavit filed with this office on or before August 5, 1997; 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 12, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 19, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 21, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 94-090, Order No. 21,323, 79 NH PUC 449, Aug. 15, 1994. [N.H.] Re Public Service Co. of New Hampshire, DR 91-095, Order No. 20,488, 77 NH PUC 250, May 26, 1992.

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NH.PUC*07/23/97*[97394]*82 NH PUC 562*Public Service Company of New Hampshire

[Go to End of 97394]

82 NH PUC 562

Re Public Service Company of New Hampshire

DR 97-059
Order No. 22,669

New Hampshire Public Utilities Commission

July 23, 1997

ORDER declining to extend a temporary stay that had been granted in Order No. 22,605 (82 NH PUC 435, *supra*) vis-a-vis an electric utility's base rate filing. Accordingly, a new procedural schedule is adopted for considering the filing.

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1. RATES, § 640

[N.H.] Procedure — Base rate filing — Lifting of previously granted temporary stay — Potentially exploitive rates and overearnings as factors — Electric utility — Adoption of new procedural schedule. p. 563.

2. PROCEDURE, § 42

[N.H.] Stay — As to consideration of base rate filing — Refusal to extend suspension period — Lifting of stay — Factors — Potentially exploitive rates and overearnings — Electric utility — Adoption of new procedural schedule. p. 563.

BY THE COMMISSION:

ORDER

On March 31, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules and a Request for Waiver of Tariff Filing Requirements, pursuant to N.H. Admin. Rules Puc 1603.02 and 1603.07, which was subsequently corrected and refiled on April 1, 1997. On May 2, 1997, PSNH filed testimony, exhibits, schedules, work papers and the remainder of the standard tariff filing requirements under N.H. Code Admin. Rule §1603 supporting an increase in overall rates.

On May 9, 1997, PSNH filed a motion to stay this proceeding to allow a mediation process relating to DR 96-150 to go forward and to allow the parties to the mediation to devote the time, effort and resources necessary to make the process successful. That request was granted on May 27, 1997 by Order No. 22,605 which stayed the proceeding until July 2, 1997.

On June 23, 1997 the Office of the Consumer Advocate (OCA) filed a Motion for Immediate Rate Relief. In its motion the OCA alleged that PSNH's currently effective base rates are exploitive and therefore unjust and unreasonable under the standards set out in the United States Supreme Court's seminal decision in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). On June 23, 1997, OCA also filed a Motion for Rehearing of Order No. 22,605, requesting that the Commission terminate the stay imposed by that order.

On July 2, 1997, PSNH requested another stay of this proceeding until at least August 5, 1997; PSNH stipulated that the temporary rates be put in place effective for all service rendered on or after July 1, 1997. PSNH also suggested that the Commission could schedule a temporary rate proceeding pursuant to RSA 378:27 if the Commission deemed it necessary. A number of parties to the mediation process supported PSNH's request. A number of parties to the mediation objected to any further delays in this proceeding.

On July 11, 1997 the OCA filed a requested procedural schedule to consider the issue of temporary rates pursuant to RSA 378:27 which was supported by a number of parties to the mediation. On July 14, 1997, PSNH filed a motion clarifying its position on the requested stay of this proceeding and its consent to establish its rates as temporary rates effective July 1, 1997. PSNH also set forth its legal analysis concerning the earliest date to which permanent rates could be reconciled.

[1, 2] Based on information supplied to this Commission by PSNH we consider the concerns raised by the OCA and other parties relative to the level of current base rates to justify further investigation into both temporary and permanent rates. Thus, we do not believe we should delay our investigation into PSNH's base rates. The request to further stay this proceeding is, therefore, denied. In so deciding, we are effectively granting OCA's request for termination of the stay.

Moving forward with this proceeding should not hinder the mediation process; we believe PSNH and the parties have sufficient resources to participate in both the mediation process and a base rate investigation. We also note that virtually all of the procedural schedule outlined below occurs after August 5, 1997, the date to which we have suspended the restructuring docket.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's motion to stay this proceeding is DENIED; 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 August 5, 1997 at 10:00; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, PSNH, the Staff of the Commission and the Intervenors hold a First Technical Session to develop a procedural schedule to govern our investigation into permanent rates and to discuss any issues related to temporary rates; and it is

FURTHER ORDERED, that the following procedural schedule shall govern our investigation into temporary rates:

Page 563

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

PSNH Testimony on Temporary Rates	7/30/97
Prehearing Conference and Technical Session on Temporary Rate Issues	8/05/97
Staff and Intervenors Submit any Additional Data Requests Via Facsimile to PSNH	8/08/97
PSNH Responses to Data Requests	8/12/97
Staff and Intervenor Testimony	8/18/97
Temporary Rate Hearing	8/21/97;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, PSNH notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than July 25, 1997, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before July 30, 1997; and it is

FURTHER ORDERED, that, pursuant to N.H. Admin. Rules Puc 201.05, the Commission hereby waives, in part, the fourteen day notification requirement of N.H. Admin. Rules Puc 203.01(a); 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 1, 1997, 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 5, 1997; and it is

FURTHER ORDERED, that PSNH shall provide its quarterly financial statements for the period ending June 30, 1997 no later than August 5, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-059, Order No. 22,605, 82 NH PUC 435, May 27, 1997.

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NH.PUC*07/28/97*[97395]*82 NH PUC 564*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97395]

82 NH PUC 564

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Star Cellular

DE 97-110
Order No. 22,670

New Hampshire Public Utilities Commission

July 28, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 565.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 565.

Page 564

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 565.

BY THE COMMISSION:

ORDER

[1-3] On June 5, 1997, New England Telephone and Telegraph Company (NYNEX) and Star Cellular (Star) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. NYNEX and Star will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

Staff recommends approval of the Agreement between NYNEX and Star based on a review of the summary and actual agreement for compliance with the TAct. Staff points out that the Agreement is substantially consistent with the terms of previously approved interconnection agreements and that all prices are the same as other agreements between NYNEX and cellular companies.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory with respect to any carrier not a party to the negotiations. We find that approval is consistent with the public interest in achieving a more competitive telecommunications market. Therefore, we will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and Star is approved; 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 August 4, 1997 and to be documented by affidavit filed with this office on or before August 11, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 25, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 27, 1997, 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 July, 1997.

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NH.PUC*07/28/97*[97396]*82 NH PUC 566*Northern Utilities, Inc.

[Go to End of 97396]

82 NH PUC 566

Re Northern Utilities, Inc.

Additional applicant: EnergyNorth Natural Gas, Inc.

DE 95-121
Order No. 22,671

New Hampshire Public Utilities Commission

July 28, 1997

ORDER accepting agreement under which trial rates for interruptible natural gas transportation service would go into effect on a permanent basis. As to firm transportation service rates, the agreement provides for the use of the "Harrison" cost-of-service methodology plus an adjustment for 75% of the difference between existing trial rates and cost-based rates.

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1. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Interruptible service — Institution of trial rates as permanent rates — Elimination of volumetric threshold — Increase in monthly customer charge — Assessment of balancing charges — Local gas distribution companies. p. 569.

2. RATES, § 379

[N.H.] Natural gas rate design — Interruptible transportation service — Therm rates — Assessment of balancing charges — For takes exceeding swing tolerances — Rate of 48 cents per decatherm — Local gas distribution companies. p. 569.

3. REVENUES, § 5

[N.H.] Local gas distribution companies — Interruptible transportation service sales — Application of margin therefrom to firm sales customers. p. 569.

4. APPORTIONMENT, § 47

[N.H.] Revenues — Local gas distribution companies — Interruptible transportation service sales — Passthrough of margin therefrom to firm sales customers. p. 569.

5. RATES, § 384

[N.H.] Natural gas rate design — Transportation service — Firm service — Basis for permanent new rates — New cost-of- service (COS) studies — Use of "Harrison" COS method — Plus adjustment of 75% of the difference between trial rates and COS- based rates — Local gas distribution companies. p. 570.

6. RATES, § 143

[N.H.] Factors affecting reasonableness — Cost of service (COS) — New COS studies — As premised on "Harrison" methodology — Local gas distribution companies — Setting of firm gas transportation service rates. p. 570.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc.; LeBoeuf, Lamb and MacRae by Meabh Purcell, Esq. for Northern Utilities, Inc.; Office of Consumer Advocate by Kenneth E. Traum for residential ratepayers; Ransmeier and Spellman by Dom D'Ambruoso on behalf of Anheuser-Busch, Inc.; and, Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

By Report and Order No. 20,950 in Docket DE 91-149, the New Hampshire Public Utilities Commission (Commission) established trial or interim rates for natural gas transportation

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services. *Re Generic Investigation into Natural Gas Transportation Service and Rates*, 78 NH PUC 479, 492 (1993). The interim rates were put into effect for a period of two years to allow EnergyNorth Natural Gas, Inc. (ENGI) and Northern Utilities, Inc. (Northern), New Hampshire's two local distribution companies (LDCs), to develop and file cost of service studies identifying the appropriate customer charges and cost based rates for firm transportation and interruptible transportation service. *Id.* at 492; 78 NH PUC 559, 602 (1993).

By Order No. 21,186, the Commission expanded the scope of the studies to include a detailed analysis of the costs of providing transportation-related balancing services to interruptible transportation, 280-day transportation (ENGI only), and firm transportation customers. *Re EnergyNorth Natural Gas, Inc.*, 79 NH PUC 202, 207 (1993).

Pursuant to these Orders, ENGI and Northern filed cost of service studies on October 19 and 23, 1995, respectively. James L. Harrison of Management Applications Consulting, Inc. prepared studies for each company.[1(115)]

Northern also submitted firm transportation rates based on its cost of service study, which it subsequently adjusted by adding back 75% of the difference between the existing trial rates and

the cost of service based rates.

During discovery and technical sessions with Northern, ENGI and the Office of Consumer Advocate (OCA), the Commission Staff (Staff) became aware of a significant difference of opinion regarding the scope of this docket. After a hearing on this issue, the Commission clarified the scope of the docket, finding that the studies would be used to develop a permanent set of transportation rates. *See* Order No. 22,062 (March 19, 1996). In response, on April 1, 1996, ENGI submitted proposed permanent transportation rates but argued they should not be put into effect until a permanent rate case occurred.

Anheuser-Busch, Inc. (AB) and Staff filed testimony on June 3, 1996; ENGI and Northern filed rebuttal testimony each on July 29, 1996; Staff filed surrebuttal testimony on August 12, 1996.

An August 12, 1996 settlement conference led to a Partial Settlement Agreement (Agreement) between ENGI, Northern, OCA and Staff, recommending resolution on all issues except firm transportation. AB opposed the Agreement. The Commission heard evidence regarding the Agreement as well as the fully contested firm transportation issues on September 10-11, October 16-17 and October 22, 1996. After submission of final exhibits in March 1997, the Parties and Staff submitted briefs on April 18 and 23, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Northern*

Northern advocated acceptance of the Agreement without further modification. It argued that the interruptible transportation trial rates were appropriate for use on a permanent basis, as they provide flexibility to respond to market conditions. Northern also argued that the three- day grace period was no longer necessary or appropriate, given an increasingly knowledgeable class of transportation customers. Further, removal of the grace period did not violate the Commission's "no harm, no foul" policy because the proposed 48 cents per decatherm balancing charge would cover actual costs incurred rather than serve as a penalty.[2(116)]

Northern opposed AB's proposal that margins from interruptible sales no longer be passed through to firm sales customers. Treatment of these margins help to keep the LDCs' earnings stable, thereby avoiding the fluctuations that can lead to rate cases.

Although Northern had originally proposed use of the Harrison studies for setting rates, Northern later advocated a modification of the Harrison studies, adding to the Harrison rates 75% of the difference between the current trial rates and the cost of service based rates. This "revenue neutral" adjustment was designed to reduce the impact on Northern due to customers taking firm transportation who would now receive the same service at a lower rate, as well as those customers taking firm sales who would migrate to firm transportation to take

advantage of the lower rate. Northern argued that the financial impact in adopting the revised Harrison rates, as urged by Staff, would be too great on the company. Northern estimated the financial impact to be $69,713 due to existing firm transportation customers at the revised Harrison rates and up to $376,473 if all firm sales customers migrated to firm transportation at those rates. Using the "Harrison plus 75%" rates, the exposure would drop to $17,038 and $94,118, respectively. If only those with a 7% or greater savings were to migrate, the likely exposure from migration under the revised Harrison rates proposed by Staff would drop to $36,145.

Northern argued that Staff's expectation of new load to offset losses was unrealistic and that resort to a rate case in the event of severe financial impact was an expensive "solution" that would not be in the public interest.

B. *ENGI*

ENGI also advocated acceptance of the Agreement regarding interruptible transportation rates and terms for reasons similar to those advocated by Northern above. It opposed AB's proposal to maintain the three-day grace period, and argued that the proposed 48 cents per decatherm balancing charge was not a penalty and therefore did not violate the Commission's "no harm, no foul" policy. ENGI also opposed AB's additional tariff language changes, beyond those contained in Exhibit 18. ENGI argued against AB's proposal that margins from interruptible transportation no longer be passed through to firm sales customers.

Regarding firm transportation, ENGI argued that the trial rates should remain in effect until a full rate case. At that point, the revised Harrison rates for each company could be adopted, if found just and reasonable. There should, however, be no change to existing firm transportation rates outside the context of a full rate case. To make such a change now, without an analysis of the LDCs' costs, revenues and earnings, would be legally impermissible. ENGI also argued that the LDCs should not bear the burden of proof regarding harm to the companies, as they are not the parties seeking the reduction in rates.

ENGI argued that it would accept "as a reasonable compromise" the "Harrison plus 75%" methodology, if the Commission were inclined to adopt new rates outside the context of a rate case.

C. *AB*

AB urged the Commission to reject the Agreement regarding interruptible transportation. Rather than adopting the flexible trial rates on a permanent basis, as the Agreement urges, AB would create a fixed volumetric charge of 5 cents per decatherm for interruptible transportation and increase the monthly customer charge, now set at $200, to $325, as opposed to the $261 charge recommended by the Agreement.

AB argued that the Commission's three day per month grace period for customers to go

outside the LDC's tolerance levels should be maintained. To do otherwise, according to AB, would violate the Commission's "no harm, no foul" policy. In its view, the 48 cents per decatherm balancing charge is not reflective of costs and serves as a penalty against the customer. AB argued that the Commission should no longer apply margins from interruptible transportation to firm sales customers, stating that ENGI would have a greater incentive to maximize its margins if it were able to keep any profits realized.

In its cover letter accompanying its brief, AB again stated that it believed ENGI had violated the Commission's policy regarding capacity release, an issue the Commission had previously ruled was beyond the scope of the proceeding.

D. *OCA*

OCA advocated acceptance of the Agreement regarding interruptible transportation rates and terms. OCA opposed AB's recommendation to cease applying the margins from interruptible transportation to firm sales customers, arguing that the costs of facilities used in interruptible services are borne by firm sales customers and any profit should go to reduce that burden. The vast majority of firm sales

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customers are residential heating customers.

Regarding firm transportation rates, OCA expressed concern that the revised Harrison rates would cause significant migration of firm sales customers and thereby trigger a rate case that could raise rates for residential customers. It argued that the benefits of competition should not come piecemeal to one class of customers, particularly if it would have an adverse impact on other customers. OCA also opposed the inclusion of certain peak shaving costs in future cost of gas adjustments.

E. *Staff*

Staff advocated acceptance of the Agreement regarding interruptible transportation rates and terms. It argued that the trial rates continued to be appropriate for interruptible transportation, allowing flexibility to respond to market conditions while still providing for the LDC the opportunity to maximize its profits where possible. Staff supported the Agreement's other adjustments to interruptible services charges, such as increasing the monthly customer charge from $200 to $261, removing the volumetric threshold to participate in transportation, and adjusting the firm standby sales service tariff.

Staff urged the Commission to reject AB's proposal that interruptible transportation margins no longer be applied to firm sales customers for similar reasons argued by OCA.

Staff urged the Commission to accept the revised Harrison rates without the "revenue

neutral" adjustment, arguing that the rates should reflect the cost to serve as much as practicable. The revenue impacts, Staff argued, were not as certain or as severe as the LDCs suggested and should not be a reason to maintain firm transportation rates that are well above cost. Staff urged the Commission to recall that the purpose of this docket was to develop true cost-based transportation rates, getting away from the trial rates that were adopted without a cost of service study in order to get transportation underway in the State.

Staff challenged the LDCs' projected revenue impacts attributable to existing firm transportation customers and those who switch from firm sales to firm transportation. In Staff's view, the projected losses were unrealistically high, based on assumptions that all firm sales customers would immediately shift to firm transportation service. In addition, Staff anticipated additional customers and revenues for each LDC, offsetting some of the losses.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the Agreement, testimony and briefs and will approve the Agreement as filed. We find the use of interruptible transportation trial rates on a permanent basis to be just and reasonable. We also find the other adjustments, including the removal of a volumetric threshold and increase in the customer charge from $200 to $261 per month to be appropriate. We will not order further tariff language changes beyond those contained in the Agreement and Exhibit 18.

We disagree with AB regarding the three-day grace period. Although we prohibited penalties against transportation customers who were out of balance but did not cause the LDC to be penalized by the interstate pipeline, we nevertheless find it reasonable for LDCs to impose charges for balancing when a customer exceeds certain swing tolerances, irrespective of the LDC's balance situation with the pipeline. LDCs incur costs in providing balancing services, which should be recovered. Consistent with the "no harm, no foul" policy, we do not authorize the LDCs to impose penalties for being out of balance when the LDC itself is not out of balance with the interstate pipeline. By this Order, however, we will authorize the recovery of costs incurred by the LDC in providing balancing services. The 48 cents per decatherm balancing charge proposed by Northern and ENGI, and supported by Staff, appears to be a reasonable approximation of the costs incurred keeping customers in balance.

[3, 4] We will not alter the current system of applying margins from interruptible transportation and sales to firm sales customers. An interruptible service uses facilities built for and paid for by firm sales customers. Since 1982, we have required LDCs to pass through to their firm sales customers any profit earned in interruptible services, as part of the semi-annual cost

of gas adjustment proceedings. AB argues that the LDCs will have a greater incentive to maximize their profits if they are able to retain those earnings. We have been presented with no

evidence to suggest that the LDCs have been lax in maximizing profits in interruptible services, nor have we observed such a problem in cost of gas proceedings. AB has not persuaded us to deviate from our longstanding policy to reduce the burden on firm sales customers by passing through interruptible margins.

[5, 6] Regarding firm transportation, we will accept the "Harrison plus 75%" methodology as an initial step in a transition to cost of service based rates. Although rates should reflect the cost to serve those customers, we are sympathetic to the LDCs' assertions that these rates should not be significantly changed outside the context of a rate case, in which all rates and revenues would be examined. We will, therefore, order the gradual reduction in firm transportation rates as recommended by Northern. The revised Harrison methodology should be the starting point for the establishment of the difference between the trial rates and the cost of service based rates. 75% of the difference between those rates will then be added back, resulting in a slight reduction in the rates for firm transportation.

We have considered and rejected a two year phase-in of the revised Harrison rates, which was briefly discussed as an alternative in the hearings. Instead we intend to observe the development of firm transportation services in the coming months, and will consider further reduction in these rates to better reflect the cost to serve firm transportation customers. We instruct the LDCs, OCA and Staff to evaluate, prior to the summer 1998 cost of gas adjustment proceedings, the number of firm transportation customers, the revenue impacts of the rates as ordered herein, and the anticipated revenue impacts of further movement towards cost based rates. At the time of the summer 1998 hearings, the LDCs shall propose another reduction in firm transportation rates, or provide evidence to demonstrate why such reduction is not in the public interest. The LDCs, OCA and Staff should work together over the coming 12 months to explore opportunities to continue to reduce these rates. Northern's proposal for a collaborative effort is a sound basis for these discussions. Treatment of peak shaving costs should also be explored in these discussions. Of course we retain the right to accelerate reductions or otherwise change the regulation of natural gas to encourage greater competition in the industry.

As a closing note, during the course of the hearings, AB raised the issue of ENGI's treatment of capacity release and alleged that it violated Commission policy set forth in Order No. 20,950. The Commission ruled from the bench that this issue was beyond the scope of the proceeding. AB's cover letter to its brief, however, again raised the issue, arguing that ENGI was not living up to the meaning or intent of Order No. 20,950. As we stated at the hearing, if AB or any other person believes the terms of Order No. 20,950 are not being met, it should make a formal complaint to the Commission, at which time we will direct the utility to respond with its view of the facts and policy directives. AB's inclusion of this issue in the cover letter to its brief was improper. We will not initiate a docket or investigation into the allegations unless and until AB makes a filing which identifies with specificity what it believes ENGI is doing that is contrary to Order No. 20,950.

Based upon the foregoing, it is hereby

ORDERED, that the Agreement between Northern, ENGI, Staff and OCA is APPROVED; and it is

FURTHER ORDERED, that firm transportation rates shall be set based on the revised

Harrison methodology adjusted to add back 75% of the difference between the trial rates and the revised Harrison methodology; and it is

FURTHER ORDERED, that Northern and ENGI shall submit compliance tariffs no later than August 1, 1997, for effect August 1, 1997; and it is

FURTHER ORDERED, that Northern and ENGI shall propose, at the time of the 1998 summer cost of gas adjustment proceedings, another reduction in firm transportation rates or evidence to demonstrate why such reduction is not in the public interest; and it is

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FURTHER ORDERED, that the issue of ENGI's handling of capacity release is beyond the scope of this proceeding.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of July, 1997.

FOOTNOTES

[1]The original Harrison rates for Northern and ENGI were further adjusted by Mr. Harrison to reflect certain methodological changes. The revised Harrison methodology results in slightly higher rates than did the original Harrison methodology. Northern, ENGI and ultimately Staff endorsed the revised methodology.

[2]In Order No. 20,950, the Commission held that if an LDC did not suffer any harm, that is, was not fined by the interstate pipeline for being out of balance beyond the pipeline's tolerance band, it could not penalize a transportation customer who had been outside the LDC's tolerance band. This became known as the "no harm, no foul" policy, i.e., no damages.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DE 95-121, Order No. 22,062, 81 NH PUC 199, Mar. 19, 1996.

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82 NH PUC 571

Re Hampton Water Works Company, Inc.

DE 95-238
Order No. 22,672

New Hampshire Public Utilities Commission

July 29, 1997

ORDER accepting settlement under which a water utility is exempted from certain provisions of municipally enacted groundwater protection ordinances. Accordingly, the utility may proceed with construction of a new gravel-packed well in the Town of Stratham, a project which had been repeatedly delayed due to the disputed ordinances.

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1. ORDINANCES, § 1

[N.H.] Exemptions from — Pursuant to settlement agreement — As to municipal groundwater protection ordinances — Construction of water well facilities — Imposition of other conditions instead. p. 573.

2. MUNICIPALITIES, § 12

[N.H.] Powers and duties — Ordinances — Ability to grant waivers from — Pursuant to settlement agreement — As to groundwater protection ordinances — For the construction of new wells. p. 573.

3. ZONING

[N.H.] Planning and zoning activities — Associated ordinances — Municipal jurisdiction — To grant exemptions from — Pursuant to settlement — Other conditions as substitute for ordinance restrictions — As to groundwater protection ordinances. p. 573.

4. WATER, § 12

[N.H.] Utility practices — Construction and equipment — Proposal for new gravel-packed well project — Settlement agreement — Providing for exemptions from certain groundwater protection ordinances — Other conditions for construction. p. 573.

APPEARANCES: Ransmeier and Spellman by Timothy E. Britain, Esq. on behalf of Hampton Water Works, Inc.; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. on behalf of the Town of Stratham; and Eugene F. Sullivan III, Esq. for the Staff of the New

Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 25, 1995, Hampton Water Works Company, Inc. (Hampton) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to site a gravel packed well in Stratham, New Hampshire pursuant to RSA 374:22 and 26. Pursuant to RSA 674:30, Hampton also requested an order from the Commission exempting it from any municipal zoning ordinances that might prohibit the development of the well.

On August 31, 1995, the Town of Stratham (Stratham or the Town) filed a motion to intervene and opposed the petition because Hampton had neither submitted a site plan for Town approval nor requested a special exception pursuant to Stratham's Site Plan Review Regulations and Zoning Ordinance designed for aquifer protection. Subsequently, Stratham challenged the Commission's authority under RSA 674:30 to grant Hampton an exemption from its aquifer protection ordinance.

As part of a mediation process entered into between Stratham and Hampton, Hampton agreed to submit its proposed production wells for site plan review. On January 10, 1997, Hampton notified the Commission that it had submitted an application for site plan review to the Stratham Planning Board for a production well (Well #16) on land of Charles W. and Katherine S. Peabody located in the Town, but that the Planning Board had attached certain conditions to the construction of Well #16 that Hampton found unacceptable. Thus, Hampton returned to the Commission and requested exemption from the conditions placed upon construction of Well #16 under RSA 674:30.

By Order No. 22,558 (April 15, 1997) the Commission affirmed its jurisdiction to override Stratham's aquifer protection ordinance under RSA 674:30. The Commission also noted, however, that the conditions placed upon the construction of Well #16 by the Stratham Planning Board (Planning Board), which Hampton found unacceptable, were very similar to conditions the Commission placed on the construction of a production well by the Milford Water Works in the Town of Amherst. *See Appeal of Milford Water Works*, 126 N.H. 127 (1985).

On June 2, 1997 the Commission was notified by the parties and Staff that a settlement agreement was imminent. On June 4, 1997 the parties and Staff filed a Settlement Agreement (Agreement) with the Commission. On June 10, 1997 the Commission heard evidence from the parties in support of the Agreement.

II. SETTLEMENT AGREEMENT

The Agreement urges the Commission to find that the construction of Well #16 by Hampton in the Town of Stratham on land owned by Charles W. and Katherine S. Peabody is for the public good, pursuant to RSA 374:22 and 374:26. It further provides that, pursuant to RSA 674:30, the Commission should exempt Hampton from the conditions placed upon the construction of Well #16 by the Planning Board subject to the following conditions:

A. Hampton shall provide the Planning Board with a copy of a duly recorded deed evidencing Hampton's right to own and operate Well #16;

B. Hampton shall institute a Well Owner Response Policy, designed to protect existing residential wells in the vicinity of Well #16 from any detrimental effects caused by the pumping of Well #16, that shall remain in effect so long as Well #16 is in operation;

C. Hampton shall comply with all conditions placed upon the use of Well #16 by the New Hampshire Department of Environmental Resources (DES) and provide the Planning Board a copy of all reports and data submitted to DES;

D. Hampton shall provide the Planning Board with a map showing the location and elevations of all monitoring points used to monitor Well #16;

E. Hampton shall provide the Planning Board with a quantitative estimate of the

amount of surface water induced into the subsurface from the Winnicutt River as a result of pumping Well #16;

F. Hampton shall permit Town representatives, on request, to observe the monitoring process;

G. Hampton shall pay $25,000 to Stratham for the services provided to the Town by GeoInsight, Inc. incurred for the purpose of site plan review of Well #16, and up to $5,500 toward the reasonable and necessary fees which may be incurred by the Town in DES proceedings relative to Well #16; and

H. If data from the monitoring programs show that Well #16 is affecting the long-term sustainable yield of the aquifer it accesses, or that irrevocable impacts to wetlands or the river system is occurring, the town shall have standing to seek review by

DES of the appropriateness of the continued pumping of Well #16.

III. COMMISSION ANALYSIS

[1-4] We find the Agreement in the public interest and will approve it. The Agreement provides a resolution to a long, expensive, and sometimes contentious proceeding in a manner that addresses and reasonably balances the interests of both Hampton's customers and the residents of Stratham. Therefore, Hampton is granted the authority pursuant to RSA 374:22 and 374:26 to construct a gravel packed production well and appurtenances in the Town of Stratham on land now or formerly of Charles W. And Katherine S. Peabody. Hampton is further granted the authority to construct such other facilities necessary to transmit the water derived for that well to serve its customers in its existing franchise areas.

Consequently, pursuant to the authority provided this Commission under RSA 674:30 we exempt Hampton from any of the conditions placed upon the construction of Well #16 by the Stratham Planning Board in its decision of December 10, 1996 approving Hampton's site plan approval application inconsistent with the Agreement among the Town, Hampton and our Staff dated June 10, 1997 or this order approving the Agreement. *See* Exhibit #7.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement entered into by the Town of Stratham, Hampton Water Works, Inc. and Commission Staff dated June 10, 1997 is accepted and approved; and it is

FURTHER ORDERED, that Hampton Water Works Company, Inc. is exempted form those provisions or conditions of the December 10, 1996 Stratham Planning Board decision granting site plan approval to production well #16 that are inconsistent with the Settlement Agreement approved herein; and it is

FURTHER ORDERED, that Hampton Water Works Company, Inc. is granted the authority to construct a gravel packed production well, its appurtenances and transmission facilities in the Town of Stratham consistent with this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampton Water Works Co., DE 95-238, Order No. 22,558, 82 NH PUC 343, Apr. 15, 1997.

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[Go to End of 97398]

82 NH PUC 573

Re MFS Intelenet of New Hampshire, Inc.

DE 97-106
Order No. 22,673

New Hampshire Public Utilities Commission

July 29, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 574.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 574.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 574.

BY THE COMMISSION:

ORDER

On June 4, 1997, MFS Intelenet of New Hampshire Inc. (MFS) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules, on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed MFS's petition for compliance with these standards. Staff reports that MFS has provided all the information required by Puc 1304.02. The information provided supports MFS's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of MFS as a New Hampshire CLEC.

MFS has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that MFS has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of MFS in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because MFS has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, MFS agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, MFS seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay

NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MFS's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 August 5, 1997 and to be documented by affidavit filed with this office on or before August 12, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than August 19, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than August 26, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective August 28, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of July, 1997.

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NH.PUC*07/30/97*[97399]*82 NH PUC 575*Public Service Company of New Hampshire

[Go to End of 97399]

82 NH PUC 575

Re Public Service Company of New Hampshire

DR 95-068
Order No. 22,674

New Hampshire Public Utilities Commission

July 30, 1997

ORDER modifying Order No. 22,192 (81 NH PUC 451) and Order No. 22,363 (81 NH PUC 766), to allow an electric utility to recover certain costs of complying with the emission control requirements of the Clean Air Act Amendments (CAAA). Commission finds that the utility has now duly demonstrated that the selective catalytic reduction technology employed by the utility was a reasonable and economic choice for such CAAA compliance.

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1. ORDERS, § 4

[N.H.] Commission jurisdiction — To modify or vacate prior decisions — Amendment of prior order — Limits — Compliance with law — Modification due to new evidence or changed circumstances. p. 578.

2. RULES AND REGULATIONS

[N.H.] Promulgation of — Interpretation of — Agency charged with enforcement — As to environmental requirements — Air Resources Division of State Department of Environmental Services — As to electric plant emission controls. p. 579.

3. EXPENSES, § 120

[N.H.] Electric utility — Costs of compliance with Clean Air Act Amendments — Installation of new emission control equipment — Factors affecting cost recovery — Type of technology employed — Selective catalytic reduction technology as being reasonable and economic choice. p. 579.

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4. ELECTRICITY, § 3

[N.H.] Generating plant — Emission controls — Clean Air Act Amendment requirements — Recovery of associated costs — Type of technology as a factor — Selective catalytic reduction technology — Cost-effectiveness and reasonableness — Substantiation. p. 579.

APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. for EnerDev, Inc.; Dean, Rice and Howard by Mark W. Dean for New Hampshire Electric Cooperative, Inc; Office of Consumer Advocate by Michael W. Holmes for 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 March 9, 1995, Public Service Company of New Hampshire (PSNH) filed its semi-annual Fuel and Purchased Power Adjustment Clause (FPPAC) petition with the New Hampshire Public Utilities Commission (Commission). Pursuant to paragraph "EA" of FPPAC, PSNH sought to recover the capital costs and increases in annual operating expenditures made to comply with the federal Clean Air Act Amendments of 1990 (CAAA).

PSNH installed a Selective Non-Catalytic Reduction (SNCR) system at Merrimack Station Unit I and installed a more expensive Selective Catalytic Reduction (SCR) system at Merrimack Station II to comply with the CAAA and state administrative rules. SNCR and SCR both reduce nitrogen oxides (NO_x) emissions. SNCR results in a reduction or "derate" of output, estimated to be approximately 70 megawatts (MW) at Unit I, which in turn results in a "production penalty cost." SCR, while more expensive to install, causes no such derate.

After three days of duly noticed hearings, the Commission issued Order No. 22,192 (June 17, 1996). In Order No. 22,192, the Commission found that PSNH's installation of SCR at Unit II of Merrimack Station may not have been the least cost alternative to comply with the NO_x reductions necessary to meet the continuing requirements of the CAAA.

This decision was based on rules adopted by the State's Department of Environmental Services, Air Resources Division (Air Resources) the agency responsible for implementing the CAAA. The Commission concluded that under these rules the implementation of SNCR at Unit II may have proven to have been the least cost method for CAAA compliance. The rules, which were the product of negotiation with PSNH, required PSNH to significantly decrease No_x emissions at Unit II to a specified level in 1995, with further reductions in 1999. The 1999 levels will be set by the Director of Air Resources and will fall within a specified range of emissions. *See* N.H. Admin. R., Env-A 1211.03(f).

The evidence established that the installation of SNCR at considerably lower capital costs than SCR, combined with a 70 MW derate of Unit II, would have achieved the same reductions in NO_x as were achieved with the 1995 implementation of the more expensive SCR system. PSNH testified that it chose SCR over SNCR because it believed that SCR, with additional catalyst, would be capable of meeting the stricter 1999 No_x standard to be set by Air Resources. PSNH went on to admit that SCR technology would not, however, provide sufficient NO_x reductions to meet the lower end of the spectrum of stricter levels or standards to be established in 1999, even with modifications to the catalyst.

Thus, if SCR proves incapable of meeting the as yet unknown 1999 NO_x standards, PSNH would be forced to re-power or retire Unit II and the unamortized capital costs of SCR would be

written off in their entirety in that year. Under such a scenario, SNCR would have been the least cost alternative for the four year window from June 1, 1995 to June 1, 1999, all other

things being equal.[1](117)

Applying risk allocation principles, the Commission in Order No. 22,192 denied PSNH full recovery of SCR costs until PSNH could establish that SCR would continue to be used and useful beyond 1999. Consistent with its analysis, the Commission allowed PSNH to collect the hypothetical costs of installing and operating SNCR until 1999.

On July 17, 1996, PSNH filed a Motion for Rehearing of the Order pursuant to RSA 541:3 (Supp. 1995). By Order No. 22,363 (October 16, 1996), the Commission denied the Motion for Rehearing based in large part on its interpretation of N.H. Admin. R., Env-A 1211.03. On November 18, 1996, PSNH appealed Order Nos. 22,192 and 22,363 to the New Hampshire Supreme Court pursuant to RSA 541.

Because the Commission provided that PSNH could recover the hypothetical costs of SNCR from 1995 through 1999, PSNH presented testimony in DR 96-285, a subsequent FPPAC proceeding, establishing that SNCR was in fact a more expensive alternative during the twelve months at issue in that proceeding because of "production penalty costs" due to loss of revenue from sales to PSNH's sister utilities under the Sharing Agreement. Based on this testimony, the Commission, on December 4, 1996, scheduled a hearing for January 23, 1997, later continued to March 4, 1997, to examine this new evidence to determine whether it should modify Order Nos. 22,192 and 22,363, pursuant to RSA 365:28. Also during this period the State and PSNH asked the Supreme Court to remand the case to the Commission to consider this evidence, which the Court granted.

On March 4, 1997, the Commission held a duly noticed hearing pursuant and considered new evidence pursuant to RSA 365:28. The evidence consisted of testimony from the Director of Air Resources relative to the enforcement of its rules and testimony from PSNH relative to production penalty costs that would have been incurred had SNCR technology been installed at Unit II.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

PSNH took the position that the Commission's original decisions denying full cost recovery for SCR technology at Unit II were incorrect and re-argued the positions set forth in its Motion for Rehearing and appeal to the Supreme Court.

PSNH also argued that the hypothetical production penalty costs combined with the hypothetical operating costs of SNCR at Unit II with a 100 MW derate, rather than the originally

estimated 70 MW derate, would have resulted in higher costs to PSNH ratepayers than the actual costs incurred using SCR at Unit II. Thus, PSNH concluded it should be allowed current recovery of the costs of SCR at Unit II.

B. *EnerDev*

EnerDev argued that the Commission should not modify its previous decisions because 1) it did not misinterpret Env-A 1211.03(d); 2) the testimony of the Director of Air Resources provided an insufficient basis to reconsider its interpretation of 1211.03(d); and 3) in any case, the record evidence is insufficient to allow PSNH to recover the costs of SCR at Unit II because of changes to Air Resources rules.

C. *Office of the Consumer Advocate*

The Office of the Consumer Advocate (OCA) took the position that the Commission should not modify its previous orders.

D. *NHEC*

Although an intervenor, the New Hampshire Electric Cooperative, Inc. did not participate in the March 4, 1997 hearing.

E. *Staff*

Staff took the position that the interpretation of Env-A 1211.03, as interpreted by Air Resources, combined with the outages of all three Millstone nuclear generating units and Connecticut Yankee, created joint dispatch

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savings to PSNH and changed circumstances such that SCR technology became economic before 1999.

III. COMMISSION ANALYSIS

[1] Pursuant to RSA 365:28, the Commission retains the authority to "alter, amend ... or otherwise modify any order made by it," and any order made altering or amending any previous order shall take the place of the original order complained of on appeal. *See* RSA 541:16. The only limitation on this authority is that the revised order must be legally correct. *Appeal of the*

Office of the Consumer Advocate, 134 N.H. 651 (1991). Thus, we may alter, amend or modify Order Nos. 22,192 and 22,363 if we are presented with new evidence or changed circumstances that persuade us that our previous decisions are no longer valid.

Our decisions in Order Nos. 22,192 and 22,363 were not based on a traditional prudence analysis. Rather, we engaged in a risk allocation analysis. *See* Order No. 22,192 (June 17, 1996) at pp. 16-19; Order No. 22,363 (October 16, 1996) at pp. 2-4. Specifically, because PSNH took the risk and invested funds in SCR technology with the expectation that Air Resources would set the stricter 1999 NO_x standards at a level SCR would be capable of meeting, we placed on shareholders the risk that SCR could prove incapable of meeting these standards.

At the same time the record evidence revealed that SNCR technology combined with a 70 MW derate of Unit II would have been the least cost alternative for the years 1995 through 1999, assuming Unit II could not operate beyond 1999 or required repowering to operate beyond 1999. Because the occurrence of either of these alternatives would require PSNH to write off or completely depreciate the value of the remaining life of its SCR investment in 1999, rather than over PSNH's proposed life of Unit II, SNCR constituted the least cost alternative under a scenario where Unit II is shut down or repowered in 1999.

Consequently, we required PSNH to forgo recovery of the capital and operating costs of SCR until it was established that SCR could meet the 1999 standards. We did, however, allow PSNH to recover the hypothetical costs of the installation and operation of SNCR at Unit II during the interim period.

During this period, the Nuclear Regulatory Commission ordered Northeast Utilities' three nuclear generating stations at Millstone Point in Connecticut shut down for an indeterminate period of time. In addition, the owners of the Connecticut Yankee nuclear generating station, in which Northeast Utilities had a majority entitlement, decided to prematurely retire the plant for economic reasons. The shut-down of these facilities created a major energy deficiency for PSNH's sister utilities in the Northeast Utilities system, the so-called Initial System.

Pursuant to the Joint Dispatch Agreement and the Sharing Agreement entered into as part of PSNH's acquisition by Northeast Utilities, the Initial System must purchase any deficiency in energy from PSNH. PSNH and, therefore, its ratepayers received substantial economic benefits from these sales to PSNH's sister utilities. If Unit II had been derated due to the installation of SNCR, sales of the energy produced by the 70 to 100 MW derate at Unit II would not have taken place and revenues associated with those sales would not have been passed on to PSNH ratepayers. Thus, the derate of Unit II under a SNCR scenario became a significant issue in the economic analysis of PSNH's decision to install SCR at Unit II in those FPPAC periods that have taken place since our initial decisions.

Initially, we discounted the economic impact of the potential derate based on our reading of Env-A 1211.03. In Order No. 22,363 we found Env-A 1211.03 ambiguous and interpreted the rule in a manner that would have allowed PSNH to continue to make sales of energy to the Initial System through creative dispatch of Unit II employing hypothetical SNCR technology. In response to this decision, PSNH introduced testimony in DR 96-285, a subsequent FPPAC proceeding, detailing how Air Resources had implemented and enforced Env-A 1211.03, and a letter from the Director of Air Resources consistent with this testimony setting forth that

agency's interpretation of Env-A 1211.03. Both the testimony and the

letter from Air Resources indicated a different and much more costly interpretation of Env-A 1211.03 than had been applied in Order No. 22,363. *See* DR 96-285.

Accordingly, we reopened this proceeding to examine this new evidence. At the March 4, 1997 hearing, the Commission heard testimony from the Director of Air Resources and PSNH. The Director testified that Air Resources would not allow PSNH to dispatch Unit II in the manner described in Order No. 22,363 because it would violate the intent of the rules, which was to insure that both daily and annual NO_x emission limits were not exceeded. PSNH's witness verified that this was in fact how the rule had been administered since its inception except for minor variances that were allowed during periods of extraordinary circumstances.

[2] In *Petition of Pelletier*, 125 N.H. 565 (1984) the New Hampshire Supreme Court held that "an agency's interpretation of its regulations is to be accorded great deference." *Petition of Pelletier*, 125 N.H. at 569. In this instance, given Air Resources' interpretation and PSNH's actions in reliance on that interpretation and the impacts on the company and ratepayers, we defer to Air Resources. We reach this conclusion not only out of comity, but in light of the interests Air Resources sought to protect through this rule as set forth in the testimony of the Director.

[3, 4] Because Air Resources' interpretation of Env-A 1211.03 does not allow for the creative dispatch of Unit II, we must reexamine the economic impact of a Unit II derate, and therefore, the cost of SNCR at Unit II. Moreover, based on the testimony presented at the March 4, 1997 hearing of actual experience with SNCR at Unit I, we believe a more realistic derate of SNCR installation at Unit II would have been 100 MW.

PSNH testified that the implementation of SNCR at Unit II with its attendant 100 MW derate would have resulted in the loss of $5.6 million annually to PSNH ratepayers under the Sharing Agreement. Thus, PSNH has demonstrated that the implementation of SCR technology at Unit II has proven to be the most economic means of complying with the CAAA rules in those FPPAC periods in which the above referenced nuclear units were down. Consistent with our risk allocation analysis in Order Nos. 22,192 and 22,363, we find that PSNH should be allowed to recover the costs associated with the implementation and operation of SCR technology at Unit II during those FPPAC periods covered in dockets DR 95-068, DR 95-220, DR 96-077 and DR 96-285 and in accordance with PSNH's current amortization schedule until such time as the 1999 NO_x standards are established, unless otherwise ordered by the Commission.

Based upon the foregoing, it is hereby

ORDERED, that Order Nos. 22,192 and 22,363 are MODIFIED to allow for the recovery of all of the appropriate capital costs and operating expenses associated with the installation and operation of SCR technology at Unit II in dockets DR 95-068, DR 95-220, DR 96-077 and DR 96-285 and in accordance with PSNH's current amortization schedule until such time as the 1999

NO_x standards are established, unless otherwise ordered by the Commission.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of July, 1997.

FOOTNOTES

[1]We recognize that the costs PSNH proposes to charge ratepayers for SCR prove to be less expensive than SNCR on a semi-annual basis because of the amortization schedule utilized by PSNH to write down its investment in SCR technology. The amortization schedule runs well beyond 1999 while the hypothetical investment in SNCR is amortized over four years. Our analysis and risk allocation assume that the capital costs of SCR are written off in total by 1999.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 22,192, 81 NH PUC 451, June 17, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 95-068, Order No. 22,363, 81 NH PUC 766, Oct. 16, 1996.

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NH.PUC*08/04/97*[97400]*82 NH PUC 580*New England Telephone and Telegraph Company dba NYNEX

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82 NH PUC 580

Re New England Telephone and Telegraph Company dba NYNEX

DE 97-046
Order No. 22,675

New Hampshire Public Utilities Commission

August 4, 1997

ORDER authorizing a poll to be conducted of the residents of Franklin as to whether extended area telephone service (EAS) should be instituted between that exchange and Laconia. Although the commission had previously found that the development of local exchange competition and

further growth of interexchange competition militated against any further expansion of EAS, it notes the special circumstances of the Franklin 934 exchange, which is unlikely to become the object of any competition. Moreover, residents are not always able to call schools, medical facilities, or other basic services without incurring a toll charge as telecommunications services are presently configured.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Importance of municipal calling service — Ability of residents to call toll-free anywhere within town — Even for cities with multiple exchanges. p. 583.

2. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 583.

3. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 583.

4. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Proposal for expanded EAS calling area — Polling of customers — Factors — Present calling exchange as inadequate for reaching true community of interest — Incurrence of toll charges for calling many schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize — Justification for deviation from policy of no EAS expansion. p. 584.

5. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Proposal for expanded EAS calling area — Polling of customers — Factors — Present calling exchange as inadequate for reaching true community of interest — Incurrence of toll charges for calling most schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize — Justification for deviation from policy of no EAS expansion. p. 584.

6. MONOPOLY AND COMPETITION, § 92

[N.H.] Telecommunications — Particular types of service — Extended area service (EAS) — Proposal for expanded EAS calling area — Justification for exception to policy of no EAS

expansion — Toll and local exchange competition as unlikely to materialize — No threat to competitors — Present calling exchange as not reaching true community of interest — Customer requests. p. 584.

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APPEARANCES: Catherine Gilb, *pro se* Representative Thomas Salatiello of Sanbornton, Victor D. DelVecchio, Esq. for New England Telephone and Telegraph Company (NYNEX), Frederick J. Coolbroth, Esq., for Granite State Telephone Company; E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On February 18, 1997, the New Hampshire Public Utilities Commission (Commission) received a petition requesting that the Commission utilize the Extended Area Service (EAS) guidelines followed by the Commission in the past to evaluate the expansion of the Franklin exchange. The Commission issued an Order of Notice scheduling a hearing for June 26, 1997. The Order of Notice identified a number of issues to be considered at the hearing, including whether the desired expansion would safeguard the rights of consumers, ensure continued quality of service, protect public safety or preserve and enhance universal service. In addition, the Commission indicated that both state and federal laws mandate that any proposal for expansion must consider whether competitors would be harmed.

On June 26, 1997, the Commission heard comments regarding the issues identified from Catherine Gilb, Representative Thomas Salatiello of Sanbornton, Senator Jack Barnes, Jr., Representative Robert LaFlamme of Belknap, James Pitts, Franklin City Manager, NYNEX, Granite State Telephone Company, members of the public and the Staff of the Commission (Staff). The Commission received a number of written comments from private citizens. The Commission also received petitions in favor of expanding the exchange signed by numerous citizens of the affected municipalities.

II. COMMENTS OF THE PUBLIC AND COMMISSION STAFF

A. *Representative Salatiello, Catherine Gilb, and other Members of the Public*

The members of the public who presented comments to the commission indicated that the Franklin 934 exchange is unique because it covers Franklin and small parts of several towns, including Sanbornton, but that its customers can only call one other exchange, Tilton, toll free. Franklin is located west of Tilton, with Sanbornton to the north. Sanbornton is split into three exchanges: the western portion is in the Franklin exchange, the middle portion is in the Tilton exchange, and the eastern portion in the Laconia exchange. As a result, according to the commenters, individuals are unable to call educational and medical services without incurring toll charges, school friends cannot communicate by telephone for study or recreational purposes without incurring toll charges, new businesses are discouraged from choosing the area because of the toll charges, and responsible workers cannot call their places of business without incurring toll charges. Several commenters stated that the current calling area reflects outmoded boundaries which made sense once but are no longer reasonable. The commenters agreed that, for them, their community of interest includes Laconia.

Several commenters indicated that individuals in Sanbornton are unable to call other residents of the town without toll charges appearing on their monthly phone bill. The toll charges are removed, according to these commenters, only after repeated calls to NYNEX customer service.

One commenter discussed the balloting method used by NYNEX in a 1992 EAS survey which was conducted pursuant to the Commission's old EAS guidelines. The ballots were distributed as inserts to customer bills. The commenter argued that the ballots could have been mistaken for junk mail and discarded, thus accounting for the low return rate. In addition, the commenter pointed out that the ballot was not specific as to the amount by which monthly bills would increase and that customers would be less likely to vote in favor of an undefined increase. Responding to questioning from the Commission, different commenters indicated

their willingness to pay a bill increase of $10, $5, or $2 for the benefit of expanded EAS.

B. *NYNEX*

NYNEX contends that the Commission retains its authority to change EAS boundaries under the Telecommunications Act of 1996 (Tact). In § 601(c) Congress declares that the TAct does not modify state law unless expressly so stated. NYNEX points out that the Tact does not expressly modify a state's right to change EAS. NYNEX further argues that expanding a particular EAS area will not violate § 253 of the Tact. While §253 of the Tact bars states from inhibiting competition, toll service is merely one of many services affected by competition. Local competition, now poised to begin, makes the EAS area itself subject to competition because, as NYNEX points out, any Competitive Local Exchange Carrier (CLEC) authorized under the Commission's rules may select a different local calling area. NYNEX avers that resellers can compete locally as well. In sum, NYNEX argues that the Commission should

consider individual EAS petitions on a case by case basis and that the existing EAS guidelines are appropriate and legally permissible for such consideration. Existing EAS guidelines entitle the telephone company to revenue neutrality, in other words, to experience no loss of revenue as a result of the expansion of EAS and concurrent reduction of toll charges. NYNEX maintained that it would not be rational to deny revenue neutrality because of the fact that competition exists, given that EAS is being expanded because of the slow pace of competition.

In response to questions from the Commission, NYNEX explained that, via its Municipal Calling Service (MCS), customers within a municipality containing more than one exchange code should be able to dial all telephone numbers within the municipality without incurring toll charges. MCS should operate automatically without a customer having to request it. NYNEX regretted any difficulties which residents of Sanbornton reported and expressed a willingness to resolve any such problems.

C. *Granite State Telephone Company*

Granite State Telephone Company (Granite State), which has an EAS petition pending at the Commission, DE 97-038, supported NYNEX's contention that § 253 of the TAct does not remove the Commission's authority to change EAS as long as the changes are competitively neutral. Granite State also supported this particular petition for expansion of Franklin's EAS, stating that the expansion is small and is requested for an area that is not apt to benefit from competition in the near future. However, Granite State contended in general that rural calling areas deal inadequately with actual communities of interest, that MCS is confusing to customers, that the issue is larger than one particular calling area, and that a rulemaking process is necessary to address what is fundamentally a universal service issue.

D. *Commission Staff*

In making its recommendation, the Commission Staff (Staff) cited to its in-depth study of the possibility of expanding local calling areas statewide, conducted as part of Docket No. 94-001, and Order No. 22,107, which summarized the study and closed the docket. The study considered the numbers of consumer complaints about EAS, complete statewide data regarding current calling patterns of New Hampshire customers, concerns for equity of calling areas, preservation of monthly basic service rates, recent state and federal legislation promoting competition in telecommunications, and seven possible methods of revising EAS. According to Staff, the Order resolved the underlying tension between the desire to encourage competition and the desire to have large local calling areas in favor of competition. Pointing out that the Order identified intraLATA Presubscription (ILP) as one tool for dealing with EAS problems by increasing competition in the instate toll market, Staff argued that ILP, which only became effective on June 2, 1997, should be given the opportunity to perform its identified task before the Commission decides to tamper with EAS. Staff also pointed out that the Order contained language intended to spur

NYNEX into proposing Optional Calling Plans and any other creative solutions to address known EAS difficulties by offering flat-rated calling packages to customers desiring calling areas dissimilar to the current EAS offering.

Staff argued against application of the existing EAS guidelines to current EAS petitions. The current guidelines could act as a continuing, cyclical deterrent to real competition, Staff argued, by allowing certain events to occur. For example, all the exchange customers could switch to a competitive toll provider who offered toll calls at a price of one cent per minute. As a result, NYNEX's toll revenues would decrease sharply. Under the guidelines, an expansion to EAS would cost very little or nothing, despite revenue neutrality, because NYNEX would lose very little or no revenues. Therefore, a vote to expand would likely be in the affirmative, effectively taking all the competitor's customers away and giving them back to NYNEX. Intrastate toll competition, according to Staff, would disappear before local competition becomes viable.

III. COMMISSION ANALYSIS

We commend the many members of the Franklin community for involving themselves in this complex issue. We appreciate the thoughtful comments and arguments made in this case, which will help to shape the evolution of telecommunications service in New Hampshire.

[1] We take the opportunity presented in this docket to stress the importance of effective MCS. Any carrier undertaking to offer customers MCS, that is, the ability for all residents within the same town to call each other toll-free even if they have a different exchange, must provide the service. In our recent ILP docket, DE 96-090, it was apparent that we consider MCS to be an important service for New Hampshire customers. NYNEX must take appropriate actions to insure that Sanbornton residents receive smoothly functioning MCS.

[2, 3] In compliance with the order in *Re New England Telephone and Telegraph Company*, 67 NH PUR 475 (1982)(Docket DR 82-70), we established guidelines for evaluating petitions to expand local calling areas. The guidelines required (1) evidence of the existence of a community of interest, (2) determination of the extent of net lost toll revenues to the telephone company, and (3) a vote in the affirmative of a majority of the total number of customers in the exchange.

In DRM 94-001, we conducted an investigation of local calling areas which culminated in Order No. 22,107 issued April 15, 1996. In that Order we decided that changes to EAS should not be instituted by regulation. Instead, we found that increased competition in the toll market as a result of intraLATA presubscription (ILP) and other changes mandated by the TAct would effectively expand EAS by creative offerings of competing carriers. We also determined that Section 253 of the TAct appeared to preclude regulatory expansion of EAS, whether by rulemaking or by consideration of individual petitions under the EAS guidelines and that the TAct inhibited our ability to continue to use the EAS guidelines.[1(118)]

On June 18, 1996, we clarified Order No. 22,107 as follows:

> To the extent our Order can be read as prohibiting the filing of EAS petitions for all time, we should clarify our intent. Companies continue to have the right to petition for a rulemaking on any issue, which we have the discretion to accept or reject. RSA 541-A:4. Our prior Order was not meant in any way to limit that statutory authority. In addition, though we stated in our Order that we would no longer entertain petitions for expanded EAS, we should state rather that we do not intend to handle petitions for EAS as we have in the past. If a LEC seeks a change in its calling area, it will bear a greater burden than in the past, having to demonstrate to the Commission that competitors will not be harmed and that the expansion is consistent with state and federal law. GST's arguments concerning the proper interpretation of Section 253 of the TAct would be considered at such a proceeding. Order No. 22,204 at p. 4.
>
> Accordingly, this petition is before us for analysis in light of our clarifying decision in

Order No. 22,204, interpretation of the TAct by the FCC in orders issued in August 1996 and May 1997, and changes in the telecommunications industry in New Hampshire since June 1996. Our analysis applies the standard we articulated in Order 22,204 for a LEC petitioner, which assures consistency with state and federal law and no harm to competitors.

[4-6] State and federal law prompts us to a "community of interest" approach to the suitability of an EAS expansion. However, we will not apply the deactivated EAS guidelines which quantified community of interest as an average of three or more calls per customer per month with 40% of the customers making at least two calls per month. Instead we look to recent FCC case law. In CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Report and Order*, FCC 97-157 (released May 8, 1997) (hereinafter referred to as the Universal Service Order), the FCC provided a definition of community of interest. Discussing affordability, in Paragraph 114 the FCC found that the scope of the local calling area directly and significantly impacts affordability and is a factor to be weighed when determining the affordability of rates. Elaborating, the FCC found that merely determining the number of subscribers to which one has access for local service in a local calling area is insufficient to determine that the calling area reflects the community of interest. A calling area which reflects the community of interest, in the FCC's opinion, is one which "allows subscribers to call hospitals, schools and other essential services without incurring a toll charge." *In the matter of Federal-State Joint Board on Universal Service Report and Order*, FCC 97-157 (May 8, 1997), para. 114. Applying this definition to the issue of affordability, the FCC stated that "... affordability is affected by the amount of toll charges a consumer incurs to contact essential service providers such as hospitals, schools, and government offices that are located outside of the consumer's local calling area .... Thus, we find that a determination of rate affordability should consider the range of a subscriber's local calling area, particularly whether the subscriber must incur toll charges to contact essential public service providers." *Id. See also Petitions for*

Limited Modification of LATA, etc., FCC 97-224 (July 15, 1997)

We will follow the FCC's common sense definition of community of interest in regard to the adequacy of a local calling area. Using this definition to facilitate examination of the Franklin petition, the Franklin local calling area has the following characteristics:

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

Exchange Rate Group/Monthly Charge	1/$12.74
Other Exchanges reached	Tilton
Number of Access Lines Reached	9,130
Educational Facilities Reached	
Public Middle School	Yes
Public High School	Yes
Internet	Yes
Medical Facilities Reached	
Doctor	Yes
Hospital	Yes
Pharmacy	Yes
Banking Facility Reached	Yes
Central Business Area	
2(119) Reached	Yes

Although it seems from this examination that the Franklin exchange encompasses a community of interest, from the comments made by customers in the Franklin exchange at the public hearing on June 26, 1997, it is also apparent that, at least for a vocal group of Franklin residents, the exchange does not encompass "their" community of interest. For instance, the Franklin exchange includes a portion of the Town of Sanbornton. Another portion of Sanbornton is assigned to the Tilton exchange and a third area of the town is assigned to the Laconia exchange. Hence, the Sanbornton residents assigned to the Tilton exchange are able to call Tilton, Franklin, and Laconia without toll charges, while the Sanbornton residents assigned to the Franklin exchange pay toll to call Laconia, and the Sanbornton residents assigned to the Laconia exchange pay toll to call Franklin.

We are convinced that Laconia is the community of interest for at least some residents of Sanbornton and Franklin for purposes of meeting their medical, educational, and business needs. We will therefore grant the petitioners' request that there be a poll of their fellow residents on the issue of expanding EAS, one way

from the 934 exchange to Laconia. If that vote is in the affirmative, we will then ballot the Laconia exchange residents in order to determine whether the EAS expansion will be two-way.

We will not permit NYNEX to impose a surcharge on customers to eliminate the negative

economic impact which may be associated with the implementation of EAS on the 934 route to Franklin, other than the increase occurring as a result of a rate group change determined by the increased number of lines reachable without paying a toll charge. The telecommunications landscape has changed and thus the goal of revenue neutrality in resolving EAS problems is elusive in today's more competitive environment. Therefore, a surcharge must be considered on a case-by-case basis. Our preliminary analysis is that adding Laconia's weighted access lines to Franklin's will cause a change from Rate Group 8 to Rate Group 14. We will order NYNEX to provide the Commission with information concerning rate group changes and to calculate the appropriate increase on a class of service basis for customers within each municipality of the Franklin and Laconia exchanges.

In order to insure maximum effective participation, the polling ballot will be designed, distributed, and tabulated by the Commission. The ballot question shall include a statement of the increased rate necessitated by the expanded calling area. The poll shall be considered conclusive if ballots are returned by 25% or more of the customer base. The outcome of a conclusive vote will be determined by a simple majority of the returned ballots.

The balloting shall be conducted according to the following schedule:

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

Ballots sent by Commission	September 8, 1997
Ballots returned	September 29, 1997
Ballots tabulated	October 13, 1997

We find that competitors are not likely to be harmed by expanding the Franklin calling area to include Laconia. In fact, it is possible that an expansion of the Franklin and Laconia calling areas may provide a more attractive market for a CLEC that resells NYNEX's services. We also note this is not a statewide re-allocation of toll revenues; the change is competitively neutral since all intraLATA toll providers are affected equally. Also, in the year since our Order 22,107 was issued, NYNEX has not proposed any Optional Calling Plans (OCP) to alleviate the EAS problems in Franklin or elsewhere. Based on the foregoing, our decision, therefore, does not violate § 253 of the TAct.

Finally, we find that the current transition period in telecommunications would benefit by a public rulemaking proceeding to establish the procedures to be used to address future EAS complaints. As with the procedure used in the recent Danbury EAS petition, Order No. 22,662, we consider the procedures utilized in this docket to be an experiment that will not only address an existing problem but also assist us in developing a new generic approach to resolving these kinds of problems.

Based upon the foregoing, it is hereby

ORDERED, that a vote on the EAS issue shall be conducted as noted above for expansion of the exchange to include Laconia and based on the price of the rate group appropriate to the

proposed expansion; and it is

FURTHER ORDERED, that NYNEX shall provide the Commission with the relevant rate group information and to calculate the appropriate increase, by class of service for each municipality in the Franklin and Laconia exchanges, by August 15, 1997 in order to facilitate preparation of timely ballots; and it is

FURTHER ORDERED, that NYNEX shall provide a list of Franklin exchange customers with names, addresses and telephone numbers and, to the extent technically possible, in mailing label or PC format by August 15, 1997; and it is

FURTHER ORDERED, that on or before September 20, 1997, NYNEX shall provide a report on the steps taken to insure smooth functioning MCS within the town of Sanbornton; and it is

FURTHER ORDERED, that Staff shall open a rulemaking proceeding to establish procedures to address future EAS complaints.

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By order of the Public Utilities Commission of New Hampshire this fourth day of August, 1997.

FOOTNOTES

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

[2]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into Extended Area Service, DRM 94-001, Order No. 22,204, 81 NH PUC 480, June 18, 1996. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-075, Order No. 22,662, 82 NH PUC 543, July 21, 1997. [N.H.] Re Preliminary Investigation into Local Calling Areas (Extended Area Service), DRM 94-001, Order No. 22,107, 81 NH PUC

288, Apr. 15, 1996.

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NH.PUC*08/04/97*[97401]*82 NH PUC 586*Hannaford Brothers Company, Inc.

[Go to End of 97401]

82 NH PUC 586

Re Hannaford Brothers Company, Inc.

DR 96-424
Order No. 22,676

Re Public Service Company of New Hampshire

DR 97-141
Order No. 22,676

New Hampshire Public Utilities Commission

August 4, 1997

ORDER scheduling a prehearing conference at which to consider the scope of issues that must be investigated vis-a-vis an electric utility's provision of backup and standby services to self-generation and cogeneration customers. The proceedings were prompted by a request by an industrial customer that an electric utility be compelled to provide such services on an unbundled basis.

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1. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Backup and standby services — Requested unbundling of — For services provided to self-generation and cogeneration customers — Scope of issues — Necessity of prehearing conference. p. 587.

2. RATES, § 342

[N.H.] Electric rate design — Backup or standby services — Requested unbundling of — For services provided to self- generation and cogeneration customers — Scope of issues — Necessity of prehearing conference. p. 587.

BY THE COMMISSION:

ORDER

On December 31, 1996, Hannaford Brothers Company, Inc. (Hannaford) filed with the New Hampshire Public Utilities Commission (Commission) a request for an order requiring Public Service Company of New Hampshire (PSNH) to provide separately priced Distribution and Transmission demand charges plus the related Administrative and Translation charges of PSNH's Backup Service Rate B (Rate B). On April 30, 1997, Hannaford and PSNH met and agreed upon a proposed procedural schedule which was included in an Order of Notice issued by the Commission on May 1, 1997. The Order of Notice scheduled a Prehearing Conference for May 12, 1997 to address the proposed procedural schedule, entertain motions to intervene and to hear the initial positions of the Parties and Staff.

On May 7, 1997, PSNH moved to

Page 586

consolidate Hannaford's petition with DR 96-150, the Commission's generic restructuring electric utility docket, arguing that the petition involved a request for retail wheeling services.

On May 8, 1997, Concord Electric Company and Exeter and Hampton Electric Company moved, without subsequent objection, to intervene in the proceeding.

On May 9, 1997, PSNH moved to stay the proceeding in order to allow the mediation process in DR 96-150 to try to resolve these issues.

At the May 12, 1997, Prehearing Conference, Hannaford requested that the Commission allow it until May 14, 1997, to respond to PSNH's motion. The Commission granted PSNH's motion and on May 14, 1997, Hannaford filed its response to PSNH's motion to stay.

On July 11, 1997, PSNH filed with the Commission a Petition for Approval of Optional Pricing to PSNH's Backup and Standby Service Rate B to become effective immediately or within 30 days pursuant to RSA 378:3 and N.H. Admin. Rules, Puc 1601.05(a)(1). This Petition proposes an optional pricing scheme that has a higher Administrative charge and a lower Distribution and Transmission charge compared to that currently under Rate B which PSNH asserts will provide for a more stable revenue stream.

On July 18, Hannaford objected to the holding of an unscheduled and unnoticed hearing on July 2, 1997, at which the Commission considered a Motion by PSNH to further suspend Docket DR 96-424.

On July 28, 1997, PSNH responded to Hannaford's objection indicating that failure to give notice of the July 2, 1997 meeting was inadvertent and that Hannaford did receive notice of the July, 2, 1997 hearing as a party to the Restructuring Proceeding.

[1, 2] These filings raise, *inter alia*, issues related to the cost of providing Backup and Standby Service under Rate B for PSNH customers, whether the newly proposed Amendments to Rate B are discriminatory, and whether Hannaford's petition should be addressed in conjunction with PSNH's Rate B proposal.

In Docket DR 91-001, the Commission approved a stipulation regarding rate design which incorporated the present rate design of Rate B. Rate B is a rate designed to provide Backup and Standby Service to self-generation and cogeneration customers at the cost of providing such service.

Based on the foregoing, it is hereby

ORDERED, that a Prehearing Conference be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on August 19, 1997 at 1:30 p.m. to discuss the scope of the issues, to discuss whether these two dockets should be combined and to establish a procedural schedule in these matters if appropriate; and it is

FURTHER ORDERED, that the Commission will proceed with an investigation into these matters concerning PSNH's tariffed Rate B regardless of the outcome of the Consolidated Hearing scheduled for August 4, 1997, concerning other PSNH issues; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, PSNH notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than August 7, 1997, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before August 19, 1997; 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 13, 1997, 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 15, 1997; and it is

FURTHER ORDERED, that the following tariff pages of Public Service Company of New Hampshire, NHPUC No. 37 - Electricity be suspended:

Original Pages 54, 55, 56, and 57.

By order of the Public Utilities

Commission of New Hampshire this fourth day August, 1997.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271- 2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made one week before the scheduled event.

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NH.PUC*08/05/97*[97402]*82 NH PUC 588*EnergyNorth Natural Gas, Inc.

[Go to End of 97402]

82 NH PUC 588

Re EnergyNorth Natural Gas, Inc.

DR 97-132
Order No. 22,677

New Hampshire Public Utilities Commission

August 5, 1997

ORDER adopting procedural schedule as to a natural gas local distribution company's proposed 1997-98 demand-side management programs for residential and small commercial customers.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Proposed 1997-98 programs — As to residential and small commercial customers — Continuation of previously approved "ENERGYWI$E" program — Local gas distribution company — Adoption of procedural schedule. p. 588.

2. GAS, § 7

[N.H.] Operation — Demand-side management — Proposed 1997-98 programs — Continuation of previously approved "ENERGYWI$E" program — Adoption of procedural schedule — Local distribution company. p. 588.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Richard A. Samuels, Esq. for EnergyNorth Natural Gas, Inc.; the Office of the Consumer Advocate by James Anderson, Esq. on behalf of residential ratepayers; and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 27, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its proposed ENERGYWI$E Program effective for the period October 1, 1997 through September 30, 1997. The ENERGYWI$E Program is ENGI's Demand-Side Management (DSM) Program aimed at residential and small commercial customers. ENGI essentially proposes to continue offering its currently approved ENERGYWI$E Program for an additional year.

By an Order of Notice issued July 10, 1997, the Commission scheduled a Prehearing Conference for July 31, 1997, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

[1, 2] At the Prehearing Conference, ENGI, OCA and Staff agreed to the proposed procedural schedule as outlined in the Order of Notice and as follows:

Page 588

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

Data Requests by Staff and Intervenors	August 5, 1997
Company Data Responses	August 12, 1997
Technical Session @ 2:00 p.m.	August 15, 1997
Testimony by Staff and Intervenors	August 21, 1997
Data Requests by the Company	August 26, 1997
Data Responses by Staff and Intervenors	August 29, 1997
Settlement Conference @ 10:00 a.m.	September 3, 1997
Filing of Settlement Agreement, if any	September 5, 1997
Hearing @ 10:00 a.m.	September 9, 1997.

Also at the Prehearing Conference, in accordance with the Order of Notice, ENGI, OCA and Staff stated their positions with regard to the filing.

ENGI stated that it was seeking Commission approval of its residential and small commercial DSM program. The proposed program is essentially the same ENERGYWI$E Program approved by the Commission for the 1996/1997 program year. ENGI intends to recover the costs of the program on a per-therm basis and estimates the annual recovery from a residential heating customer to be approximately $9.50. ENGI stated that it seeks to implement the new conservation charges on a bills-rendered basis and that the proposed conservation charges reflect recovery of $49,500 of lost net revenues.

The OCA did not state its initial position.

Staff stated that it is primarily concerned about the performance of the current year's ENERGYWI$E Program, whether results of monitoring and evaluation were incorporated into the development of the proposed program and the need for additional documentation from ENGI to enable Staff to perform a thorough analysis of the proposal.

II. COMMISSION ANALYSIS

We find the proposed procedural schedule to be reasonable and will, therefore, approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this fifth day of August, 1997.

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NH.PUC*08/05/97*[97403]*82 NH PUC 589*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97403]

82 NH PUC 589

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Business Long Distance, Inc.

DE 97-122
Order No. 22,678

New Hampshire Public Utilities Commission

August 5, 1997

ORDER approving an interim agreement negotiated by a local exchange telephone carrier (LEC)

and an interexchange telephone carrier (IXC) under which the IXC will purchase services from the LEC at a discount for resale to retail customers.

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1. SERVICE, § 171

[N.H.] Resale — Of telecommunications service — Under agreement between local exchange carrier (LEC) and interexchange carrier (IXC) — Purchase by IXC of LEC services at a discount — Resale to business and residential retail customers. p. 590.

2. RATES, § 553

[N.H.] Telephone rate design — Discounted wholesale service — Purchase of services by interexchange carrier from local exchange carrier — For resale to business and residential retail customers — Negotiated

Page 589

agreement. p. 590.

BY THE COMMISSION:

ORDER

[1, 2] On June 17, 1997, New England Telephone and Telegraph Company (NYNEX) and Business Long Distance, Inc. (BLD) jointly filed with the New Hampshire Public Utilities Commission (Commission) a resale Agreement (Agreement) negotiated pursuant to Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement establishes terms for the discount purchase of NYNEX telecommunications services for resale by BLD to retail customers in the State of New Hampshire. All business and residence services requested by BLD are detailed in the Agreement with a mutually agreed upon percentage discount from the tariff rates. Discounts in this filing range from 17.3% to 20.25% from retail tariff rates and are the same as another recent filing.

This Agreement is an interim contract which will govern the parties' terms until the Commission approves a "statement of generally available terms and conditions" (SGAT) for the wholesale marketing of services by NYNEX. The parties agree that at that time the SGAT terms will govern.

NYNEX will provide training to BLD regarding all services requested as well as reasonable amounts of information to assist marketing efforts.

Staff recommends approval of this negotiated Agreement based on a review of the summary provided by NYNEX, the Agreement and verbal clarification provided by NYNEX.

We accept Staff's recommendation, finding that the Agreement meets the standards of §252(e)(2)(A) of the TAct for approval. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *Nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Agreement negotiated between NYNEX and BLD is approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Put 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 August 12, 1997 and to be documented by affidavit filed with this office on or before August 19, 1997; 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 26, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 4, 1997, 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 fifth day of August, 1997.

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NH.PUC*08/05/97*[97404]*82 NH PUC 590*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97404]

82 NH PUC 590

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: Metracom Corporation

DE 97-133
Order No. 22,679

New Hampshire Public Utilities Commission

August 5, 1997

ORDER approving an interim agreement negotiated by a local exchange telephone carrier

(LEC) and an interexchange telephone carrier (IXC) under which the IXC will purchase services from the LEC at a discount for resale to retail customers.

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1. SERVICE, § 171

[N.H.] Resale — Of telecommunications service — Under agreement between local exchange carrier (LEC) and interexchange carrier (IXC) — Purchase by IXC of LEC services at a discount — Resale to business and residential retail customers. p. 591.

2. RATES, § 553

[N.H.] Telephone rate design — Discounted wholesale service — Purchase of services by interexchange carrier from local exchange carrier — For resale to business and residential retail customers — Negotiated agreement. p. 591.

BY THE COMMISSION:

ORDER

[1, 2] On June 30, 1997, New England Telephone and Telegraph Company (NYNEX) and Metracom Corp. (Metracom) jointly filed with the New Hampshire Public Utilities Commission (Commission) a resale Agreement (Agreement) negotiated pursuant to Section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement establishes terms for the discount purchase of NYNEX telecommunications services for resale by Metracom to retail customers in the State of New Hampshire. All business and residence services requested by Metracom are detailed in the Agreement with a mutually agreed upon percentage discount from the tariff rates. Discounts in this filing range from 17.3% to 20.25% from retail tariff rates and are the same as another recent filing.

This Agreement is an interim contract which will govern the parties' terms until the Commission approves a "statement of generally available terms and conditions" (SGAT) for the wholesale marketing of services by NYNEX. The parties agree that at that time the SGAT terms will govern.

NYNEX will provide training to Metracom regarding all services requested as well as

reasonable amounts of information to assist marketing efforts.

Staff recommends approval of this negotiated Agreement based on a review of the summary provided by NYNEX, the Agreement and verbal clarification provided by NYNEX.

We accept Staff's recommendation, finding that the Agreement meets the standards of §252(e)(2)(A) of the TAct for approval. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *Nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Agreement negotiated between NYNEX and Metracom is approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Put 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 August 12, 1997 and to be documented by affidavit filed with this office on or before August 19, 1997; 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 26, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 4, 1997, 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 fifth day of August, 1997.

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NH.PUC*08/08/97*[97405]*82 NH PUC 592*Wildwood Water Company

[Go to End of 97405]

82 NH PUC 592

Re Wildwood Water Company

DR 97-121

Order No. 22,680

New Hampshire Public Utilities Commission

August 8, 1997

ORDER suspending a water utility's petition for a 67.31% 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 — Water utility. p. 592.

2. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 65% — Necessity of suspension — To allow for adequate investigatory period — Issues to be addressed — Plant additions — System operations — Water treatment expense. p. 592.

BY THE COMMISSION:

ORDER

[1, 2] On July 18, 1997, Wildwood Water Company (Wildwood, or Petitioner) filed with the New Hampshire Public Utilities Commission (Commission) proposed tariff revisions, revised financial schedules and supporting testimony. Wildwood proposes an overall annual revenue increase of $8,930 or 67.31 percent to be applied to its 42 customers.

The filing raises issues concerning, but not limited to, plant additions, operation and maintenance, and water treatment expenses. A full investigation is necessary to determine whether the proposed increases are in the public good.

Based upon the foregoing, it is hereby

ORDERED, that Wildwood's Tariff No. 1 Water First Revised Page No. 7 is hereby suspended.

By order of the Public Utilities Commission of New Hampshire this eighth day of August, 1997.

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NH.PUC*08/12/97*[97406]*82 NH PUC 592*Statewide Electric Utility Restructuring Plan

[Go to End of 97406]

82 NH PUC 592

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,681

New Hampshire Public Utilities Commission

August 12, 1997

ORDER denying a motion by Public Service Company of New Hampshire for continued suspension of the procedural schedule as to outstanding motions for rehearing and/or clarification of Order No. 22,512 (82 NH PUC 101, *supra*), which pertained to the commission's electric industry restructuring plan. Instead, the commission establishes a new procedural schedule, noting that the suspension period, which was intended as a means of facilitating mediation, no longer seemed to be producing results, given the waning party support for additional mediation time.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Required mediation sessions — Deadline for reporting results of

Page 592

mediation efforts — Rescheduling of related commission rehearing proceedings — Termination of suspension period. p. 593.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Required mediation sessions — Deadline for reporting results of mediation efforts — Rescheduling of related commission rehearing proceedings — Termination of suspension period. p. 593.

3. PROCEDURE, § 42

[N.H.] Stay and suspension — Temporary duration — Termination of — Establishment of new procedural schedule — Relative to rehearing requests — Pending completion of required

mediation sessions — Electric restructuring proceeding. p. 593.

4. PROCEDURE, § 32

[N.H.] Rehearing — Lifting of temporary suspension of — Adoption of new procedural schedule — In electric restructuring proceeding. p. 593.

BY THE COMMISSION:

ORDER

This order addresses an August 1, 1997 "Motion for Continued Suspension of Proceedings" (Motion) filed by Public Service Company of New Hampshire (PSNH) relative to the rehearing schedule in this docket.[1(120)] PSNH requests a continued "suspension" of the rehearing schedule to accommodate a mediation process in which the State of New Hampshire and others are engaged under the oversight of the United States District Court. The relevant procedural history leading to PSNH's Motion is recounted in Order Nos. 22,664 (July 21, 1997) and 22,599 (May 22, 1997). The Commission conducted a status conference relative to this matter on August 4, 1997.

The Commission originally agreed to delay the rehearing process in this proceeding until July 2, 1997 to accommodate the requests of several parties, including PSNH, who argued that a temporary suspension of this docket would facilitate a negotiated resolution of PSNH's legal claims. *See*, Order No. 22,599 (May 22, 1997), p.7. PSNH's original request was limited to a one-month suspension of the rehearing process, which the Commission thereafter agreed to extend to August 5, 1997 in Order No. 22,664 (July 21, 1997). In the instant request, PSNH requests another month suspension until September 2, 1997. The sole basis in the motion for PSNH's current request is its assertion that "mediation efforts have progressed." PSNH Motion, ¶ 4.

During the aforementioned status conference, the following parties offered support for PSNH's request: the Conservation Law Foundation (CLF), Bellweather Solutions, the Business and Industry Association, Granite State Electric Company, the "Unitil Companies" (Concord Electric Company and Exeter & Hampton Electric Company), Connecticut Valley Electric Company, Representative Jeb Bradley and the Governor's Office of Energy and Community Services. A number of parties objected to PSNH's request and urged the Commission to proceed with the rehearing process without further delay, including the New Hampshire Electric Cooperative (NHEC), Freedom Energy L.L.C., the Retail Merchants Association, Granite State Taxpayers Association, the City of Claremont, Enron, the Office of Consumer Advocate (OCA) and Senator Jim Rubens.

Several parties urged the Commission to adopt a compromise procedural schedule which was presented by the City of Manchester. Under this proposed approach, the Commission was urged to begin to "ramp up" a procedural schedule which provides for data requests and PSNH

responses later this month. Cabletron Systems and the Campaign for Ratepayer Rights expressed support for this proposal.

[1-4] The only issue before us is whether to defer further activity in this docket until

September 2, 1997, at which time the parties to the federal court mediation are required to report to the court the results of their efforts. In Order No. 22,599, we stated that the parties would be required to demonstrate "meaningful and significant progress" in order for us to grant any future requests to extend the procedural schedule. In Order 22,664, we agreed to extend the suspension of the rehearing process despite the absence of such a demonstration and explained that part of the rationale for so doing was the broad support for that extension. Based on the comments of several parties during the status conference, that support seems to have diminished. Some parties report that no meaningful progress has been made and they urge the Commission to proceed with the rehearing process, although others appear somewhat encouraged by the process. Despite these different perceptions, none of the parties believe that the mediation process should be abandoned.

While the Commission has been and continues to be fully supportive of the parties' attempts to resolve the disputed issues through negotiation, the issue before us here is whether we should continue to abstain from moving forward with a policy directive that we are required to implement by law. Although by now the participants in this proceeding are undoubtedly aware of this point, it is worth repeating that we are under a statutory deadline, not a self-imposed administrative deadline, to implement a retail access program by January 1, 1998, with the authority to extend that deadline for up to six months if it is in the public good. *See*, RSA 374-F:4,I. We originally decided to suspend this proceeding because several parties argued that by so doing the Commission would facilitate a negotiated resolution of the matters raised by PSNH, which in turn would expedite the implementation of the Legislature's policies. At a minimum, a question has been raised as to whether the suspension is having its desired effect.

Because we have no way to determine at this point whether a settlement will be reached by September 2, 1997, and in view of our responsibility to meet the aforementioned statutory deadline, we will establish a rehearing schedule to be implemented in the event that the parties are unsuccessful in their mediation efforts. *See* Appendix A attached hereto. This schedule requires that responses to data requests that were stayed by order No. 22,599 be provided by PSNH by September 5, 1997; it also reactivates the remainder of the schedule originally laid out by the Commission.

We have not scheduled any hearings until after the parties report the results of the mediation to the federal court on or about September 2, 1997. Thus, the procedural schedule is intended to accommodate the requests of those parties who believe that their full attention and resources should be dedicated to the mediation process during the next month.

In allowing the parties a total of more than 90 days of delay in the instant rehearing process we believe that we have provided ample time for them to explore mediation. In light of the

pending statutory deadlines, we believe that we must be prepared to move ahead with this docket if we are not presented with a settlement proposal by September 2, 1997. We note that the issues to be addressed as part of the discovery and rehearing are narrow in scope. We therefore see no reason why the parties cannot proceed with mediation or other settlement discussions while the Commission completes the rehearing process.

Finally, in the event that significant progress in the mediation is made at any future date the Commission will entertain requests to modify the procedural schedule set forth in Appendix A. At a minimum, the parties would be required to present a memorandum of understanding or other memorialized evidence outlining the terms of any settlement before we will consider granting such a request.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion is DENIED as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 1997.

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

APPENDIX A

Procedural Schedule for "PSNH Specific" Issues
(*See*, Order No. 22,548 (April 7, 1997))

PSNH's Responses to Outstanding Data Requests	September 5, 1997
Staff and Intervenor Testimony	September 12, 1997
PSNH's Data Requests	September 19, 1997
Staff/Intervenor Responses	September 26, 1997
Hearings	October 6, 1997 (1:30 P.M.) October 7-8, 1997 (10 A.M.)

Procedural Schedule Relative to Energy Efficiency Issues
(*See*, Order No. 22,576 (April 30, 1997))

Testimony or Written Comments from Any Interested Party	September 17, 1997
Hearings	October 9, 1997 (10 A.M.)

FOOTNOTES

[1]PSNH also filed the same request in DR 96-424. A separate order addressing PSNH's request has been issued.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,576, 82 NH PUC 376, Apr. 30, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,599, 82 NH PUC 420, May 22, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,664, 82 NH PUC 552, July 21, 1997.

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NH.PUC*08/18/97*[97407]*82 NH PUC 596*Granite State Telephone, Inc.

[Go to End of 97407]

82 NH PUC 596

Re Granite State Telephone, Inc.

DE 97-038
Order No. 22,682

New Hampshire Public Utilities Commission

August 18, 1997

ORDER authorizing a poll to be conducted of the residents of Chester and Sandown as to whether extended area telephone service (EAS) should be instituted between their shared exchange and ones in Plaistow, Hampstead, Atkinson, and Kingston. Although the commission had previously found that the development of local exchange competition and further growth of interexchange competition militated against any further expansion of EAS, it cites the special circumstances of the Chester/Sandown area, which is unlikely to become the object of any competition. Moreover, many residents are unable to call educational and medical facilities or other basic services without incurring a toll charge as telecommunications services are presently

configured. Commission observes that the instant EAS application is somewhat more complex than others also pending before the commission in that it involves an expansion of exchanges served by more than one local carrier.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 599.

2. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Factors affecting EAS expansion proposals — Communities of interest — Effect of lost toll revenues — Extent of toll and local exchange competition — Customer demand. p. 599.

3. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Proposal for expanded EAS calling area —
Polling of customers — Factors — Present calling exchange as inadequate for reaching true community of interest — Incurrence of toll charges for calling many schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize — Justification for deviation from policy of no EAS expansion — Inclusion of exchanges served by more than one local carrier notwithstanding. p. 599.

4. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Proposal for expanded EAS calling area — Polling of customers — Factors — Present calling exchange as inadequate for reaching true community of interest — Incurrence of toll charges for calling most schools, hospitals, and other basic services — Toll and local exchange competition as unlikely to materialize — Justification for deviation from policy of no EAS expansion — Inclusion of exchanges served by more than one local carrier notwithstanding. p. 599.

5. MONOPOLY AND COMPETITION, § 92

[N.H.] Telecommunications — Particular types of service — Extended area service (EAS) — Proposal for expanded EAS calling area — Justification for exception to policy of no EAS expansion — Toll and local exchange competition as unlikely to materialize — No threat to competitors — Present calling exchange as inadequate for reaching true communities of interest — Significant customer demand. p. 599.

APPEARANCES: Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for Granite State Telephone, Inc.; Victor D. Del Vecchio, Esq. for New England Telephone and Telegraph Company (NYNEX); E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On March 7, 1997, Granite State Telephone, Inc. (GST) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting an expansion of the Chester-Sandown exchange (887), on the basis of the Extended Area Service (EAS) guidelines followed by the Commission in the past, to include Plaistow (382), Hampstead (329), Atkinson (362) and Kingston (642). The Commission issued an Order of Notice scheduling a hearing for July 8, 1997.

The Order of Notice identified a number of issues to be considered at the hearing, including whether the desired expansion would safeguard the rights of consumers, ensure continued quality of service, protect public safety or preserve and enhance universal service. In addition, the Commission indicated that both state and federal laws mandate that any proposal for expansion must consider whether competitors would be harmed.

On July 8, 1997, the Commission heard comments regarding the issues identified from a representative of GST, Senator Jack Barnes of Sandown, Representative Thomas Salatiello of Sanbornton, New England Telegraph and Telephone, Inc. (NYNEX), Commission Staff (Staff) and members of the public. The Commission received a number of written comments as well, including a letter from the selectmen of Sandown which was read into the record. The Commission also received petitions in favor of expanding the exchange signed by over 750 residents in the 887 exchange, supporting the expansion of their local calling area.

II. COMMENTS OF THE PUBLIC,
TELEPHONE COMPANIES AND STAFF

A. *Granite State Telephone, Inc.*

GST stated its belief that expansion of the Chester-Sandown exchange would be in the public

interest. GST explained that an expansion would have no negative effect on the intraLATA toll market because the Chester-Sandown area is not a major toll route. In addition, according to GST, a community of interest exists with the expansion communities, based on the petition signed by 750 residents of Sandown. GST therefore urged the Commission to permit a vote by the residents of each affected exchange area on whether 2-way expansion of their EAS should occur. The vote, GST suggested, should be premised upon an analysis of calling data which would determine an appropriate surcharge to assess customers, based on the financial impact to the company resulting from alterations to revenues caused by expanding EAS. The surcharge would be clearly identified to voters. Because the vote will affect all residents of each exchange, GST proposed that, to be valid, a vote must produce at least a 25% voter turnout in each exchange. A simple majority would determine the outcome of a valid vote.

If a valid vote concluded that a 2-way expansion was not approved but that a 1-way expansion would be approved, GST suggested that other options could be considered but that rate design for such an outcome would be complex and that the surcharge would be higher.

GST submitted a memorandum of law supporting its contention that § 253 of the TAct does not remove or diminish the Commission's authority to change individual EAS routes, as long as the changes are competitively neutral. Establishment of EAS arrangements does not implicate competitive entry, according to the memo, but only defines the scope of incumbent LEC services. Further, competitive LECs (CLECs) would not be prevented from offering local exchange or toll service in the same area. And finally, enlarging EAS to reflect communities of interest is consistent with an intent of the TAct, namely to insure universal, affordable

service. GST's memorandum identifies actions taken in other states to expand local calling areas after the enactment of the TAct.

GST also proposed that the Commission undertake a rulemaking to develop a statewide policy regarding EAS.

B. *Senator Barnes, Representative Salatiello and other Members of the Public*

Both Senator Barnes and Representative Salatiello spoke on behalf of expanding the Chester-Sandown local calling area, stressing that competition may solve problems in the long run but that competition is not coming to rural New Hampshire any time soon. Members of the public stressed the importance of local calling for educational and medical reasons, so as not to inhibit responsible parents, students, and patients from obtaining assistance. The Timberlane Middle School and High School are located in Plaistow, which is a toll call for students and parents in Sandown. The Selectmen of Sandown sent a letter mentioning the significant financial impact of toll bills on small businesses, schools, and the elderly. Selectman David R. Cheney presented his preference for the Commission to allow GST to offer a special calling plan with an

option for expanded area calling. This would allow those who wish to obtain expanded calling to do so, at their own expense, but would permit those who have no need for the wider calling area, or who are on fixed incomes, to retain the current calling area at the same price. A resident of Chester supported the optional calling plan proposal, reminding the Commission that Sandown's regional school is in Plaistow but Chester's is not. Therefore, Chester residents may wish to retain the current calling area.

The Chairman of the Timberlane School Budget Committee indicated that phone bills are an inordinate percentage of the budget. The Budget Committee chairman also mentioned that his doctors and therapists are outside the calling area which, as a disabled person, necessitates numerous toll calls. He supported expanding the calling area.

According to most commenters, individuals are unable to call educational and medical services without incurring toll charges. School friends cannot communicate by telephone for study or recreational purposes without incurring toll charges, new businesses are discouraged from locating in the area because of the toll charges, and responsible workers cannot call their places of business without incurring toll charges. Several commenters stated that the current calling area reflects outmoded boundaries which made sense once but are no longer reasonable.

C. *NYNEX*

NYNEX does not serve the Chester-Sandown exchange. It does serve the abutting communities where Sandown residents wish to annex by EAS. In support of the petition, therefore, NYNEX agreed with GST that the Commission retains its authority to change EAS boundaries under the TAct. NYNEX pointed out that competition is the long term answer to EAS problems but suggested that, if the Commission were to grant an EAS expansion, using the guidelines developed in Docket No. 82-70 would insure that a strong community of interest exists.

D. *Commission Staff*

The Staff did not present formal comments. Asking questions of the GST witness, however, Staff elicited responses to indicate that at least one of the four proposed expansion towns would meet the definition of community of interest under the old EAS guidelines.

III. COMMISSION ANALYSIS

We commend the members of the Chester-Sandown community for involving themselves in this complex issue. We appreciate the thoughtful comments and arguments made in this case, which will help to shape the evolution of telecommunications service in New Hampshire. This docket is somewhat similar to two recent EAS cases, DE 97-046 and DE 97-75. Some of the same reasoning applies. However, this docket, unlike those two, deals with a request to expand the calling area of customers

of an independent telephone company to include exchanges in NYNEX's territory. Therefore, some of the results of that reasoning warrant a different outcome.

[1, 2] In compliance with the order in *Re New England Telephone and Telegraph Company*, 67 NH PUC 475 (1982)(Docket DR 82-70), we established guidelines for evaluating petitions to expand local calling areas. The guidelines required (1) evidence of the existence of a community of interest, (2) determination of the extent of net lost toll revenues to the telephone company, and (3) a vote in the affirmative of a majority of the total number of customers in the exchange.

In DRM 94-001, we conducted an investigation of local calling areas which culminated in Order No. 22,107 issued April 15, 1996. In that Order we decided that changes to EAS should not be instituted by regulation. Instead, we found that increased competition in the toll market as a result of intraLATA presubscription (ILP) and other changes mandated by the TAct would effectively expand EAS by creative offerings of competing carriers. We also determined that Section 253 of the TAct appeared to preclude regulatory expansion of EAS, whether by rulemaking or by consideration of individual petitions under the EAS guidelines and that the TAct inhibited our ability to continue to use the EAS guidelines.[1(121)]

On June 18, 1996, we clarified Order No. 22,107 as follows:

> To the extent our Order can be read as prohibiting the filing of EAS petitions for all time, we should clarify our intent. Companies continue to have the right to petition for a rulemaking on any issue, which we have the discretion to accept or reject. RSA 541-A:4. Our prior Order was not meant in any way to limit that statutory authority. In addition, though we stated in our Order that we would no longer entertain petitions for expanded EAS, we should state rather that we do not intend to handle petitions for EAS as we have in the past. If a LEC seeks a change in its calling area, it will bear a greater burden than in the past, having to demonstrate to the Commission that competitors will not be harmed and that the expansion is consistent with state and federal law. GST's arguments concerning the proper interpretation of Section 253 of the TAct would be considered at such a proceeding.

Order No. 22,204 at p. 4.

We will therefore analyze this petition in light of our clarifying decision in Order No. 22,204, interpretation of the TAct by the FCC in orders issued in August 1996 and May 1997, and changes in the telecommunications industry in New Hampshire since June 1996. Our analysis applies the standard we articulated in Order 22,204 for a LEC petitioner, which assures consistency with state and federal law and no harm to competitors. We find that this approach is not inconsistent with the interpretation of the TAct which is argued in the memorandum of law presented by GST.

[3-5] State and federal law prompts us to a "community of interest" approach to the suitability of an EAS expansion. However, even though there is some evidence that at least one of the proposed expansion exchanges would meet our prior EAS guidelines which quantified community of interest as an average of three or more calls per customer per month with 40% of the customers making at least two calls per month, we will not apply those guidelines to determine community of interest. Instead we look to recent Federal Communications Commission (FCC) case law. In CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Report and Order*, FCC 97-157 (released May 8, 1997) (hereinafter referred to as the Universal Service Order), the FCC provided a definition of community of interest. Discussing affordability, in Paragraph 114, the FCC found that the scope of the local calling area directly and significantly impacts affordability and is a factor to be weighed when determining the affordability of rates. Elaborating, the FCC found that merely determining the number of subscribers to which one has access for local service in a local calling area is insufficient to determine that the calling area reflects the community of interest. A calling area which reflects the community of interest, in

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the FCC's opinion, is one which "allows subscribers to call hospitals, schools and other essential services without incurring a toll charge." *In the matter of Federal-State Joint Board on Universal Service Report and Order*, FCC 97-157 (May 8, 1997), para. 114. Applying this definition to the issue of affordability, the FCC stated that:

> " ... affordability is affected by the amount of toll charges a consumer incurs to contact essential service providers such as hospitals, schools, and government offices that are located outside of the consumer's local calling area. ... Thus, we find that a determination of rate affordability should consider the range of a subscriber's local calling area, particularly whether the subscriber must incur toll charges to contact essential public service providers." *Id. See also Petitions for Limited Modification of LATA, etc.*, FCC 97-224 (July 15, 1997)

We will follow the FCC's common sense definition of community of interest in regard to the adequacy of a local calling area. Using this definition to facilitate examination of the GST petition, the Chester-Sandown local calling area has the following characteristics:

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

Exchange Rate Group/Monthly
  Charge                        none/$9.07
Other Exchanges reached         Manchester
                                Derry
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Number of Access Lines Reached	110,206
Educational Facilities Reached	
Public Middle School	Yes(Chester)/ No (Sandown)
Public High School	Yes (Chester/ No (Sandown)
Internet	Yes
Medical Facilities Reached	
Doctor	Yes
Hospital	Yes
Pharmacy	Yes
Banking Facility Reached	Yes
Central Business Area	
2(122) Reached	Yes

Although it seems from this examination that the Chester-Sandown exchange encompasses a community of interest, from the comments made by customers in the Chester-Sandown exchange, especially those who live in Sandown, it is also apparent that the exchange does not encompass "their" community of interest.

We are particularly struck by the map showing the EAS calling capability of the Chester-Sandown exchange and those of surrounding communities, Exhibit 2. The map shows that EAS for the Chester-Sandown exchange reaches to communities which border Chester but not Sandown, and that Sandown is east of Chester whereas the Chester-Sandown EAS exchanges are west of Chester.

We are convinced that the towns to which GST has requested to extend the Chester-Sandown exchange represent the community of interest, for at least some residents of the exchange, notably the 750 people who signed the EAS petition. That community of interest serves the medical, educational, and business needs of that segment of the exchange.

Accordingly, modified slightly and subject to certain conditions, we will grant GST's petition to conduct a poll. The poll shall include the customers in the Chester-Sandown exchange only. The purpose of the poll is to see if those customers approve of paying an additional amount for the benefit of calling all or any of the additional exchanges. The customers in the additional exchanges need not be polled because we have determined that adding the customers of Chester to any of the other exchanges will not create enough of an increase in access lines so as to change the current NYNEX rate group to a more costly one. Those customers could therefore receive the benefits of EAS to Chester, should it be approved in the Chester-Sandown vote, without incurring increased rates.

As in our decisions in DR 97-046 and DR 97-075, in order to insure maximum effective participation, the polling ballot will be designed, distributed, and tabulated by the Commission. The ballot question shall include a statement of the increased rate necessitated by the expanded calling area. The poll shall be considered conclusive if ballots are returned by 25% or more of the customer base. The

outcome of a conclusive vote will be determined by a simple majority of the returned ballots.

Unlike the situation in DR 97-046 and DR 97-075, we are unable to establish precise balloting dates because the ballot must be prepared based upon information we do not have at present. Calculation of a rate increase due to the increased number of access lines is not a simple matter of referring to multiple rate groups as in the NYNEX cases; GST has two rate groups only and the Chester-Sandown customers are already in the higher of the two. Therefore, we will order GST to provide the following information to the Commission within 30 days of the effective date of this order.

For *each* of the requested exchanges GST shall provide:

a) originating and terminating minutes of use (MOU);

b) access revenue;

c) billing and collection revenue;

d) intrastate impact resulting from federal changes;

e) number of residence and business access lines over which the proposed surcharge will be collected;

f) cost of other changes necessary;

g) other factors which GST believes should be considered in the cost calculation;

h) current terms and conditions of EAS agreements with NYNEX;

i) terms and conditions of billing and collection agreements with NYNEX;

j) terms and conditions of anticipated EAS agreements with NYNEX if such agreements affect the relevant towns; and

k) a recommendation as to what is the appropriate charge for the proposed expanded EAS.

NYNEX shall provide to the Commission within 30 days of the effective date of this order the following information for *each* of the affected routes:

1) Current toll revenue based on current toll MOU; and

2) Current access revenue based on current access MOU.

After analyzing the information submitted by GST and NYNEX, we will then determine whether GST's recommendation is reasonable and proceed with the balloting. Our intent is to commence the balloting in the early fall, to have the ballots returned within 3 weeks, and tabulated 2 weeks thereafter.

Based upon the foregoing, it is hereby

ORDERED, that a poll on the EAS issue shall be conducted as noted above; and it is

FURTHER ORDERED, that within 30 days of the effective date of this order, GST and NYNEX shall provide the Commission with the information listed above; and it is

FURTHER ORDERED, that GST shall provide a list of Chester-Sandown exchange customers, including names, addresses and telephone numbers and, to the extent technically possible, in mailing label or PC format within 30 days of the effective date of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

FOOTNOTES

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

[2]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Investigation into Extended Area Service, DRM 94-001, Order No. 22,204, 81 NH PUC 480, June 18, 1996. [N.H.] Re Preliminary Investigation into Local Calling Areas (Extended Area Service), DRM 94-001, Order No. 22,107, 81 NH PUC 288, Apr. 15, 1996.

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NH.PUC*08/18/97*[97408]*82 NH PUC 602*Pennichuck Water Works, Inc.

[Go to End of 97408]

82 NH PUC 602

Re Pennichuck Water Works, Inc.

DR 97-058
Order No. 22,683

New Hampshire Public Utilities Commission

August 18, 1997

ORDER granting a water utility a 5.12% temporary rate increase, pending resolution of the utility's request for a permanent increase of 26.98%.

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1. RATES, § 630

[N.H.] Temporary rates — Pending completion of permanent rate case — Factors affecting grant — Financial jeopardy — Capital construction obligations — Increases in tax liability — Water utility. p. 603.

2. RATES, § 597

[N.H.] Water rate design — Special factors — Financial jeopardy — Capital construction obligations — Increases in tax liability — As justifying temporary rate increase — Pending completion of permanent rate case. p. 603.

APPEARANCES: Gallagher, Callahan and Gartrell by John B. Pendleton, Esq., for Pennichuck Water Works, Inc.; Ransmeier and Spellman by Dom A. D'Ambruoso, Esq., for Anheuser-Busch Companies, Inc. and Amy L. Ignatius, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER
I. PROCEDURAL HISTORY

Pennichuck Water Works, Inc. (Pennichuck) serves the southern New Hampshire area, operating a core system that serves Nashua, and portions of Amherst, Merrimack, Milford, Hollis and Bedford as well as 10 independent community systems serving portions of Epping, Derry, Bedford, Milford and Plaistow. On May 28, 1997, Pennichuck filed with the New Hampshire Public Utilities Commission (Commission) a petition for an increase in its rates and to consolidate the rates of the core and community systems, even though the systems are not physically interconnected.

Pennichuck requested an overall 26.98% increase in permanent rates, on a consolidated system basis. In its testimony filed July 10, 1997, it also requested a temporary 5.12% increase in revenues overall, to be derived solely from core customers. Pennichuck proposed to exclude the community systems from the temporary rate increase and to exclude from the temporary and

permanent rate increases all commercial and municipal fire protection customers. This would result in a 7.8% increase to all other customers of the core system if the temporary rate increase were granted.

Anheuser-Busch, Inc.(AB), Pennichuck's largest customer, sought and was granted intervention. The Office of Consumer Advocate is a statutorily authorized intervenor but did not participate.

At a prehearing conference on July 15, 1997, the Parties and Commission Staff (Staff) presented their initial positions on the filing and presented a procedural schedule that would at least set deadlines for the temporary rate request discovery and hearing. Pennichuck opposed the full procedural schedule, arguing that if temporary rates were not granted, the delay until February 1998 for hearings would pose a financial hardship. The Commission accepted the agreed upon portions of the procedural schedule and stated that it would consider the evidence on temporary rates before addressing the disputed aspects of the schedule.

The Commission heard evidence regarding the temporary rate request on July 30, 1997.

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II. POSITIONS OF THE PARTIES AND STAFF

A. *Pennichuck*

Pennichuck argued that it fell short of its last authorized rate of return of 8.81%, earning only 8.42% in 1996 and 8.32% in its core system for the 12 months ending May 31, 1997. It further argued that its return on equity was 8.4% in 1996 and 7.9% for the 12 months ending May 31, 1997, as compared to an authorized return on equity of 9.71%.

Pennichuck stated that without temporary and permanent rate relief, it would cut back on certain non-mandated construction and maintenance projects, but would be unable to put off those improvements which are mandated by municipal, state and federal authorities. Pennichuck asserted that temporary rates would send a clear signal to the financial community that the Commission supported its efforts, which would allow it to seek equity financing.

Pennichuck argued that the Commission's standard for granting temporary rates articulated in *Re Hampton Water Works*, 76 NH PUC 629 (1991) is too extreme, as it requires a company to reach the point of financial instability before obtaining relief. In Pennichuck's view it is prudent utility management to seek temporary and permanent rates before reaching the point of a financial crisis.

B. *AB*

AB took no position on Pennichuck's request for temporary rates.

C. *Staff*

Staff opposed the request for temporary rates. Based on review of the books and records on file with the Commission, pursuant to RSA 378:27, Pennichuck was not financially unsound. In fact, when comparing Pennichuck's overall rate of return and overall return on equity against its current cost of debt, Staff found that the core system was actually overearning to a slight degree.

Staff's calculations on rate of return for the core system resulted in figures that were almost identical to Pennichuck's, that is, an overall rate of return for 1996 of 8.46 and 8.36% for the 12 months ending May 31, 1997. There was a significant difference however, in the calculations of Pennichuck's return on equity, due to the treatment of an earlier infusion of capital from the parent company to Pennichuck. Consistent with the last ratemaking settlement and order of the Commission, Staff treated that infusion as debt rather than equity, which resulted in higher returns on equity, to wit, 9.4% for 1996 and 9.13% for the 12 months ended May 31, 1997. Making two adjustments proposed by Pennichuck, accepted for the purposes of the temporary rate hearing, Mr. Naylor's calculations on return on equity came down to 8.50% for 1996 and 8.15% for the twelve months ending May 31, 1997.

Pennichuck's actual cost of capital in December 1996 was 8.4% and for the 12 months ending May 31, 1997, was 8.26%. This, compared to Pennichuck's actual rate of return of 8.46% in 1996 and 8.36% for the 12 months ending May 31, 1997, further led Staff to the view that Pennichuck's core system was earning a reasonable return on its investment in plant and that temporary rates were not needed.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the record before us in the petition for temporary rates and find that Pennichuck is entitled to temporary rates as requested. We agree with Pennichuck that a utility should not be forced to spiral downward to a crisis level before obtaining some relief. While we do not necessarily interpret *Hampton* as does Pennichuck and will not overturn that decision, we should clarify that we consider evidence of threatened financial harm as well as actual earnings in temporary rate proceedings.

Pennichuck has responded to municipal, state and federally mandated construction, as well as its own schedule for maintenance and upgrade of its system, with an ambitious capital improvements plan. We do not want to see the progress made on those projects slowed; neither do we want to see Pennichuck suffer in the investment community in its quest to obtain

equity financing. In addition, we note that Pennichuck's tax obligations to the City of Nashua have increased. This increase is a result of negotiations between Pennichuck and the City of

Nashua that avoided costly litigation and potentially higher taxes. Finally, should we find an increase in permanent rates to be justified at the conclusion of this case, imposition of temporary rates will help to minimize the impact on ratepayers. For those reasons we will approve the requested 5.12% temporary rate increase, which will result in a 7.8% increase for all core system customers other than those merely taking fire protection services.

By this order we have not judged the wisdom of consolidation of the system, the appropriate rate of return for permanent rates, or the particular rate base items that may be in dispute in the permanent case. In addition, we have not determined whether the parent company's infusion of capital should continue to be treated as debt as in DR 92-220 or as equity as argued by Pennichuck. These are issues that will be more fully addressed in the permanent rate proceeding. As always, temporary rates are subject to reconciliation, up or down, upon the determination of permanent rates.

Because we are granting Pennichuck's request for temporary rates, it is our understanding that Pennichuck has no basis to oppose the full procedural schedule proposed by Staff at the prehearing conference. The proposed schedule is as follows:

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

Data Requests to Pennichuck	August 14, 1997
Data Responses from Pennichuck	August 28, 1997
Follow up Data Requests to Pennichuck	September 11, 1997
Follow up Data Responses to Pennichuck	September 25, 1997
Tech Session (10:00 a.m.)	October 3, 1997
Intervenor and Staff Testimony Due	November 6, 1997
Data Requests to Intervenors and Staff	November 20, 1997
Data Responses from Intervenors and Staff Due	December 4, 1997
Rebuttal Testimony by Pennichuck	December 18, 1997
Settlement Conference (10:00 a.m.)	January 6-7, 1998
Submission of Settlement Agreement (if any)	January 15, 1998
Surrebuttal Testimony from Staff and Intervenors	January 22, 1998
Hearing on the Merits (10:00 a.m.)	February 3, 4, 5, 10, and 11, 1998

The schedule will be approved as submitted, although we encourage the Parties and Staff to explore the possibility of earlier settlement discussions. If those discussions prove fruitful, we will schedule an earlier hearing on the merits of a settlement proposal.

Based upon the foregoing, it is hereby

ORDERED, that Pennichuck's petition for temporary rates is GRANTED; and it is

FURTHER ORDERED, that the procedural schedule noted above is APPROVED; and it is

FURTHER ORDERED, that Pennichuck shall submit tariff pages in compliance with this order within 15 days.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

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NH.PUC*08/18/97*[97409]*82 NH PUC 605*Public Service Company of New Hampshire

[Go to End of 97409]

82 NH PUC 605

Re Public Service Company of New Hampshire

DR 97-059
Order No. 22,684

New Hampshire Public Utilities Commission

August 18, 1997

ORDER adopting procedural schedules for investigating both an electric utility's base rate filing and its request for temporary rates. As part of the temporary rate proceeding, the commission will be examining its authority to order rates reduced pursuant to a request for temporary rates.

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1. RATES, § 85

[N.H.] Commission jurisdiction — As to temporary rates — Ability to lower rates during temporary rate proceeding — Procedural schedule for considering — Electric utility. p. 606.

2. RATES, § 635

[N.H.] Temporary rates — Scope of proceeding — Extent of commission authority — As to lowering rates during temporary rate proceeding — Procedural schedule for considering — Electric utility. p. 606.

3. RATES, § 640

[N.H.] Procedure — Base rate filing — Temporary rate filing — Electric utility — Adoption of separate procedural schedules. p. 606.

APPEARANCES: Gerald M. Eaton, Esq. and Day, Berry and Howard by Robert Knickerbocker, Esq. on behalf of Public Service Company of New Hampshire; Dean, Rice and Howard by Anne Davidson, Esq. on behalf of the New Hampshire Electric Cooperative, Inc.; F. Anne Ross, Esq. on behalf of Retail Merchants Association; The Dupont Group by James Monahan for Cabletron Systems, Inc.; McLane, Graf, Raulerson and Middleton by Deborah M. Barradale, Esq. on behalf of EnerDev, Inc.; O'Neill, Grills and O'Neill by David E. Crawford Esq. on behalf of the City of Manchester; Backus, Meyer and Solomon by Robert A. Backus, Esq. on behalf of the Campaign for Ratepayers Rights; D. Dickinson Henry on behalf of Bellwether Solutions, Inc.; Jack K. Ruderman, Esq. for the Governor's Office of Energy and Community Services; Michael W. Holmes, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Jacqueline Lake Killgore, Esq. on behalf of Public Utility Policy Institute; and, Eugene F. Sullivan, III, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

On March 31, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a Notice of Intent to File Rate Schedules and a Request for Waiver of Tariff Filing Requirements, pursuant to N.H. Admin. Rules Puc 1603.02 and 1603.07, which was subsequently corrected and refiled on April 1, 1997. On May 2, 1997, PSNH filed testimony, exhibits, schedules, work papers and the remainder of the standard tariff filing requirements under N.H. Code Admin. Rule §1603 supporting an increase in overall rates.

By Order No. 22,605 (May 27, 1997) we granted a motion filed by PSNH, and supported by a number of other parties, requesting that the Commission stay its investigation and consideration of PSNH's base rate filing to accommodate PSNH and other parties attempts to mediate a resolution of pending litigation in federal court concerning some of our orders in DR 95-150.

On July 25, 1997, PSNH filed another motion to stay our investigation into PSNH's base rates. In response to concerns raised by a

number of parties with regard to PSNH's level of earnings we denied the motion and set August 5, 1997 for a prehearing conference to establish procedural schedules to govern our investigation into PSNH's base rate filing and to entertain motions to intervene.

On July 2, 1997 the Public Utility Policy Institute filed a motion to intervene. The City of Manchester filed a Petition to intervene on July 25, 1997. Motions to intervene were filed by

EnerDev, Inc., the New Hampshire Electric Cooperative, the Retail Merchants Association of New Hampshire, Cabletron Systems, Inc. On August 1, 1997. The Campaign for Ratepayers Rights filed for late intervention on August 5, 1997. The Governors Office of Energy and Community Services and Bellwether Solutions, Inc. orally requested limited intervenor status at the August 5, 1997 prehearing conference. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor. There were no objections to any of the motions to intervene. The Commission granted the motions to intervene from the bench at the prehearing conference.

[1-3] On August 5, 1997 the duly noticed prehearing conference took place. The only substantive issue raised at the prehearing conference concerned the authority of the Commission to lower rates as part of a temporary rate proceeding. PSNH averred that the Commission had neither the statutory authority nor the jurisdiction to lower base rates as part of this temporary rate proceeding. PSNH would not expound upon this theory but agreed to file a legal memorandum on the issue on August 14, 1997.

After the Staff and intervenors waived the right to issue data requests to PSNH, all parties and Staff stipulated to the following procedural schedule to govern the investigation into temporary rates:

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

August 5, 1997	Technical Session
August 14, 1997	Jurisdictional Memorandum from PSNH
August 18, 1997	Staff/Intervenor Testimony
August 22, 1997	Data Requests to Staff/Intervenors
August 29, 1997	Data Responses of Staff/Intervenors; Responsive Jurisdictional Memoranda from Staff/Intervenors
September 8, 1997	Rebuttal Testimony
September 11, 12, 1997	Temporary Rate Hearing

The parties stipulated to the following procedural schedule to govern the investigation into permanent rates:

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

October 3, 1997	First Round of Data Requests
November 7, 1997	Data Responses
January 5, 1998	Audit Report Completed
January 26, 1998	Second Round of Data Requests
February 16, 1998	Data Responses
March 2, 1998	Staff/Intervenor Testimony
March 20, 1998	Data Requests to Staff/ Intervenors
April 10, 1998	Data Responses

April 24, 1998	PSNH Rebuttal Testimony
April 29 & 30, 1998	Settlement Conference
May 4 - 15, 1998	Hearings
May 29, 1998	Briefs
June 15, 1998	Reply Briefs

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedules set forth above shall govern our investigation into PSNH's base rates.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-059, Order No. 22,605, 82 NH PUC 435, May 27, 1997.

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NH.PUC*08/18/97*[97410]*82 NH PUC 607*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97410]

82 NH PUC 607

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-150
Order No. 22,685

New Hampshire Public Utilities Commission

August 18, 1997

ORDER conditionally approving a special rate contract as between a local exchange telephone carrier and HADCO Corporation for fiber distributed data interface service.

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1. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface (FDDI) service — Special rate contract — Terms — Interconnection of multiple FDDI network locations — Conditional approval. p. 607.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Interconnection of multiple local area networks — Special rate contract — Conditional approval. p. 607.

3. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Special rate contract — Propriety of unconditional approval — Separate opinion. p. 608.

4. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Special rate contract — Propriety of unconditional approval — Separate opinion. p. 608.

BY THE COMMISSION:

ORDER

[1, 2] On July 24, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with HADCO Corporation (HADCO) for FDDI Service. In support of its petition, NYNEX filed the signed contract and a cost analysis of the proposal.

The Special Contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc 204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

FDDI is employed to link together geographically disparate high-capacity network users,

such as the interconnection of multiple Local Area Networks (LAN) at various locations. Permitting a special contract enables NYNEX to obtain revenues which contribute to shared and common costs.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on August 7, 1997. No comments have been received by the Commission regarding this filing. Staff inquiries regarding the cost data have been appropriately answered by NYNEX. Staff agrees that specialized central office equipment is properly amortized during the life of the contract and that outside plant which would be reusable, is correctly amortized at 62% of full cost. Maintenance Costs are properly estimated for both Central

Office and Outside Plant facilities.

The cost study details demonstrate that the proposed rates for the FDDI service exceed the relevant costs, thus, Staff has recommended that the Commission approve this special contract.

We have reviewed the petition and the Staff recommendation and find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of docket DE 96-420. Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with HADCO 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded HADCO in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

August 18, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*08/18/97*[97411]*82 NH PUC 609*Hollis Telephone Company

[Go to End of 97411]

82 NH PUC 609

Re Hollis Telephone Company

DS 97-147
Order No. 22,686

New Hampshire Public Utilities Commission

August 18, 1997

ORDER suspending a local exchange telephone carrier's proposed reduction in its intrastate access rates.

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1. RATES, § 553

[N.H.] Telephone rate design — Intrastate access service — Proposed rate reduction — Suspension of — Local exchange carrier. p. 609.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate decrease — As to intrastate access service — Suspension as allowing for adequate investigatory period — Local exchange telephone carrier. p. 609.

BY THE COMMISSION:

ORDER

[1, 2] On July 23, 1997, Hollis Telephone Company (HTC) filed tariff pages proposing to reduce IntraState access rates. In its petition, HTC also requested approval to have the proposed access rates be effective as of July 2, 1997. According to HTC, the purpose of the filing is to address, among other items, over earnings.

Staff has reviewed the proposed filing and identified several concerns. Specifically, the Staff is concerned that the reduction in access rates may be insufficient to address over earnings, especially in light of recent admissions by HTC that it is currently offering its existing customers IntraState toll services. Staff has discussed its concerns with HTC but has been unable to resolve a number of issues in a timely manner. Therefore, Staff recommends that the Commission suspend the petition in order to allow the parties additional time to address their differences of opinion.

We have reviewed Staff's request and will suspend the proposed filing. HTC may revise the filing and resubmit proposals for review.

Based upon the foregoing, it is hereby

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

Section 3, Page 9, Second Revision Section 6, Page 81, Third Revision

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

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NH.PUC*08/18/97*[97412]*82 NH PUC 609*Wilton Telephone Company

[Go to End of 97412]

82 NH PUC 609

Re Wilton Telephone Company

DS 97-148
Order No. 22,687

New Hampshire Public Utilities Commission

August 18, 1997

ORDER suspending a local exchange telephone carrier's proposed reduction in its intrastate access rates.

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1. RATES, § 553

[N.H.] Telephone rate design — Intrastate access service — Proposed rate reduction — Suspension of — Local exchange carrier. p. 610.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed rate decrease — As to intrastate access service — Suspension as

allowing for adequate investigatory period — Local exchange telephone carrier. p. 610.

BY THE COMMISSION:

ORDER

[1, 2] On July 23, 1997, Wilton Telephone Company (WTC) filed tariff pages proposing to reduce IntraState access rates. In its petition, WTC also requested approval to have the proposed rates take effect as of July 2, 1997. According to WTC, the purpose of the filing is to address, among other items, over earnings.

Staff has reviewed the proposed filing and identified several concerns. Specifically, the Staff is concerned that the reduction in access rates may be insufficient to address over earnings, especially in light of recent admissions by WTC that it is offering its existing customers IntraState toll services. Staff has discussed its concerns with WTC but has been unable to resolve a number of issues in a timely manner. Therefore, Staff recommends that the Commission suspend the petition on order to allow the parties additional time to address their differences of opinion.

We have reviewed Staff's request and will suspend the proposed filing. WTC may revise the filing and resubmit proposals for review.

Based upon the foregoing, it is hereby

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

Section 17, Page 1, Third Revision Section 17, Page 2, Third Revision Section 17, page 3, Fourth Revision

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 1997.

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NH.PUC*08/19/97*[97413]*82 NH PUC 610*EnergyNorth Natural Gas, Inc.

[Go to End of 97413]

82 NH PUC 610

Re EnergyNorth Natural Gas, Inc.

DF 97-146
Order No. 22,688

New Hampshire Public Utilities Commission

August 19, 1997

ORDER authorizing a natural gas local distribution company to issue up to $22 million in 30-year first mortgage bonds, so as to refinance other debt to take advantage of lower interest rates.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Refinancing of debt — To take advantage of lower interest rates — Savings on both long- and short-term debt — Natural gas distribution utility. p. 611.

BY THE COMMISSION:

ORDER

On July 21, 1997, EnergyNorth Natural Gas, Inc. (ENGI or the Company) filed a petition seeking authorization to issue 30-year mortgage bonds (the bonds) in the amount of $22 million and amortize related expenses.

The Company has engaged Edward D. Jones & Co. (E.D. Jones) to underwrite the placement of the bonds. E.D. Jones' underwriting discount and commission is expected to be 4 percent, or $880,000. This amount will be deducted from the gross proceeds. Additional expenses, primarily legal and printing costs, are expected to be approximately $100,000 and will be paid directly by the Company.

The net proceeds of approximately $21,120,000 ($22,000,000 less underwriting

discount and commission expenses totaling $880,000) will be used to repay the Company's outstanding short-term debt of approximately $14.5 million, refinance long-term debt of approximately $5.9 million and for general working capital purposes (approximately $720,000).

The Company has not issued long-term debt since January, 1992 and has experienced

substantial growth, including a major expansion, since that time. Given the favorable interest rates as evidenced by the estimated interest rate of this proposed financing (approximately 7.8%), the Company has proposed replacing its outstanding short-term debt with more permanent financing. The Company has also reviewed the current long-term debt outstanding and has determined that redemption of the 8.67% Series A General and Refunding Mortgage Bonds due in 2002 would result in a substantial savings. While ENGI has other outstanding bond issues that require a higher interest payment, those bond issues carry severe penalties for early retirement which makes redemption uneconomical.

The pretax call premium with respect to the Series A General and Refunding Mortgage Bonds to be redeemed is estimated to be $575,000. The Company has proposed to combine the unamortized debt expense and call premium with the issuance cost of the proposed financing and amortize the balance for book purposes over the 30-year life of the new bond series.

The financing consists of a public offering of $22 million of First Mortgage Bonds. The bonds will mature in thirty (30) years. Interest, at a rate yet to be determined but estimated to be 7.8%, will be payable semiannually. The bonds will be secured by a mortgage lien on substantially all of the Company's utility property. The bonds are not subject to a sinking fund, however, the financing does include a limited right of redemption at the option of the beneficial owner. This redemption right gives any deceased beneficial owner's representative the option to redeem their interests in the offered bonds at 100% of their principal amount plus accrued interest, at any time, subject to an annual maximum principal amount per beneficial owner ($25,000) and an annual aggregate for all beneficial owners.

The Company's petition indicates that its embedded cost of debt as a result of the proposed financing lowers the anticipated overall embedded cost of long-term debt at September 30, 1997 from 9.74% to 9.28%. Such a reduction in the cost of debt should directly benefit the Company's ratepayers in the Company's next general rate case.

[1] We have reviewed ENGI's petition in support of its request for authorization of the issuance of additional long-term debt in the amount of $22,000,000. Given the terms of the bond issue, the purpose of the financing and potential benefits to ratepayers, we find the petition to be in the public good pursuant to RSA 369:4. Based upon the foregoing, it is hereby

ORDERED, that the petition of EnergyNorth Natural Gas, Inc. for authority to issue $22,000,000 of 30-Year First Mortgage Bonds is hereby APPROVED; and it is

FURTHER ORDERED, that the net proceeds be used to retire outstanding short-term debt, retire all of the issued and outstanding 8.67% Series A General and Refunding Mortgage Bonds due in 2002 and apply the balance of the proceeds to general working capital purposes; and it is

FURTHER ORDERED, that the unamortized debt expense and call premium associated with the retirement of long-term debt be combined with the issuance cost of the proposed financing and amortized over the 30-year life of the new bond series; and it is

FURTHER ORDERED, that ENGI shall file with this Commission a detailed statement of the actual issuance cost, including those costs associated with the retirement of long-term debt; and it is

FURTHER ORDERED, that ENGI shall file with this Commission a copy of the signed

underwriting agreement between ENGI and E.D, Jones; and it is

FURTHER ORDERED, that once the proceeds of the bond issue has been fully expended, ENGI shall file with this Commission a detailed statement, duly sworn by its Treasurer, showing the disposition of the proceeds of the bond issue; and it is

Page 611

FURTHER ORDERED, that ENGI shall file with this Commission copies of the conditions and covenants of the bonds when they are finalized.

By order of the Public Utilities Commission of New Hampshire nineteenth day of August, 1997.

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NH.PUC*08/25/97*[97414]*82 NH PUC 612*Beebe River Water System

[Go to End of 97414]

82 NH PUC 612

Re Beebe River Water System

DE 95-271
Order No. 22,689

New Hampshire Public Utilities Commission

August 25, 1997

ORDER scheduling a hearing at which to consider lifting the receivership status of a small community water system, given steps taken by a municipal district to acquire ownership and control of the system.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — As to continuation of appointment — Consideration of possible lifting of receivership — Factors — Municipal acquisition of system — Water utility. p. 612.

2. WATER, § 13

[N.H.] Water utility operations — Under receivership — Consideration of possible lifting of receivership — Factors — Municipal acquisition of system — Hearing schedule. p. 612.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

By Order No. 22,304, (September 4, 1996) the New Hampshire Public Utilities Commission (Commission) placed the community water system located in a limited area of the Town of Campton known as the Beebe River Village under its receivership without hearing, pursuant to RSA 374:47-a because of the imminent threat to the health and safety of the customers of the system. That same order appointed Lakes Region Water Company (Lakes Region) the Commission's agent to operate the system.

By Order No. 22,385 (October 29, 1996), we extended the receivership of the system, after a hearing, for health reasons and because ownership of, or title to, the system was clouded. We also set a rate for service to compensate Lakes Region for its services. A complete procedural history of this proceeding can be found in the referenced orders.

On March 25, 1997, we held a hearing to evaluate the status of the system and the continuing need for Commission receivership. Our evaluation included any affirmative actions taken by owners, customers or the Town to address the system's shortcomings. At the conclusion of that hearing, we orally extended Commission receivership for six months based on the representations by the community that actions were being taken which would eventually result in local control of the water system. The six month extension expires September 25, 1997.

II. COMMISSION ANALYSIS

[1, 2] As we have stated from the outset of this proceeding, Commission receivership is not intended to be a solution to the system's problems, but rather is a means to maintain the status quo while the system's owners, its customers, or municipal entities worked towards a permanent resolution to the problems besetting the water system. It is with that premise in mind that we address the issue of the continuation of Commission receivership beyond September 25, 1997.

Our files in DR 97-081 indicate that on March 19, 1997 the residents of Beebe River Village met pursuant to RSA chapter 52 and established a village district, the Beebe River

Village District (Village District). Under RSA 52, a village district is a body corporate and politic with all the powers of a New Hampshire town necessary to fulfill its purposes and goals which has the authority, among other things, to own and operate such facilities necessary for the supply of water. Thus, there is a municipal entity in place which is empowered to own and operate the water system now under our receivership.

Based on the representations of counsel for the Village District, it is our understanding that the Village District has taken affirmative action to apply for and accept an initial loan from the New Hampshire Department of Environmental Services to develop an engineering analysis of the requirements of the system. Counsel for the Village District advised this Commission that it intended to exercise its powers to take control of the ownership, operation and maintenance of the system.

While the Commission has the statutory authority to continue to hold the water system under its receivership, we do not understand why this action is necessary given the existence of the Village District. Where a municipal entity exists to address a specific need of its citizens and has in fact accepted money from the State for that purpose it should begin to take affirmative actions to fulfill its stated purpose. Thus, we will take action to learn what the Village District has done to obtain ownership, control and responsibility for the water system.

We will schedule a hearing to consider the continuing need for Commission receivership of the Beebe River Village community water system. We will also consider the status of the Village District's efforts regarding responsibility for the water system.

Based upon the foregoing, it is hereby

ORDERED, that a hearing be held on September 25, 1997 at 10:00 a.m. to consider the continuing need for Commission receivership of the Beebe River Village community water system.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beebe River Water System, DE 95-271, Order No. 22,304, 81 NH PUC 674, Sept. 4, 1996. [N.H.] Re Beebe River Water System, DE 95-271, Order No. 22,385, 81 NH PUC 815, Oct. 29, 1996.

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NH.PUC*08/25/97*[97415]*82 NH PUC 613*Granite State Electric Company

[Go to End of 97415]

82 NH PUC 613

Re Granite State Electric Company

DE 96-125
Order No. 22,690

Re Connecticut Valley Electric Company

DE 96-126
Order No. 22,690

Re New Hampshire Electric Cooperative, Inc.

DE 96-127
Order No. 22,690

Re Concord Electric Company

DE 96-128
Order No. 22,690

Re Exeter and Hampton Electric Company

DE 96-129
Order No. 22,690

Re Public Service Company of New Hampshire

DE 97-034
Order No. 22,690

New Hampshire Public Utilities Commission

August 25, 1997

ORDER adopting settlements under which various electric utilities agree to improve their vegetation control and tree-trimming practices in an effort to better assure the reliability of their

respective transmission and distribution systems.

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1. ELECTRICITY, § 4

[N.H.] Operating practices and efficiency — System reliability issues — Transmission and distribution facilities — Vegetation control and tree-trimming practices as factors — Company-specific trimming cycles — Implementation of reliability improvement plans — Development of baseline performance standards — Settlement. p. 615.

2. SERVICE, § 326

[N.H.] Electric — Transmission and distribution facilities — Factors affecting system reliability — Vegetation control and tree-trimming practices — Settlement as to company-specific trimming cycles — Necessity of reliability improvement plans and baseline performance standards. p. 615.

APPEARANCES: Carlos A. Gavilondo, Esq. for Granite State Electric Company; Kenneth C. Picton, Esq. for Connecticut Valley Electric Company; Dean, Rice and Howard by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; LeBoeuf, Lamb, Greene & MacRae by Maebh Purcell, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Devine, Millimet and Branch by Frederick J. Coolbroth, Esq. for Public Service Company of New Hampshire; Deborah M. Barradale for EnerDev, Inc.; Office of Consumer Advocate by Kenneth E. Traum for residential ratepayers; Michael D. Cannata, Jr. 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 7, 1996, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice establishing an investigation into the reliability of the transmission and distribution systems of New Hampshire's electric utilities. The purpose of the investigation was to establish a baseline for each utility prior to the onset of competition and to ensure that each utility is fulfilling its existing obligations. In addition, as noted in the Order of Notice, Commission Staff (Staff) asserted that there should be disincentives for utilities to underfund reliability expenditures, including vegetation control. Further, should performance based regulation be adopted for transmission and distribution, Staff asserted one must be able to establish reasonable targets for reliability standards.

The investigation grew out of DE 95-194, a prior investigation into the reliability of the transmission and distribution systems of Public Service Company of New Hampshire (PSNH). The PSNH investigation resulted in a settlement approved by the Commission in 1996. See Order No. 22,289 (August 26, 1996). At that time, Staff initiated investigations of the reliability efforts of the other New Hampshire electric utilities.

The Commission opened individual dockets for each electric utility in order to focus on the specific challenges and operational circumstances of each company. Discovery, including data requests, field visits and discussions with each utility, ensued over the following months. On June 26, 1997, Staff filed Agreements executed with each utility, the Office of Consumer Advocate (OCA) and Staff. The Commission consolidated the Agreements for hearing on August 6, 1997.

II. TERMS OF AGREEMENTS

Staff filed Agreements with Granite State Electric Company (GSEC), Connecticut Valley Electric Company (CVEC), New Hampshire Electric Cooperative, Inc. (NHEC), Concord Electric Company (CEC), and Exeter & Hampton Electric Company (E&H) that closely mirrored one another. The Agreements noted that the utilities responded fully to Staff inquiries in this investigation, were engaged in sound

Page 614

vegetation control efforts and had proposed reliability improvement programs that represented good utility practice. Among the terms are:

• Each utility will undertake a vegetation control plan, with the following cycles for fully trimming the system:

GSEC - 5 years
CVEC - 5 years
NHEC - 10 years
CEC - 4 years
E&H - 5 years

• Each utility will reevaluate its right of way and distribution vegetation maintenance programs by the fourth quarter of 1998, except for NHEC which will do so by the third quarter of 1999. Such review will include whether a different vegetation control cycle is appropriate, as well as review of other policies.

• Each Agreement requires particular notice to property owners and abutters prior to use of herbicides, in accordance with RSA 374:2-a.

• The utilities will fund a comprehensive engineering analysis resulting in the installation of protection devices, in accordance with good utility practice, for the entire distribution system by the end of 2000.

• By the third quarter of 1997, each utility will submit 1996 data on device operations, to approximate momentary interruptions. Such reporting will continue on an annual basis thereafter.

• None of the utilities is required to routinely trim vegetation around residential connections, provided the utility maintains the reliability of those services. There are provisions for case by case analysis of trimming requests by a customer.

• Commencing in the third quarter of 1997, each utility will provide service reliability indices indicating reliability with and without off-system supply caused outages.

• Each utility will maintain funding through the coming years to accomplish reliability projects planned and budgeted for by the utility. In addition, CVEC will evaluate remote, fast response facilities and submit its recommendations to the Commission by the third quarter of 1997. NHEC will commence a three year program costing approximately $8 million, to eliminate all 207 miles of its remaining amerductor facilities, and by the third quarter of 1997 will install and have operational a minimum of 1500 momentary outage monitoring devices.

• Staff agrees to support each utility in the event a utility seeks to obtain cost recovery for reasonably and prudently expended funds.

With the exception of the provisions regarding residential services and Staff support in a cost recovery proceeding, the terms in the five Agreements are similar to those contained in the 1996 PSNH Agreement. PSNH, OCA and Staff executed a supplemental Agreement in this docket, containing the residential services and cost recovery support provisions. The 1996 Agreement with PSNH remains in effect.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the Agreements filed in this docket and find they provide a sound, reasonable and prudent conclusion to these investigations. The utilities have committed to ongoing reliability maintenance and improvement within a framework tailored for each company to help contain costs.

As we move to a competitive, disaggregated market for electricity, the need for reliable transmission and distribution systems is critical. Ongoing reporting by each utility will provide an important baseline against which to measure performances in a new era of transmission and distribution utility regulation. The New Hampshire Legislature has mandated that the movement toward competition in the electric industry should not jeopardize the reliability of the transmission and distribution systems. RSA 374-F:3,I. These Agreements, as well as the Agreement executed with PSNH in 1996, will help to ensure that reliability is not diminished. We commend our Staff, OCA and the State's electric utilities for their efforts in these dockets.

Based upon the foregoing, it is hereby

ORDERED, that the Agreements reached with GSEC, CVEC, NHEC, CEC, E&H and PSNH are APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DE 95-194, Order No. 22,289, 81 NH PUC 651, Aug. 26, 1996.

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NH.PUC*08/25/97*[97416]*82 NH PUC 616*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97416]

82 NH PUC 616

Re New England Telephone and Telegraph Company dba NYNEX

DS 97-028
Order No. 22,691

New Hampshire Public Utilities Commission

August 25, 1997

ORDER adopting stipulation under which a local exchange telephone carrier agrees to reduce its basic exchange, exchange access, and message telecommunications service rates as an offset for an increase in revenues expected from an approved increase in rates for local sent-paid calls placed from pay telephone stations. The reductions total $3.7 million.

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1. RATES, § 532

[N.H.] Telephone rate design — Local exchange and exchange access service rates — Reductions in — As offset for increase in local pay station charges — Stipulation — Local exchange carrier. p. 617.

2. RATES, § 588

[N.H.] Telephone rate design — Switched access — Originating and terminating charges — Reductions in — As offset for increase in local pay station charges — Stipulation — Local exchange carrier. p. 617.

3. RATES, § 584

[N.H.] Telephone rate design — Message telecommunications service — Reductions in daytime per-minute charges — As offset for increase in local pay station charges — Stipulation — Local exchange carrier. p. 617.

4. RATES, § 565

[N.H.] Telephone rate design — Pay stations — Local sent-paid calling rates — Increase from 10 to 25 cents — Necessity of revenue offsets from other services — Stipulation — Local exchange carrier. p. 617.

APPEARANCES: Victor D. Del Vecchio, Esq. for NYNEX; Partridge, Snow and Hahn by Scott A. Sawyer, Esq. for MCI; New Hampshire Legal Assistance by Alan Linder, Esq. for Save Our Homes Organization; Office of Consumer Advocate by Kenneth E. Traum for residential ratepayers; E. Barclay Jackson, Esq. and Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

New England Telephone and Telegraph Company (NYNEX), on January 24, 1997, filed with the New Hampshire Public Utilities Commission (Commission) revisions to its Message Telecommunications Service (MTS) to offset the anticipated revenue increase associated with

its proposed increase in the local coin rate. On April 18, 1997, the Commission approved the local coin rate increase but suspended implementation of the increase "until the Commission approves a reduction to `Intrastate local exchange service and exchange access service rates' in conformance with FCC Order No. 97-678." *See* Order No. 22,562 (April 18, 1997).

On April 22, 1997, NYNEX filed with the Commission revised tariff pages to reduce the monthly service rates for residential and business basic exchange and Centrex services and usage rates for intrastate access service, effective April 15, 1997. Concurrently, NYNEX filed with the Commission a Motion for Establishment of Temporary Rates, also effective April 15, 1997, and for Waiver of the 30-Day Notice requirement contained in N.H. Admin. R. Puc 1601.05(a). Intervenors MCI Telecommunications, Inc. (MCI) and Save Our Homes Organization (SOHO) objected to NYNEX's Motion. SOHO also filed a Motion for Reconsideration of Order No. 22,562, the Commission's order approving the coin phone rate increase.

Though NYNEX requested that temporary rates be established at current rate levels without hearing, the Commission heard evidence on the temporary rate request on May 8, 1997. Also on that date, the Commission heard arguments regarding SOHO's Motion for Reconsideration.

By Order No. 22,598 (May 22, 1997), the Commission granted the request for temporary rates at current levels, effective April 15, 1997 and adopted a procedural schedule for completion of the full investigation into NYNEX's basic service and switched access service rates. It denied SOHO's Motion for Reconsideration.

On June 16, 1997, NYNEX, MCI, the Office of Consumer Advocate (OCA) and Commission Staff (Staff) filed a Stipulation and Agreement (Agreement) addressing a permanent reduction in basic exchange, exchange access and MTS rates. SOHO was not a signatory to the Agreement but informed the Commission that it did not oppose it. The Commission heard evidence in support of the Agreement on July 17, 1997.

II. TERMS OF AGREEMENT

[1-4] NYNEX agrees to reduce its basic exchange, exchange access and MTS rates, for a total annual revenue reduction of approximately $3,700,000 which amount offsets and slightly exceeds the anticipated revenue increase from the coin rate increase to 25 cents. The new rates for both originating and terminating switched access will be $0.029657. The same rate will apply to 800 Data Base Access Service.

NYNEX also agrees to reduce its toll rates by $1,727,301. To accomplish this reduction, the daytime MTS rate will be reduced by 1.2 cents per minute.

Monthly basic exchange rates for all classes of customers will drop slightly, by approximately $0.11/month for residential service and $0.48/month for business service. The combined impact of toll reductions and basic exchange reductions is approximately $0.27/month for residential service and $0.75/month for business service.

Because the Agreement seeks an April 15, 1997 effective date for the new rates, it agrees to

apply a one time credit to customers of the relevant services. NYNEX agrees to work with the Commission Staff and other interested parties to determine the amount of the credit. NYNEX also agrees to file reports with the Commission regarding the actual amount credited, once bills reflecting the credit have been issued.

By implementing these rate reductions, the signatories agree that, for the purposes of this docket, effective April 15, 1997, charges that recover the costs of coin phones and any associated intrastate subsidies will have been removed.

III. COMMISSION ANALYSIS

We have reviewed the Agreement and testimony presented in support hereof and find that the Agreement is a sound resolution of the issues pending in this docket. The resulting rates provide a reduction to NYNEX toll and basic exchange service bills of approximately $0.27/month and $0.75/month for residential

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and business service, respectively. The reductions in access rates we hope will spur reductions in toll rates offered by NYNEX's competitors. NYNEX's revenue increase due to the increase in the local coin rate to 25 cents will be more than offset by the reductions in basic exchange, access and MTS rates.

Other than the follow up efforts necessary to implement the credit, we believe this resolves all final issues pending in DS 97-028. In our view, NYNEX has satisfied its obligations, pursuant to Federal Communications Commission Order No. 97-678, to remove all subsidies in provision of coin phone service from intrastate local exchange and exchange access service rates.

Based upon the foregoing, it is hereby

ORDERED, that the Agreement reached between NYNEX, MCI, OCA and Staff is APPROVED; and it is

FURTHER ORDERED, that NYNEX shall submit tariffs in compliance with this order within 10 days; and it is

FURTHER ORDERED, that NYNEX participate with Staff and other interested parties in working out the terms of the one time credit to customers; and it is

FURTHER ORDERED, that NYNEX report to the Commission the actual credit applied once those bills are issued.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,562, 82 NH PUC 352, Apr. 18, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DS 97-028, Order No. 22,598, 82 NH PUC 415, May 22, 1997.

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NH.PUC*08/25/97*[97417]*82 NH PUC 618*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97417]

82 NH PUC 618

Re New England Telephone and Telegraph Company dba NYNEX

DE 97-013
Order No. 22,692

New Hampshire Public Utilities Commission

August 25, 1997

ORDER deciding to bifurcate a proceeding examining the operations of a local exchange telephone carrier. Accordingly, review of the carrier's compliance with the provisions of § 271 of the Telecommunications Act of 1996 will remain within Docket DE 97-013 while a new docket is established for considering the carrier's filing of a statement of generally available terms and conditions (DE 97-171).

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1. TELEPHONES, § 3

[N.H.] Operating practices — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine compliance with thereto — Separate docket to review a proposed statement of generally available terms and conditions — Local exchange carrier. p. 619.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Local exchange telephone carrier — Requirements of § 271 of the Telecommunications Act of 1996 — Proceeding to determine

compliance with thereto — Separate docket to review a proposed statement of generally available terms and conditions. p. 619.

3. PROCEDURE, § 8

[N.H.] Joinder or severance — Factors affecting bifurcation — Time constraints — Necessity of different levels of review — Clarity of scope of proceedings — Local exchange

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telephone carrier — As to terms and conditions of service. p. 619.

BY THE COMMISSION:

ORDER

On July 11, 1997, NYNEX filed with the New Hampshire Public Utilities Commission (Commission) a Statement of Generally Available Terms (SGAT), pursuant to §252(f) of the Telecommunications Act of 1996 (TAct). The filing is a continuation of a docket opened by the Commission on February 6, 1997, to investigate NYNEX's compliance with §271 of the TAct. As approved in our Order No. 22,531, full intervenors in the docket include AT&T Communications of New England, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and New England Cable Television Association, Inc. (NECTA).

By letter dated July 30, 1997, Vitts Corporation (Vitts) moved to intervene in this docket. No objections have been filed in response.

On August 1, 1997, the New England Cable Television Association, Inc. (NECTA) filed with the New Hampshire Public Utilities Commission a Motion to Strike NYNEX's Statement of Generally Available Terms (SGAT) and Supporting Testimony or, Alternatively, for Prompt Procedural Conference. AT&T Communications of NH, Inc. filed a letter in support of the Motion to Strike on August 1, 1997. NYNEX filed a response to the NECTA Motion to Strike on August 14, 1997.

For the reasons discussed below, the Commission denies the Motion to Strike, assigns a new docket number to the SGAT review, schedules a prehearing conference in the new docket, and grants Vitts' Motion to Intervene.

In February, 1997, the Commission opened this docket to investigate NYNEX's eligibility for entry into the New Hampshire interLATA telephone market pursuant to standards detailed in Section 271 of the Telecommunications Act of 1996 (TAct). Pursuant to the Commission's Order of Notice, NYNEX filed an Initial Status Report, and monthly updates, regarding its compliance with the requirements of §271, including relevant documentation and expectations with regard to

completion of those requirements. As stated at the prehearing conference on March 13, 1997, NYNEX intended to satisfy all the points on the competitive checklist of §271 via a Statement of Generally Available Terms and Conditions (SGAT), as permitted under §271(c)(1). By Order No. 22,531, the Commission approved a procedural schedule for timely review of an SGAT, pursuant to §252(f).

By letter dated April 3, 1997, NYNEX indicated that contrary to its prior intention, negotiated and arbitrated interconnection agreements would be used to demonstrate compliance with the competitive checklist. Therefore, NYNEX requested that the Commission suspend the procedural schedule, committing to complete the SGAT filing requirements contained in the procedural schedule at least 60 days prior to its filing of a §271 application with the Federal Communications Commission. NYNEX further stated that completion of the SGAT filing requirements would not trigger the 60-day notice period prior to its §271 application unless accompanied by a draft §271 application for the Commission's review. By Order No. 22,610 (June 2, 1997), the Commission suspended the procedural schedule.

NYNEX filed an SGAT for the Commission's review on July 11, 1997. In the cover letter accompanying the filing, NYNEX reiterated that the SGAT filing was submitted as a stand-alone filing pursuant to §252(f) and not as part of a §271 filing or for the purpose of fulfilling §271 requirements. By Order No. 22,661 (July 16, 1997), the Commission lifted the suspension of the procedural schedule and approved a modified schedule for review of the SGAT. The Commission stated "[O]ur completion of this SGAT review will not close this docket; examination of NYNEX's §271 filing will continue as part of this docket."

[1-3] Based on the recent filings in this docket, we are convinced that the SGAT should be reviewed independent of §271 compliance issues. Despite our intent to limit the scope of

review of the SGAT to the standards set out in §252(f), both NYNEX and the intervenors in this case continue to address §271 compliance issues. In order to keep the scope of our review clear, NYNEX's SGAT filing and all pertinent filings in response to the filing will be transferred to DE 97-171, entitled NYNEX Petition for Approval of SGAT; all intervenors in DE 97-013 will become intervenors in DE 97-171. The scope of DE 97-171 is limited to review of the SGAT under §252(f)(2), that is, whether the filing complies with §§251 and 252(d). Our review will not consider whether the SGAT meets any of the items on the competitive checklist contained in §271.

Furthermore, we find that we cannot adequately complete our review of the Petition for Approval of SGAT in Docket DE 97-171 within the period mandated by §252(f)(3). Therefore, as we will not be in a position to approve or deny the SGAT, the SGAT will automatically take effect at the expiration of the time period for review, pursuant to §252(f)(3)(B). We understand and approve the intent of Congress to allow an SGAT to go into effect while state review continues. Pursuant to §252(f)(4), we intend to continue our review beyond the time period and to exercise our authority to approve or disapprove the SGAT when our review is complete. We

consider the rates of an SGAT which goes into effect automatically pursuant to §252(f)(3)(B) to be the equivalent of temporary rates under RSA 378:27. We consequently suspend the remainder of the procedural schedule as set out in our Order No. 22,661 and schedule a prehearing conference to establish an appropriate procedural schedule for completing our review, including a hearing on temporary rates. Thus, our review of the SGAT will not be delayed, but rather enhanced. As Congress intended, neither will NYNEX's introduction of an SGAT be delayed.

We find that Vitts Corporation's written request for intervention demonstrates a substantial interest in the proceeding and that the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. Accordingly, we will grant the request.

Based upon the foregoing, it is hereby

ORDERED, that NECTA's Motion to Strike NYNEX's SGAT is DENIED; and it is

FURTHER ORDERED, that review of NYNEX's SGAT, excluding consideration of §271 issues and pursuant to our discussion above, shall be conducted as part of a new docket, DE 97-171, entitled NYNEX Petition for Approval of SGAT; and it is

FURTHER ORDERED, that NYNEX's SGAT, as filed, shall take effect on October 20, 1997 pursuant to §252(f)(3)(B), subject to the continued review of the SGAT pursuant to §252(f)(4) and the Commission's eventual determination;

FURTHER ORDERED, that a prehearing conference in DE 97-171 is scheduled for Tuesday, September 9, 1997 at 2 p.m. before the New Hampshire Public Utilities Commission located at 8 Old Suncook Road, Concord, New Hampshire to discuss a procedural schedule for the remainder of the SGAT review; and it is

FURTHER ORDERED, that Vitts Corporation is granted full intervention in DE 97-013 and DE 97-171.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,531, 82 NH PUC 290, Mar. 24, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,610, 82 NH PUC 447, June 2, 1997. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,661, 82 NH PUC 542, July 16, 1997.

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82 NH PUC 621

Re Beebe River Village Community Sewage Disposal System

DE 97-081
Order No. 22,693

New Hampshire Public Utilities Commission

August 25, 1997

ORDER declining to appoint a receiver for a small community sewer system, finding that current operations did not pose a threat to public health or safety.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of a receiver — Upon determination of serious and imminent threat to public health and safety. p. 622.

2. RECEIVERS, § 1

[N.H.] Necessity of — When system operations present threat to public health and safety — Factors affecting lack of need for receivership — No imminent public jeopardy — Self-sustaining operations — No risk of interruptions to service — Small community sewer system. p. 622.

3. SERVICE, § 406

[N.H.] Sewer service — Small community system — Proposed receivership status — Factors affecting rejection — No imminent public jeopardy — Reasonableness of existing operations — No risk of interruptions to service. p. 622.

APPEARANCES: Blodgett, Makechnie and Vetne by Sheliah M. Kaufold, Esq. for the Beebe River Village District; George Neill for the Department of Environmental Services; Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 4, 1997, the Staff of the New Hampshire Public Utilities Commission (Commission) was notified by Lakes Region Water Company (Lakes Region) that it was in receipt of an electric bill for Beebe River Village's sewer disposal system from Public Service of New Hampshire (PSNH). Lakes Region advised PSNH that it was not responsible for the sewage disposal system because it was only the agent for Commission receivership of the Beebe River Village water distribution system.

Upon investigation, Commission Staff (Staff) determined that a community sewage disposal system was operating at the Beebe River Village (Village) and that the electric bill for the system's main pump was two months in arrears. Staff requested and PSNH agreed not to disconnect electricity to the pump until the issue of the system's ownership and its continued operation was addressed.

On May 9, 1997, we issued an Order of Notice scheduling a hearing for May 21, 1997 to consider placing the sewage disposal system under receivership pursuant to RSA 374:47-a.

At the May 9, 1997 hearing, we heard testimony from Staff and George Neill, a representative of the Department of Environmental Services, Water Division (Water Division). Counsel to the Beebe River Village District (District) also supplied information to the Commission.[1(123)]

Staff's testimony consisted of a description of the sewage disposal system as designed and as currently operating, a general concern over the lack of oversight of the system by a certified operator and the failure of any individual to take responsibility for electric service to the pump that operates what is left of the original sewage disposal system.

Mr. Neill indicated that the sewage disposal system as currently operated posed no immediate threat to the health or safety of the

residents of the Village or the people of New Hampshire. He further testified that a certified operator was unnecessary at this time because the system would operate sufficiently on its own given its design and the number of customers utilizing the system.

Counsel for the Village District represented that the hearing was unnecessary as was receivership because Albert Nault, an entrepreneur attempting to develop a site for spring water in the Village, had represented to her that he had paid the electric bill and was under a contractual obligation to assume responsibility for the sewage disposal system.

II. COMMISSION ANALYSIS

[1-3] Pursuant to RSA 374:47-a the Commission may place a utility under its receivership without hearing if it determines there is a "serious and imminent threat to the health and welfare of the customers ... ," and after hearing if the Commission determines that receivership is "consistently failing to provide adequate and reasonable service."

Mr. Neill of the Department of Environmental Services, the agency with primary responsibility over the safe and adequate operation of sewage disposal systems, testified that a certified operator for this system was unnecessary at this time and that the system would operate effectively and safely without a certified operator or supervision. Counsel for the Village District represented that the electric bill for the sewage disposal system was the responsibility of Albert Nault, an entrepreneur seeking, among other things, to rehabilitate the commercial and industrial complexes located in the Village, who had assumed responsibility for the sewage disposal system's electric bill. Thus, based on this evidence there is neither a serious and imminent risk to the health and welfare of the customers of the system nor is there a risk that the utility will not provide adequate and reasonable service to customers, and, therefore, no need for Commission receivership.

Furthermore, as we noted in Order No. 22,689 issued in conjunction with this order, we believe the Beebe River Village District is the proper entity to address any problems that develop with the Village's infrastructure.

Based upon the foregoing, it is hereby

ORDERED, that the Beebe River Village community water system will not be placed under Commission receivership.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

FOOTNOTES

[1]Although counsel for the District appeared at the May 9, 1997 hearing, the District has never entered an appearance or filed a motion to intervene in this proceeding or DE 95-271, the proceeding controlling the receivership of the Beebe River Village community water system.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beebe River Water Utility, DE 95-271, Order No. 22,689, 82 NH PUC 612, Aug. 25, 1997.

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NH.PUC*08/25/97*[97419]*82 NH PUC 622*Hampton Water Works Company, Inc.

[Go to End of 97419]

82 NH PUC 622

Re Hampton Water Works Company, Inc.

DE 95-238
Order No. 22,694

New Hampshire Public Utilities Commission

August 25, 1997

ORDER clarifying Order No. 22,672 (82 NH PUC 571, *supra*) in which the commission had accepted a settlement exempting a water utility from certain municipal groundwater protection ordinances. Commission explains that its paraphrasing of certain portions of the settlement agreement in no way was intended to be a modification of said agreement. It affirms that the agreement was approved as submitted.

Page 622

1. PROCEDURE, § 31

[N.H.] Stipulations or settlements — Acceptance by commission — Approval as submitted — Paraphrasing of terms notwithstanding. p. 623.

BY THE COMMISSION:

ORDER

By Order No. 22,672 (July 29, 1997) the Commission accepted a settlement agreement entered into between and among Hampton Water Company Works, Inc. (Hampton), the Town of Stratham and Commission Staff setting forth conditions for the Commission to override a Stratham ordinance affecting the construction of a production well by Hampton pursuant to RSA 674:30.

On August 15, 1997, Hampton filed a Motion for Clarification. In the Motion, Hampton pointed out that Order No. 22,672 inaccurately set forth the terms of Paragraph 2.B of the Agreement and the Response Policy adopted by reference therein.

[1] It was not our intent to modify the Agreement or the Response Policy agreed to by the parties and Staff in Order No. 22,672. To the extent our attempt to paraphrase the pertinent concepts of the Agreement appeared to modify Paragraph 2.B of the Agreement and the Response Policy, we hereby clarify that was not our objective.

Based upon the foregoing, it is hereby

ORDERED, that Order No. 22,672 is clarified to indicate that Paragraph 2.B of the Settlement Agreement is and was approved as submitted.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of August, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hampton Water Works Co., Inc., DE 95-238, Order No. 22,672, 82 NH PUC 571, July 29, 1997.

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NH.PUC*08/27/97*[97420]*82 NH PUC 623*New England Fiber Communications LLC

[Go to End of 97420]

82 NH PUC 623

Re New England Fiber Communications LLC

DE 97-118
Order No. 22,695

New Hampshire Public Utilities Commission

August 27, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 624.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 624.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched

Page 623

access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 624.

BY THE COMMISSION:

ORDER

On June 11, 1997, New England Fiber Communications LLC, d/b/a New England Brooks Fiber Communications (Brooks), filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

[1-3] The Commission Staff (Staff) has reviewed Brooks' petition for compliance with these standards. Staff reports that Brooks has provided all the information required by Puc 1304.02. The information provided supports Brooks' assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Brooks as a New Hampshire CLEC.

We find that Brooks has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Brooks in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Brooks has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Brooks agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Brooks seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Brooks' petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 3, 1997 and to be documented by affidavit filed with this office on or before September 10, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than September 17, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or

request for hearing shall do so no later than September 24, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 26, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1997.

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NH.PUC*08/27/97*[97421]*82 NH PUC 625*LCI International Telecom Corporation

[Go to End of 97421]

82 NH PUC 625

Re LCI International Telecom Corporation

DE 97-138
Order No. 22,696

New Hampshire Public Utilities Commission

August 27, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 625.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 625.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 625.

BY THE COMMISSION:

ORDER

On July 8, 1997, LCI International Telecom Corp. (LCI) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

[1-3] The Commission Staff (Staff) has reviewed LCI's petition for compliance with these standards. Staff reports that LCI has provided all the information required by Puc 1304.02. The information provided supports LCI's assertion of financial resources,

managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of LCI as a New Hampshire CLEC.

LCI has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

We find that LCI has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of LCI in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because LCI has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, LCI agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, LCI seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that LCI's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 3, 1997 and to be documented by affidavit filed with this office on or before September 10, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than September 17, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 24, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 26, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of August, 1997.

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NH.PUC*09/02/97*[97422]*82 NH PUC 626*Exeter and Hampton Electric Company

[Go to End of 97422]

82 NH PUC 626

Re Exeter and Hampton Electric Company

Additional applicant: Kingston-Warren

DR 96-349
Order No. 22,697

New Hampshire Public Utilities Commission

September 2, 1997

ORDER rejecting the joint petition of an electric utility and an industrial customer for authority to relocate the point of metered service for

the customer, which relocation would have resulted in a change in electric supplier for the customer. Instead, the customer's present service provider, Public Service Company of New Hampshire, is directed to continue serving the customer but to examine the possibility of placing the customer under a different rate schedule, either through a special rate contract or through the utility's approved business retention tariffs.

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1. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Factors — New versus existing customers — Location of customer's premises in two different service areas — Location of load versus location of meter — Avoidance of uneconomic duplication of facilities — Prohibition on poaching of existing customers — Electric service. p. 632.

2. FRANCHISES, § 53

[N.H.] Amendment — Changes in existing service area assignments — Factors — New versus existing customers — Customer premises as straddling franchise boundaries — Location of load versus location of meter — Avoidance of uneconomic duplication of facilities — Prohibition on poaching of existing customers — Electric service. p. 632.

3. SERVICE, § 286

[N.H.] Electric connections — Proposed relocation of point of metered service — Factors affecting rejection — Unnecessary change of service provider — Uneconomic duplication of facilities — No showing of inadequacy of service — Property ownership disputes. p. 632.

4. MONOPOLY AND COMPETITION, § 50

[N.H.] Integrity of territorial assignments — Factors — Customer preference — New versus existing customers — Customer choice as issue only for new customers or existing customers with inadequate service — Prohibitions on poaching — Electric service. p. 632.

5. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation of business — Special business retention tariffs or special rate contracts — To prevent customer migration — Electric service — Directive for negotiation. p. 632.

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Orr & Reno by Thomas C. Platt, III, Esq. on behalf of Kingston-Warren Corporation; LeBoeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. and Susan Geiser, Esq. on behalf of Exeter & Hampton Electric Company and Concord Electric Company; Carlos A. Gavilondo, Esq. and Paige Graening, Esq. on behalf of Granite State Electric Company; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of Great Bay Power Corporation, and Eugene F. Sullivan, III, Esq. on behalf of the Staff of New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

This docket was opened on October 28, 1996, when Exeter & Hampton Electric Company (E&H) and Kingston-Warren Corporation (Kingston-Warren) filed a joint petition (Joint Petition) with the Commission for declaratory ruling regarding E&H's right to serve Kingston-Warren. Kingston-Warren is a manufacturer of automotive sealing components served currently by Public Service Company of New Hampshire (PSNH) through PSNH's distribution network located in the Town of Newfields, a franchise area of PSNH.

The petitioners propose to move the existing metering point to a location either owned or

leased by Kingston-Warren in the Town of Exeter. In either case, the metering point would be in the franchise territory of E&H.

The petitioners also requested a declaratory ruling concerning whether Kingston-Warren is

eligible for Rate EB, E&H's energy service bank tariffed rate approved by this Commission in docket DR 95-176. *See* Order Nos. 21,895 and 21,985.

On November 13, 1996, E&H filed a request for approval to construct lines that traverse and parallel railroad tracks on an easement leased from Boston and Maine Corporation and for approval of the proposed fees to be paid to Boston and Maine Corporation for the easement in the Town of Exeter pursuant to RSA 371:24. PSNH filed a petition to intervene and a motion for an adjudicatory proceeding on December 4, 1996. E&H and Kingston-Warren filed separate objections to PSNH's petition and motion. On December 24, 1996, PSNH filed a response to the joint objections.

On December 26, 1996, the Commission issued an Order of Notice which mandated as full parties to this proceeding all jurisdictional electric utilities and proposed a procedural schedule, including a pre-hearing conference for January 30, 1997. On February 10, 1997, the Commission approved an expanded procedural schedule and granted intervention to Great Bay Power Corporation (Great Bay), which filed a Petition to Intervene on January 24, 1997. *See* Order No. 22,498.

The Commission suspended the schedule in this proceeding on March 14, 1997, based on a Staff request, and directed the parties and Staff to convene a technical conference in order to clarify data responses and re-establish a procedural schedule. Staff submitted a letter to the Commission on March 26, 1997, in which it conveyed a stipulation by the state's electric utilities and Staff to certain facts material to the proceeding and proposed a new procedural schedule. Hearings on the merits were held on May 28-30 and June 3, 1997. The Commission granted Kingston-Warren's Motion for Confidential Treatment of certain information at the hearing.

Kingston-Warren, E&H, PSNH, and Staff prefiled direct testimony. Kingston-Warren, PSNH, and Granite State Electric Company (GSEC) prefiled rebuttal testimony. Connecticut Valley Electric Company did not present testimony, but did file a Statement of Position in which it opposed the Joint Petition by Kingston-Warren and E&H. The Office of Consumer Advocate, a statutorily recognized intervenor, did not participate in the proceeding. Kingston-Warren, E&H, GSEC, PSNH and Great Bay filed post-hearing briefs. Kingston-Warren, E&H, and PSNH filed reply briefs.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Kingston-Warren Corporation*

Kingston-Warren presented the testimony of John David Keeney, Vice President of Manufacturing and Development, who adopted the pre-filed testimony of Tony Stewart, Vice President of Sealing Operations, and Robert Tom Nadeau, Plant Manager for Kingston-Warren's Newfields manufacturing facility. Kingston-Warren also had testimony presented on its behalf by J. Jefferson Davis, Esq. and Richard S. Ladd concerning whether Kingston-Warren owns land located in the service territory of E&H.

Kingston-Warren is a wholly owned subsidiary of Harvard Industries. Kingston-Warren has manufacturing facilities in Newfields, New Hampshire, Wytheville, Virginia and Churchill,

Tennessee. Kingston-Warren employs approximately 1,500 people, of which 650 are employed at its Newfields facility in New Hampshire. Kingston-Warren's main business is to manufacture sealing components for automobiles, primarily for General Motors. Tr. at 14 and 17. Electricity costs at Kingston-Warren's New Hampshire plant of $1.5 million in 1996 represents approximately 2.2% of its total gross sales from the New Hampshire facility. Electricity costs at the other two manufacturing facilities are significantly less. Tr. at 22.

Kingston-Warren stated that it bids on contracts that are long-term in nature. The contracts Kingston-Warren is bidding on now do not start until 2000 or 2001. Most contracts last for 4 or 5 years. Kingston-Warren testified that it

operates in a highly competitive business environment with continual pressure to reduce costs. It also indicated that its parent company, Harvard Industries, filed for Chapter 11 reorganization in the Bankruptcy Court.

In the fall of 1994, Kingston-Warren contacted PSNH about reducing its energy costs. Tr. at 48. Kingston-Warren stated it got little help from PSNH initially, but PSNH did offer Kingston-Warren a 10-15% decrease in rates under a special contract. Tr. at 49. According to Mr. Nadeau, PSNH wanted a 10-year contract term. Tr. at 49. At that point Kingston-Warren, which did not want to become locked into a long-term contract, sought service from E&H. In October 1996, Kingston-Warren sent PSNH a notice to terminate service. Ex. 5.

Kingston-Warren presented evidence related to the boundaries of Kingston-Warren's property. Exhibits 13, 14 and 15. Based on that evidence, Kingston-Warren believes it has a very small parcel of land located in E&H's service territory, on which an E&H meter could be located.

B. *Exeter & Hampton Electric Company*

E&H presented the testimony of two witnesses, Glenn D. Appleton, Vice President, Engineering and Operations at Unitil Service Corporation, and Frederick J. Stewart, assistant Vice President, Communication and Regulation Services at Unitil Service Corporation. Unitil Service Corporation provides various services for the subsidiaries of Unitil Corporation, including E&H.

Mr. Appleton explained that Kingston-Warren contacted E&H in late 1994 about providing power to Kingston-Warren's facilities. Mr. Appleton stated that Kingston-Warren was concerned about its high electric costs and that discussions with PSNH, its electric provider, had been unsuccessful. E&H responded with a proposal to provide service to Kingston-Warren by constructing a 34.5 kV transmission line from E&H's Portsmouth Avenue substation located near Route 101 in Exeter to a service point on Kingston-Warren property within the Town of Exeter and within the service territory of E&H. The line would use an existing E&H right-of-way along Route 101, until it intersected the Boston and Maine Railroad (B&M) right-of-way from which it would follow the B&M right-of-way for 1.3 miles to a pole in Exeter near the town line of

Newfields. At that point, E&H indicated there are two alternate ways to provide service to Kingston-Warren. This route, known as The Proposed Route, would change the line from overhead to underground at the pole in Exeter from which it would then use a private property easement for 600 feet until Kingston-Warren's property is reached. At Kingston-Warren's property, E&H would affix a metering point for service.

Mr. Appleton states that all necessary easements, licenses, and approvals have been secured or granted. E&H would need approval by the Commission to construct lines along the B&M railroad tracks, and fees to B&M would have to be established for the use of its right-of-way. E&H's proposal to cross the private property located near the Exeter/Newfields town line requires an easement from the landowner. E&H states it has an Option Agreement to purchase the easement.

The Alternative Route, which Kingston-Warren prefers because it is $89,000 cheaper, is exactly the same up to the pole placement on the B&M right-of-way near the Newfields town line. The pole placement would then become the point of service and metering location for Kingston-Warren. Kingston-Warren would extend its line to that point.

Mr. Stewart testified that Kingston-Warren would be served by E&H under E&H's tariff Rate EB, the energy bank service rate approved by the Commission in docket DR 95-176. Mr. Stewart also testified that E&H has an obligation to serve all customers that apply for service from E&H, including Kingston-Warren, so long as the customers follow the requirements set forth in E&H's tariff. Kingston-Warren has twice applied for service under E&H's tariff; first, as a Large General Service Rate G-1 customer, and later under Rate EB. E&H believes that it can serve Kingston-Warren under its existing tariffs without Commission approval if the Proposed Route were used.

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C. *Public Service Company of New Hampshire*

Gary A. Long, Vice-President of Customer Service and Economic Development, testified that PSNH questions whether Kingston-Warren owns land in E&H's service territory, but more importantly, that PSNH believes it would be poor public policy and contrary to RSA 374-F to allow Kingston-Warren or any customer to move a meter to another franchised service territory in order to receive service from another electric company. PSNH states that the correct basis upon which to determine which utility should serve a customer is the location of the load, not the meter. Customers should not be allowed to choose distribution companies without the permission of both distribution utilities. To do otherwise, in PSNH's opinion, is to promote inefficient and discriminatory outcomes, increase stranded costs to existing customers, and jeopardize safety. Ex. 17 at 6.

PSNH also does not believe that Kingston-Warren is eligible for Rate EB. PSNH states that this is a clear example of poaching, a practice opposed by the Commission in docket DR 94-171, the Generic Discounted Rates proceeding and in DR 95-216, Guidelines for Economic

Development and Business Retention Tariffs. PSNH acknowledges that the one exception to the Commission's "no poaching" policy is when the rate offered by another utility is the last step to retain that customer in New Hampshire. PSNH states emphatically that the Joint Petition is not such a case and that it is "ludicrous to believe that a customer could simply relocate its meter and be eligible for Energy Bank service." Ex. 17 at 9. PSNH does not believe that Kingston-Warren or E&H have demonstrated that Kingston-Warren would leave New Hampshire absent service from E&H under Rate EB. In PSNH's opinion, the Joint Petition is an effort by Kingston-Warren to lower its rates and to avoid paying PSNH's stranded costs. PSNH points out that its business retention rate, Rate BR, is the same price, approximately, as E&H's standard G-1 rate. Based on the information presented by Kingston-Warren at the hearing, PSNH stated it could not determine whether Kingston-Warren qualified for Rate BR.

PSNH points out that it has two other service territory disputes with E&H: Hall Farm Realty in Atkinson, and Pine Road in Brentwood. PSNH seeks guidance from the Commission pertaining to how similar boundary disputes should be resolved in the future.

PSNH also testified in opposition to Staff's position concerning station service load. PSNH did not pre-file testimony on this issue as it did not believe it was within the scope of the docket, but did include it in its rebuttal testimony. PSNH defines station service load as electrical service provided to a generating plant when the generating plant is not operating. Ex. 18 at 5. PSNH believes that station service to generating plants involves different service characteristics than does service to non-generating customers. The difference is due primarily to the significant interconnection needed to service large generating plants. Service to those facilities should, therefore, be provided by the interconnecting utility. As an example of the current policy, PSNH lists eight generating facilities for whom the interconnected utility, which in many cases is PSNH, provides station service despite their location in the service territories of other franchised utilities in New Hampshire. Ex. 18 at 5.

D. *Granite State Electric Company*

Cynthia Arcate, Executive Vice President of Granite State Electric Company, testified that the petition should be denied. GSEC believes that the property dispute is "almost irrelevant" in this proceeding. GSEC avers that the determining factor in deciding who should provide service to a "border customer" is the location of the load, unless there is an agreement among E&H, PSNH and Kingston-Warren which is subsequently approved by the Commission or the Commission finds that service by PSNH to Kingston-Warren is inadequate and that it would be in the public good for E&H to serve Kingston-Warren. Tr., Day 2 at 6, Ex. 12 at 5, 15 and 16. For support, GSEC cites RSA 374:22-c, IV which was repealed in 1989, and RSA 374:22 and RSA 374:26.

GSEC differentiates between an existing

customer and a new customer. A new customer may be served by the non-host utility if it is less expensive to do so. For an existing customer to change distribution providers would require a greater burden of proof to show that existing service is not just more expensive, but is inadequate.

GSEC believes that approval of the Joint Petition would allow Kingston-Warren to "bypass" the stranded costs of PSNH. Ex. 12 at 9. Such an outcome would shift stranded cost recovery to PSNH's remaining customers; in effect, resulting in the discriminatory treatment of customers based on their location within a service territory. Ex. 12 at 10. GSEC also believes the Joint Petition will encourage duplicate facilities, create economic waste, could result in an unacceptable safety risk and would pose serious service quality problems for distribution companies. In GSEC's view, the near term benefits of switching distribution companies is negligible over time due to the advent of retail competition. If the Commission were to approve the Joint Petition, GSEC agrees with PSNH and Staff that Kingston-Warren is not eligible for Rate EB.

E. *Great Bay*

Great Bay, a 12.13% owner in the Seabrook nuclear power facility (Seabrook), submitted a brief addressing the issue of station service. Great Bay notes that Seabrook is located in the service territory of E&H. It receives some of its power from PSNH, specifically when the plant is off-line; the so-called campus load is supplied by E&H.

Great Bay believes that the Commission has the authority to grant more than one utility the operating authority to service another utility's service territory as has occurred at Seabrook. Brief at 3.

F. *Commission Staff*

Staff presented two witnesses, Thomas C. Frantz and Michael D. Cannata, Jr., the Commission's Chief Economist and Chief Engineer, respectively. Mr. Frantz testified that he did not believe Kingston-Warren qualified for Rate EB based on the information contained in the filing by E&H and Kingston-Warren. Mr. Frantz based his opinion on the tariff language of Rate EB which states "a customer must have a commitment to relocate and/or expand" and on the position of Kingston-Warren that it was willing to accept service from E&H under either Rate EB or Rate G-1, E&H's general tariff rate for large customers. Accepting service under Rate G-1 demonstrates the sufficiency of the higher rate. Service provided under Rate EB would, in Mr. Frantz's view, result in Kingston-Warren receiving an unwarranted discount or "free ride." Ex. 21. Staff acknowledged that Kingston-Warren had presented additional testimony during the hearing that strengthened Kingston-Warren's case for some form of rate relief, though more information was necessary before Staff could make a recommendation. Tr., Day 3 at 164.

Mr. Cannata testified on the past practices of utilities in resolving franchise disputes, how generating loads located in other utility service territories have been resolved in the past and how they should be treated in the future. Mr. Cannata also responded to concerns about fire and safety

raised by PSNH and GSEC if franchise border customers were served by different franchise utilities and PSNH's position on non-bypassable charges such as an exit fee if Kingston-Warren were to leave PSNH's system. A Stipulation between Staff and the jurisdictional utilities, attached to Mr. Cannata's pre-filed testimony, describes how questions concerning retail load at franchise boundaries and load at generating stations were resolved historically. Ex. 2, Attachment MDC-2.

Mr. Cannata recommended that the Commission find the following: 1) there have been inconsistencies in the way loads have been served at franchise boundaries; 2) the location of the meter, not the load being served, should determine which utility serves a customer; 3) the Commission should determine who will provide service to the proposed Pencor facility located near Merrimack Station, though Mr. Cannata recommends that it be served by Concord Electric Company; 4) loads associated with generating stations should be served by the franchised utility during forced or unforced

outages; 5) the Commission should disregard safety arguments as not material to this proceeding; 6) customers should be able to choose which utility provides service to them if they have property in proximity to two franchised utilities; 7) customers located near other service territories who choose to take service from an alternative utility should not be found to have created "stranded costs" by their action; and 8) the Commission should issue specific instructions to franchised utilities that they not attempt to circumvent customers who may have choices as a result of the outcome of this proceeding. Ex. 22 at 18-20.

III. COMMISSION ANALYSIS

[1-5] Based on the record before us, we find that the public good is best served by denying the Joint Petition of Kingston-Warren and E&H. We will direct PSNH, with the assistance of our Staff, to initiate discussions with Kingston-Warren to determine whether it is appropriate for PSNH and Kingston-Warren to enter into a special contract or to serve Kingston-Warren under PSNH's tariffed rates for economic development or business retention, Rate ED or Rate BR, respectively.

Our determination of the public good in this proceeding has been predicated on the following: 1) the cost to E&H of serving Kingston-Warren, approximately $285,000, would be significant as compared to no additional cost to PSNH to continue to serve Kingston-Warren; 2) there is no other need for the facilities that would have to be built to serve Kingston-Warren, in other words there would have to be approximately 2.8 miles of otherwise unnecessary line installed, most of which is in an area where there is currently no line, thereby also impacting on aesthetics; 3) in order for the meter used to serve Kingston-Warren to be in E&H's service territory, it would have to be relocated several hundred feet away from the customer's building on a narrow slice of land in Exeter, which would be an unusual and inconvenient construction

for the sole purpose of being able to place the meter in E&H's territory; 4) the customer could avoid paying any stranded costs of PSNH by changing distribution companies, a situation which would encourage similar attempts on or near borders between distribution companies with different levels of stranded costs, thus increasing stranded cost liability for other customers of PSNH; and, 5) the load and the existing meter are both located in PSNH's territory.

We also note that this situation is different from either Lake Tarleton (Order No. 22,362 issued on October 15, 1996) or Hall Farm Realty Trust (Order No. 22,663 issued on July 21, 1997), two recent cases that have addressed service territory issues. Both of those cases addressed the question of who should serve *new load*. In the proceeding presently before us, there is existing service to Kingston-Warren and there is no need for an upgrade to serve the customer. The distribution facilities are clearly more readily available from PSNH than they are from E&H. After assessing all of these factors, we do not believe it would be in the public good to allow E&H to serve Kingston-Warren.

This case does not raise customer choice issues that arise as a result of RSA 374-F. Under that electric industry restructuring law, the Commission clearly retains the authority to regulate distribution services such as those at issue here. Nothing in RSA 374-F contravenes the Commission's authority to exercise its lawful jurisdiction under existing statutes. *See* RSA 374-F:4,X. Accordingly, under a public good analysis which traditionally applies to our decision-making, we find that it is logical and rational and in the public good to allow PSNH to continue serving Kingston-Warren. Furthermore, we note that a customer currently served by a distribution utility or a prospective customer located within the existing service area of a distribution utility may not take service from another distribution utility without Commission approval.

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Insofar as the issue of station service is concerned, we do not believe that it is appropriate to address that issue in this docket. While the Joint Petition raises some issues that are similar to the station service issue, the facts of station service are not fully before us and this docket was not noticed to include station service. We decline to rule on this issue at this time.

Insofar as ownership of the land is concerned, we find the evidence in the record supports Kingston-Warren's assertion that it owns a small parcel of land in Exeter. We are disturbed, however, by the fact that Kingston-Warren would not allow representatives of PSNH to access Kingston-Warren's land to do their own analysis of the disputed boundaries. If this issue were dispositive in this docket we would feel compelled to give PSNH an opportunity to do a further analysis and to present the results of that analysis for the record. Because we believe the land ownership issue is not dispositive in this docket, however, we do not see the need to do so.

Because of our determination outlined above, we do not believe it is necessary to rule on the issue of Kingston-Warren's eligibility for E&H's Rate EB.

We recognize Kingston-Warren is a valuable customer to PSNH. Kingston-Warren makes important and valuable contributions to the economy of the state. In light of Kingston-Warren's

contributions and its financial hardship, we direct PSNH, with involvement from our Staff as our Staff deems necessary and appropriate, to explore options for rate relief for Kingston-Warren. The options could be service rendered under a special contract or service under the tariff, either Rate ED or Rate BR. We will direct PSNH to report back to us on the status of those discussions within 30 days.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Petition of Kingston-Warren Corporation and Exeter & Hampton Electric Company is DENIED; and it is

FURTHER ORDERED, that PSNH enter into negotiations with Kingston-Warren to consider special pricing options for Kingston- Warren and to report back to us within 30 days on the status of those discussions; and it is

FURTHER ORDERED, that Staff participate in the aforementioned discussions to the extent it deems necessary and appropriate.

By order of the Public Utilities Commission of New Hampshire this second day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Exeter & Hampton Electric Co., DR 96-349, Order No. 22,498, 82 NH PUC 64, Feb. 10, 1997. [N.H.] Re Exeter & Hampton Electric Co., DE 96-363, Order No. 22,663, 82 NH PUC 548, July 21, 1997. [N.H.] Re Guidelines for Economic Development and Business Retention Filings, DR 95-216, Order No. 21,895, 80 NH PUC 709, Nov. 6, 1995. [N.H.] Re Lake Tarleton Land Management Corp., DE 96-243, Order No. 22,362, 81 NH PUC 763, Oct. 15, 1996. [N.H.] Re UNITIL Service Corp., DR 95-176, Order No. 21,985, 81 NH PUC 35, Jan. 18, 1996.

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NH.PUC*09/02/97*[97423]*82 NH PUC 633*Exeter and Hampton Electric Company

[Go to End of 97423]

82 NH PUC 633

Re Exeter and Hampton Electric Company

DR 97-157
Order No. 22,698

Re Concord Electric Company

DR 97-175
Order No. 22,698

New Hampshire Public Utilities Commission

September 2, 1997

ORDER scheduling a prehearing conference at which to consider the scope of issues that must be investigated vis-a-vis proposals by two electric utilities for the provision of a new backup service. The accompanying tariff proposals are suspended accordingly.

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1. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Backup service — New proposal for — Suspension — Necessity of prehearing conference. p. 634.

Page 633

2. RATES, § 342

[N.H.] Electric rate design — Backup service — New proposal for — Necessity of suspension and prehearing conference. p. 634.

3. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service offering — To allow for adequate investigatory period — Backup service — Electric utilities. p. 634.

BY THE COMMISSION:

ORDER

[1-3] On August 4, 1997, Exeter & Hampton Electric Company (Exeter & Hampton), filed with the New Hampshire Public Utilities Commission (Commission), a new rate schedule, NHPUC NO. 17 - Electricity, Original Pages 40-S and 40-T, a transmittal letter, and a Petition in Support of a Proposed Tariff for Back-up (Station) Service and for Declaratory Ruling on Applicability to become effective August 30, 1997. On August 27, 1997, Public Service Company of New Hampshire (PSNH) filed a Petition to Intervene and a Motion for Suspension

of the proposed tariff pages. On August 27, 1997, Concord Electric Company (Concord Electric) filed a petition to offer a new Backup service similar to the Exeter & Hampton petition.

Both filings raise, *inter alia*, issues related to the delivery of station service by the local distribution company for those periods when the generating plants can not supply their own requirements. The tariff proposals allow those customers operating generation in Exeter & Hampton's or Concord Electric's service territory, specifically, Seabrook Station, Merrimack Station, and the SES Concord Company's waste-to-energy plant, to purchase capacity and energy from third party suppliers as arranged by the customer.

Due to the nature of this filing and its potential impact on other utilities and generating plants in New Hampshire, the Commission will mandate all jurisdictional electric utilities as full parties unless a company can demonstrate that its participation in this proceeding is neither necessary nor material for the Commission to reach a just and reasonable decision.

Based on the foregoing, it is hereby

ORDERED, that the following tariff pages of NHPUC No. 17 - Electricity, Exeter & Hampton Electric Company be SUSPENDED: Original Page 40-S and Original Page 40-T; and it is

FURTHER ORDERED, that the following tariff pages of NHPUC No. 12 - Electricity, Concord Electric Company be SUSPENDED:

Original Page 40-R and Original Page 40-S;

and it is

FURTHER ORDERED, that a Prehearing Conference be held before the Commission located at 8 Old Suncook Road, Concord, New Hampshire on September 17, 1997, at 10:00 a.m. and be immediately followed by a technical session; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Exeter & Hampton Electric Company and Concord Electric Company notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than September 6, 1997, in a statewide newspaper of general circulation, publication to be documented by affidavit filed with the Commission on or before September 17, 1997; and it is

FURTHER ORDERED, that all electric utilities shall be full parties to this proceeding unless they can demonstrate that their participation is unnecessary; 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 Exeter & Hampton Electric Company, Concord Electric Company and the Office of the Consumer Advocate on or before September 12, 1997, 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 make said Objection on or before September 17, 1997.

By order of the Public Utilities Commission of New Hampshire this second day of September, 1997.

Any individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the American with Disabilities Act Coordinator, NHPUC, 8 Old Suncook Road, Concord, New Hampshire 03301-7319; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Preferably, notification of the need for assistance should be made one week before the scheduled event.

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NH.PUC*09/03/97*[97424]*82 NH PUC 635*EnergyNorth Natural Gas, Inc.

[Go to End of 97424]

82 NH PUC 635

Re EnergyNorth Natural Gas, Inc.

DR 97-140
Order No. 22,699

New Hampshire Public Utilities Commission

September 3, 1997

ORDER approving a natural gas local distribution company's proposed new hedging program, termed a natural gas price risk management policy.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — For passing through actual costs of gas — Effect of price fluctuations — Necessity of hedging policy — As means for stabilizing prices — Use of futures market — Local distribution company. p. 637.

2. SERVICE, § 339.1

[N.H.] Natural gas — Supply or commodity issues — Effect of price fluctuations — Adoption of hedging policy — Use of call options to hedge winter gas supplies — Local distribution company. p. 637.

3. GAS, § 7

[N.H.] Operating practices — As to supply or commodity issues — Effect of price fluctuations — Adoption of hedging program — Natural gas price risk management policy — Use of call options and futures market to hedge winter gas supplies — For stabilization of prices — Local distribution company. p. 637.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Deborah Barradale, Esq. for EnergyNorth Natural Gas, Inc.; the Office of the Consumer Advocate by Kenneth Traum for 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 July 9, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its Petition for Approval of Natural Gas Price Risk Management Policy (hedging program) which would be effective from the date of the order approving the hedging program through March 31, 1998, the end of ENGI's next winter period. Submitted with the petition was the pre-filed direct testimony of Michelle L. Chicoine, Vice President, Treasurer and Chief Financial Officer of ENGI. The filing was in response to Commission Order Nos. 21,401 (November 1, 1994) and 22,079 (March 28, 1996).

By an Order of Notice issued July 16, 1997, the Commission approved an expedited

procedural schedule, set deadlines for intervention requests and objections thereto, and scheduled a Hearing on the Merits for August 20, 1997. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

II. POSITIONS OF THE PARTIES AND STAFF

A. ENGI

ENGI's witness Mark Savoie, Rate Analyst, adopted the prefiled testimony of Michelle L. Chicoine and provided a summary of the filing at the hearing. The purpose of the hedging program is to mitigate price volatility for gas sales customers at a minimal cost. ENGI proposes to use call options to hedge a portion of its winter gas supply. A call option gives the buyer the right, but not the obligation, to purchase a commodity at a predetermined price and before a predetermined date. Call options will allow ENGI to limit the upside cost exposure of natural gas and still allow it to buy at market prices if spot prices fall rather than increase during ENGI's next winter period.

ENGI will credit the Cost of Gas Adjustment (CGA) for the entire amount of any gains resulting from the purchase of call options. The only costs ENGI identified with the hedging program are premiums and brokerage fees which will be charged to the CGA. ENGI proposed a $500,000 threshold of the net hedging program costs (total premiums and brokerage fees, less gains resulting from the purchase of options). ENGI estimated that the $500,000 at risk for gas sales customers represents a maximum increase of approximately $4.50 for the winter CGA period or less than one percent (1%) for an average domestic heating customer during the winter period. ENGI estimates that the program could save $23.91 for these residential customers over the course of the winter period.

ENGI stated in its filing that it will secure the services of a brokerage firm to execute the purchase and sale of options. The brokerage fees are expected to be $25 per contract, or $0.00025 per therm. Although ENGI will rely upon the advice of the selected brokerage firm, the final decision as to how much and when to purchase and sell the options will rest upon four members of ENGI's senior management.

The policy provides that ENGI will provide the Commission with a report by May 15, 1998 which will include an analysis of the performance of the program. ENGI will also propose any necessary modifications for the following plan year to be effective July 1, 1998 through June 30, 1999 should the Commission approve continuation of the program.

B. Office of the Consumer Advocate

The OCA did not file direct testimony but appeared at the Hearing on the Merits and stated its support of the pilot nature of the hedging program and the checks and balances recommended by Commission Staff in prefiled testimony.

C. Commission Staff

On August 14, 1997, Staff submitted the prefiled testimony of Michelle A. Caraway, Utility Analyst III, with the Commission. Ms. Caraway's testimony indicated Staff's support of ENGI's filing and recommendation that the Commission approve the hedging program.

Staff's testimony also described several areas of concern regarding ENGI's proposal. These

included: the lack of approval from the Board of Directors; the lack of internal accounting procedures for the hedging program; additional information that should be tracked by ENGI; the treatment of net costs which exceed the $500,000 threshold at risk for gas sales customers; and the reporting hierarchy of the members of management authorized to execute trades.

Staff's recommendation that the Commission approve ENGI's hedging policy was premised upon ENGI receiving approval of the hedging program from the Board of Directors. Staff's testimony stated that: "Documentation is also important in the event that the Board of Directors places conditions on the hedging policy which materially alters the proposal now

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before the Commission." Ex. 3 at p. 3.

III. COMMISSION ANALYSIS

[1-3] After careful review of the proposed Natural Gas Price Risk Management Policy, and testimony and exhibits offered at the August 20, 1997 hearing, we find that ENGI's proposed hedging program is reasonable and in the public good.

ENGI is not allowed to earn a rate of return on the cost of gas; gas costs are passed through to ratepayers on a dollar-for-dollar basis through the CGA mechanism. By Order Nos. 21,401 (November 1, 1994) and 22,079 (March 28, 1996), the Commission encouraged ENGI and Staff to explore the use of the futures market to help stabilize gas prices. During the past two winter periods, the commodities market has experienced dramatic price fluctuations in natural gas. Actual gas costs exceeded projections so drastically during the 1996/1997 winter period that all of New Hampshire's local distribution companies submitted revised mid-winter CGA filings to avoid substantial underrecoveries.

The proposed hedging program represents a fairly conservative approach to the use of the futures market. Many different financial instruments and various combinations thereof are available for use in a strategically designed hedging program. However, given the experimental nature of this program, the call options will allow ENGI the flexibility to mitigate natural gas price volatility and to benefit from favorable price movements.

Although there is no sharing of the hedging program costs with the shareholders, all benefits derived by the program will be passed along to ratepayers through the CGA. ENGI estimates that the maximum amount at risk for the average domestic heating customer is approximately $4.50 over the course of the winter period. This is a cost that will flow through the CGA reconciliation and will not represent a separate surcharge.

At the August 20, 1997 hearing, ENGI's witness addressed each of Staff's five concerns that it had outlined in its prefiled testimony. Mr. Savoie stated the Board of Directors' approval would be forthcoming and that internal accounting procedures were being discussed between ENGI's controller and its outside audit firm. Mr. Savoie ensured that natural gas spot prices and

futures prices would be tracked on a daily basis. Although ENGI does not anticipate surpassing the $500,000 net cost threshold, any costs that do exceed the threshold will not be charged to the CGA but will be booked as an operating expense. Lastly, although the final decision of when and how much ENGI should be in the futures market rests ultimately with the members of senior management and not the selected brokerage firm, ENGI's Vice President of Gas Supply will have primary responsibility for the decision based on his experience with gas supplies and prices.

Since the Commission has not yet received documentation from ENGI that approval from the Board of Directors for the hedging program has been obtained, we shall approve the hedging program subject to receipt of such documentation. Additionally, we shall direct ENGI to file the internal accounting procedures with the Commission's Finance Department which will have the responsibility to determine whether the procedures adequately facilitate Staff's review of the performance of the hedging program. We shall not address in this order the treatment of net costs which exceed the $500,000 threshold but shall save that determination for ENGI's next rate case.

Based upon the foregoing, it is hereby

ORDERED, that the Natural Gas Price Risk Management Policy is APPROVED subject to approval from the Board of Directors; and it is

FURTHER ORDERED, that ENGI shall document with the Commission the approval of the hedging program from the Board of Directors; and it is

FURTHER ORDERED, that ENGI shall submit to the Commission's Finance Department its internal accounting procedures for booking the costs and benefits of the hedging program within 60 days of this order for the reasons previously outlined in this order.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 94-230, Order No. 21,401, 79 NH PUC 599, Nov. 1, 1994. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 96-049, Order No. 22,079, 81 NH PUC 233, Mar. 28, 1996.

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82 NH PUC 638

Re Kearsarge Telephone Company

DS 97-161
Order No. 22,700

New Hampshire Public Utilities Commission

September 3, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed tariff revisions relative to Centrex services. The revisions offer subscribers new optional station features at no additional cost.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex services — Tariff revisions — To offer new optional station features at no additional cost — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 638.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex services — Tariff revisions — Offering of new optional station features at no additional cost — Charges as exceeding applicable incremental costs — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 638.

BY THE COMMISSION:

ORDER

[1, 2] On August 1, 1997, Kearsarge Telephone Company (KTC) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to restructure and revise the Centrex service tariff of KTC pursuant to RSA 374:22 and RSA 374:26. The proposed effective date of the tariff is September 4, 1997. The new Centrex service includes several standard and optional station features at no additional cost to the Customer. The Centrex rates are based on the current Business One - party rate, plus a gross up factor of 125%. The additional gross-up factor recovers the incremental cost of providing the standard and optional station features. The

Centrex filing also includes discounted rates depending on the number of lines and length of the contract.

Staff has reviewed the petition and cost study details. The cost analysis provided by KTC demonstrates that the proposed rates for Centrex services exceed the relevant costs. Therefore, Staff recommends approval with one condition: the proposed tariff revisions impose a termination liability on the customer in the form of a financial penalty. The termination penalty for customers canceling the contract prior to the completion of the service period is calculated by multiplying the monthly rate by the remaining months in the contract period times fifty percent. Because the Commission currently has an open docket investigating the issue of early contract termination by customers without penalty, the Staff recommends that the Commission expressly retain its authority to revisit the

terms and conditions of this proposed tariff depending on the outcome in docket DE 96-420.

We have reviewed the petition and Staff's recommendation. Because the proposed rates exceed the relevant incremental costs, we find the tariff revisions to be in the public interest and will order approval of KTC's petition. Approval allows KTC to respond to customer demands and will help to foster competition. However, KTC should recognize that the Commission may exercise its authority to revisit the terms and conditions of this proposed tariff depending on the outcome of docket DE 96-420. We will direct KTC to insert additional language in its tariff indicating to customers that penalties associated with early termination of the contract prior to the end of the service period are subject to change.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that KTC's petition to revise its Centrex Service offering is APPROVED; and it is

FURTHER ORDERED, that KTC will insert the appropriate language in its tariff indicating that financial penalties for early termination of the contract prior to the end of the service period may be subject to change; 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 10, 1997 and to be documented by affidavit filed with this office on or before September 17, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 24, 1997, 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 September 24, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

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NH.PUC*09/03/97*[97426]*82 NH PUC 639*Chichester Telephone Company

[Go to End of 97426]

82 NH PUC 639

Re Chichester Telephone Company

DS 97-162
Order No. 22,701

New Hampshire Public Utilities Commission

September 3, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed tariff revisions relative to Centrex services. The revisions offer subscribers new optional station features at no additional cost.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex services — Tariff revisions — To offer new optional station features at no additional cost — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 639.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex services — Tariff revisions — Offering of new optional station features at no additional cost — Charges as exceeding applicable incremental costs — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 639.

BY THE COMMISSION:

ORDER

[1, 2] On August 1, 1997, Chichester Telephone Company (CTC) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to restructure and revise the Centrex service tariff of CTC pursuant to RSA 374:22 and RSA 374:26. The proposed

effective date of the tariff is September 4, 1997. The new Centrex service includes several standard and optional station features at no additional cost to the Customer. The Centrex rates are based on the current Business One - party rate, plus a gross up factor of 125%. The additional gross-up factor recovers the incremental cost of providing the standard and optional station features. The Centrex filing also includes discounted rates depending on the number of lines and length of the contract.

Staff has reviewed the petition and cost study details. The cost analysis provided by CTC demonstrates that the proposed rates for Centrex services exceed the relevant costs. Therefore, Staff recommends approval with one condition: the proposed tariff revisions impose a termination liability on the customer in the form of a financial penalty. The termination penalty for customers canceling the contract prior to the completion of the service period is calculated by multiplying the monthly rate by the remaining months in the contract period times fifty percent. Because the Commission currently has an open docket investigating the issue of early contract termination by customers without penalty, the Staff recommends that the Commission expressly retain its authority to revisit the terms and conditions of this proposed tariff depending on the outcome in docket DE 96-420.

We have reviewed the petition and Staff's recommendation. Because the proposed rates exceed the relevant incremental costs, we find the tariff revisions to be in the public interest and will order approval of CTC's petition. Approval allows CTC to respond to customer demands and will help to foster competition. However, CTC should recognize that the Commission may exercise its authority to revisit the terms and conditions of this proposed tariff depending on the outcome of docket DE 96-420. We will direct CTC to insert additional language in its tariff indicating to customers that penalties associated with early termination of the contract prior to the end of the service period are subject to change.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that CTC's petition to revise its Centrex Service offering is APPROVED; and it is

FURTHER ORDERED, that CTC will insert the appropriate language in its tariff indicating that financial penalties for early termination of the contract prior to the end of the service period may be subject to change; 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 10, 1997 and to be documented by affidavit filed with this office on or before September 17, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 24, 1997, 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 September 24, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

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NH.PUC*09/03/97*[97427]*82 NH PUC 640*Meriden Telephone Company

[Go to End of 97427]

82 NH PUC 640

Re Meriden Telephone Company

DS 97-163
Order No. 22,702

New Hampshire Public Utilities Commission

September 3, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed tariff

revisions relative to Centrex services. The revisions offer subscribers new optional station features at no additional cost.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex services — Tariff revisions — To offer new optional station features at no additional cost — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 641.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex services — Tariff revisions — Offering of new optional station features at no additional cost — Charges as exceeding applicable incremental costs — Possibility of further revisions to early termination penalty provisions — Local exchange carrier. p. 641.

BY THE COMMISSION:

ORDER

[1, 2] On August 1, 1997, Meriden Telephone Company (MTC) petitioned the New Hampshire Public Utilities Commission (Commission) for authority to restructure and revise the Centrex service tariff of MTC pursuant to RSA 374:22 and RSA 374:26. The new Centrex service includes several standard and optional station features at no additional cost to the Customer. The Centrex rates are based on the current Business One - party rate, plus a gross up factor of 125%. The additional gross-up factor recovers the incremental cost of providing the standard and optional station features. The Centrex filing also includes discounted rates depending on the number of lines and length of the contract.

Staff has reviewed the petition and cost study details. The cost analysis provided by MTC demonstrates that the proposed rates for Centrex services exceed the relevant costs. Therefore, Staff recommends approval with one condition. The proposed tariff revisions impose a termination liability on the customer in the form of a financial penalty: the termination penalty for customers canceling the contract prior to the completion of the service period is calculated by multiplying the monthly rate by the remaining months in the contract period times fifty percent. Because the Commission currently has an open docket investigating the issue of early contract termination by customers without penalty, the Staff recommends that the Commission expressly retain its authority to revisit the terms and conditions of this proposed tariff depending on the outcome in docket DE 96-420.

We have reviewed the petition and Staff's recommendation. Because the proposed rates exceed the relevant incremental costs, we find the tariff revisions to be in the public interest and will order approval of MTC's petition. Approval allows MTC to respond to customer demands and will help to foster competition. However, MTC should recognize that the Commission may exercise its authority to revisit the terms and conditions of this proposed tariff depending on the

outcome of docket DE 96-420. We will direct MTC to insert additional language in its tariff indicating to customers that penalties associated with early termination of the contract prior to the end of the service period are subject to change.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MTC's petition to revise its Centrex Service offering is APPROVED; and it is

FURTHER ORDERED, that MTC will insert the appropriate language in its tariff indicating that financial penalties for early termination of the contract prior to the end of the service period may be subject to change; 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 10, 1997 and to be documented by affidavit filed with this office on or before September 17, 1997; and it is

Page 641

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 18, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 22, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 24, 1997, 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 September 24, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

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NH.PUC*09/03/97*[97428]*82 NH PUC 642*Exeter and Hampton Electric Company

[Go to End of 97428]

82 NH PUC 642

Re Exeter and Hampton Electric Company

DR 97-151

Order No. 22,703

New Hampshire Public Utilities Commission

September 3, 1997

ORDER approving an electric utility's special rate contract with Shop N Save Supermarkets for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to pos-
sible summer capacity constraints. p. 642.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 642.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool resources. p. 642.

BY THE COMMISSION:

ORDER

[1-3] On July 25, 1997, Exeter & Hampton Electric Company (E&H) filed Contract No. 4, a voluntary, one-year interruptible load agreement between E&H and Shop N Save Supermarkets (the customer). Contract No. 4 allows the customer to interrupt up to 50 kW of its load when called upon by E&H during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 4 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated

average load relief achieved during the interruption which will be calculated by E&H and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

E&H also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 4 retroactive to July 24, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 4 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4.

While we believe the use of a special contract is warranted in this situation, we direct E&H to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 4 between Exeter & Hampton Electric Company and Shop N Save Supermarkets is APPROVED; and it is

FURTHER ORDERED, based on the fact that no comments were filed in the six prior related dockets, Exeter & Hampton Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 4 retroactively to July 24, is APPROVED; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Exeter & Hampton Electric Company 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 10, 1997 and to be documented by affidavit filed with this office on or before September 17, 1997; 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 September 24, 1997; 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 1, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on October 3, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

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NH.PUC*09/03/97*[97429]*82 NH PUC 643*Concord Electric Company

[Go to End of 97429]

82 NH PUC 643

Re Concord Electric Company

DR 97-152
Order No. 22,704

New Hampshire Public Utilities Commission

September 3, 1997

ORDER approving an electric utility's special rate contract with Shop N Save Supermarkets for the provision of interruptible service. The one-year contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 644.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 644.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement —

Purpose — Easing of possible summer capacity constraints — Preservation of power pool

resources. p. 644.

BY THE COMMISSION:

ORDER

[1-3] On July 25, 1997, Concord Electric Company (CECo) filed Contract No. 10, a voluntary, one-year interruptible load agreement between CECo and Shop N Save Supermarkets (the customer). Contract No. 10 allows the customer to interrupt up to 50 kW of its load when called upon by CECo during New England Power Pool (NEPOOL) Operating Procedure Number 4 - Action During a Capacity Deficiency (OP-4). Contract No. 10 is classified with NEPOOL as Type 5A interruptible load. If the customer interrupts its load when called upon during OP-4, the customer will receive a demand credit of $8 per kW of interruptible load based on the estimated average load relief achieved during the interruption which will be calculated by CECo and verified by NEPOOL. The credit level may change from time to time as determined by NEPOOL, but the $8 per kW is effective through September 15, 1997.

CECo also requested in its petition that the Commission waive certain filing requirements pursuant to Puc 1601.02 and asked the Commission to make the effective date of Contract No. 10 retroactive to July 24, 1997.

The Commission has reviewed the filing and Staff's recommendation and finds that approval of Special Contract No. 10 is in the public interest. We have held hearings on the capacity situation in New England for this summer as part of DR 97-014, Public Service Company of New Hampshire's Fuel and Purchased Power Adjustment Clause. Our approval of this special contract will contribute to NEPOOL's resources should Type 5 interruptible load be called upon to interrupt during OP-4.

While we believe the use of a special contract is warranted in this situation, we direct CECo to report to us by December 1, 1997 whether a generally available tariff for interruptible load is more appropriate and effective.

Based upon the foregoing, it is hereby

ORDERED, that Contract No. 10 between Concord Electric Company and Shop N Save Supermarkets is APPROVED; and it is

FURTHER ORDERED, based on the fact that no comments were filed in the six prior related dockets, Concord Electric Company's request to waive the requirement pursuant to Puc 1601.02 that filings be made 15 days prior to the effective date and to approve Contract No. 10 retroactively to July 24, 1997 is APPROVED; and it is

FURTHER ORDERED, that Concord Electric Company file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called OP-4, whether OP-4 included curtailment of Type 5A customer load, if Type 5A load was curtailed, the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Concord Electric Company 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 10, 1997 and to be documented by affidavit filed with this office on or before September 17, 1997; 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 September 24, 1997; 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 1, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on October 3, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this third day of September, 1997.

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NH.PUC*09/04/97*[97430]*82 NH PUC 645*Exeter and Hampton Electric Company

[Go to End of 97430]

82 NH PUC 645

Re Exeter and Hampton Electric Company

DF 97-164
Order No. 22,705

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing an electric utility to issue up to $8 million in short-term debt, even though such will exceed a previously approved limit on short-term debt of 10% of net fixed plant. The additional short-term debt is viewed as essential for increasing the utility's interim funding requirements.

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1. SECURITY ISSUES, § 98

[N.H.] Short-term debt — Issuance of additional debt — In excess of limit of 10% of net fixed plant — Factors affecting approval — Necessity of increased interim funding — Significant customer growth — Need for greater capital expenditures — Electric utility. p. 645.

BY THE COMMISSION:

ORDER

[1] On August 8, 1997, Exeter & Hampton Electric Company (E&H) filed with the New Hampshire Public Utilities Commission (Commission) a request that the Commission waive N.H. Admin. Rules, Puc 307.05, a provision in Commission rules now awaiting repromulgation, which limits an electric utlity's short term debt to 10% of net fixed plant. E&H seeks authorization for a short-term debt limit of $8,000,000, which would exceed the 10% limit. E&H also seeks authority to issue and sell from time to time, or renew, notes, bonds, or other evidences of indebtedness payable less than 12 months from the date thereof.

E&H was authorized by Order No. 19,541 (September 27, 1989) to issue and sell, from time to time, or renew, up to $5,000,000 of short-term debt at current interest rates. The Commission also required E&H to obtain prior approval before incurring short-term debt in excess of the amount allowed in that order. As of June 30, 1997, E&H had outstanding short-term debt in the amount of $4,210,906, thus approaching the limit of $5,000,000 for short- term debt established in Order No. 19,541. E&H anticipates that it will need to exceed the $5,000,000 short-term debt limitation on or before September 15, 1997 in order to meet its increasing interim funding requirements. Therefore, E&H seeks approval to issue up to an additional $3,000,000 of such indebtedness.

Because of the growth in customers and sales over the last several years, accompanied by the need for additional capital expenditures for additions, extensions, and betterments to its distribution property, plant, and equipment, E&H's interim funding requirements have increased. It seeks the requested increase in short-term debt to support current and working capital requirements, provide interim financing for increasing levels of capital expenditures on distribution plant and equipment and provide the financial flexibility to plan and optimize the benefits and timing of future long-term financings.

By vote dated August 8, 1997, E&H's Board of Directors approved the proposed increase in short-term debt and filing of this petition, and requested that an order *nisi* be issued within 30 days of the filing of this petition.

Subsequent to the issuance of Order No. 19,541, the Commission promulgated N. H. Admin. Rules, Puc 307.05 establishing the short-term debt limit for electric utilities. The Commission has reviewed the filing and the responses to data requests propounded by Staff. From the financial statements submitted with the petition, it is evident that E&H would exceed the 10% limitation contained in a prior rule and in the pending rule if the additional amount were to be borrowed immediately and in its entirety. E&H has advised Staff that such

is not its intent, but we recognize the need for a company to have flexibility in its financial dealings.

We have reviewed the filing and the responses to data requests propounded by Staff. Given the managerial and financial expertise of E&H, we will authorize the new debt ceiling of $8,000,000. We find the proposed uses for the requested borrowings reasonable under all of the circumstances, and in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Exeter & Hampton Electric Company be, and hereby is, authorized to issue and sell from time to time, or renew, up to $8,000,000 of notes, bonds, and other evidences of indebtedness payable less than 12 months from the date thereof at current interest rates and upon terms and conditions and for the purposes as set forth in the Exeter & Hampton Electric Company petition and its attached exhibits; and it is

FURTHER ORDERED, that Exeter & Hampton Electric Company first obtain approval of this Commission before incurring short-term indebtedness in excess of the amount allowed by the terms of this order; and it is

FURTHER ORDERED, that on or before January 1st in each year, Exeter & Hampton Electric Company shall file with this Commission, in accordance with Puc 609.02, Form F-2 "Disposition of Proceeds from Sale of Securities"; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Exeter & Hampton Electric Co., DF 89-128, Order No. 19,541, 74 NH PUC 316, Sept.

27, 1989.

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[Go to End of 97431]

82 NH PUC 646

Re Concord Electric Company

DF 97-165
Order No. 22,706

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing an electric utility to issue up to $8 million in short-term debt, even though such will exceed a previously approved limit on short-term debt of 10% of net fixed plant. The additional short-term debt is viewed as essential for increasing the utility's interim funding requirements.

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1. SECURITY ISSUES, § 98

[N.H.] Short-term debt — Issuance of additional debt — In excess of limit of 10% of net fixed plant — Factors affecting approval — Necessity of increased interim funding — Significant customer growth — Need for greater capital expenditures — Electric utility. p. 647.

BY THE COMMISSION:

ORDER

[1] On August 8, 1997, Concord Electric Company (CEC) filed with the New Hampshire Public Utilities Commission (Commission) a request that the Commission waive N.H. Admin. Rules, Puc. 307.05, a Commission rule now awaiting repromulgation, which limits an electric

utility's short tem debt to 10% of net fixed plant. CEC seeks authorization for $8,000,000, which would exceed the 10% limit. CEC also seeks authority to issue and sell from time to time, or renew, notes, bonds, or other evidences of indebtedness payable less than 12 months from the date thereof.

CEC was authorized by Order No. 19,540 (September 27, 1989) to issue and sell, from time to time, or renew, up to $5,000,000 of short-term debt at current interest rates. The Commission also required CEC to obtain prior approval before incurring short-term debt in excess of the amount allowed in that order. As of June 30, 1997, CEC had outstanding short-term debt in the amount of $3,774,678, thus approaching the limit of $5,000,000 for short- term debt established in Order No. 19,540. CEC anticipates that it will need to exceed the $5,000,000 short-term debt limitation on or before September 15, 1997 in order to meet its increasing interim funding requirements. Therefore, the CEC seeks approval to issue up to an additional $3,000,000 of such indebtedness.

Because of the growth in customers and sales over the last several years, accompanied by the need for additional capital expenditures for additions, extensions, and betterments to its distribution property, plant, and equipment, CEC interim funding requirements have increased. CEC seeks the requested increase in short-term debt to support current and working capital requirements, provide interim financing for increasing levels of capital expenditures on distribution plant and equipment and provide the financial flexibility to plan and optimize the benefits and timing of future long-term financings.

By vote dated August 8, 1997, CEC's Board of Directors approved the proposed increase in short-term debt and filing of this petition, and requested that an order *nisi* be issued within 30 days of the filing of this petition.

Subsequent to the issuance of Order No. 19,540, the Commission promulgated N. H. Admin. Rules, Puc 307.05 establishing the short-term debt limit for electric utilities. The Commission has reviewed the filing and the responses to data requests propounded by Staff. From the financial statements submitted with the petition, it is evident that CEC would exceed the 10% limitation contained in a prior rule and in the pending rule if the additional amount CEC were to be borrowed immediately and in its entirety. CEC has advised Staff that such is not its intent, but we recognize the need for a company to have flexibility in its financial dealings.

We have reviewed the filing and the responses to data requests propounded by Staff. Given the managerial and financial expertise of CEC, we will authorize the new debt ceiling of $8,000,000. We find the proposed uses for the requested borrowings reasonable under all of the circumstances, and in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Concord Electric Company be, and hereby is, authorized to issue and sell from time to time, or renew, up to $8,000,000 of notes, bonds, and other evidences of indebtedness payable less than 12 months from the date thereof at current interest rates and upon terms and conditions and for the purposes as set forth in the Concord Electric Company petition and its attached exhibits; and it is

FURTHER ORDERED, that Concord Electric Company first obtain approval of this Commission before incurring short-term indebtedness in excess of the amount allowed by the

terms of this order; and it is

FURTHER ORDERED, that on or before January 1st in each year, Concord Electric Company shall file with this Commission, in accordance with Puc 609.02, Form F-2 "Disposition of Proceeds from Sale of Securities"; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Concord Electric Co., DF 89-127, Order No. 19,540, 74 NH PUC 315, Sept. 27, 1989.

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NH.PUC*09/04/97*[97432]*82 NH PUC 648*Manchester Water Works

[Go to End of 97432]

82 NH PUC 648

Re Manchester Water Works

DE 97-107

Order No. 22,707

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing a municipal water utility to extend service into a previously unserved area of the Town of Hooksett.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Extraterritorial extension by municipal utility — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 648.

2. SERVICE, § 204

[N.H.] Extensions — Municipal water utility — Service beyond corporate boundaries — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 648.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission) on July 11, 1997, 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 an area in Hooksett containing a total of ten lots as described below.

The Town of Hooksett has provided written support for the proposed extension. There is no other water utility service in the proposed area. In addition, the Department of Environmental Services has confirmed the suitability and availability of Manchester's water supplies.

Based on the above facts, 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 Tax Map 35, Lots 3 and 7; Tax Map 40, Lot 11; and

Tax Map 43, Lots 46, 47, 51-1, 52, 53-1, 53-2 and 55; 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

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NH.PUC*09/04/97*[97433]*82 NH PUC 649*Manchester Water Works

[Go to End of 97433]

82 NH PUC 649

Re Manchester Water Works

DE 97-142
Order No. 22,708

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing a municipal water utility to extend service into a previously unserved area of the Town of Hooksett.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Extraterritorial extension by municipal utility — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 649.

2. SERVICE, § 204

[N.H.] Extensions — Municipal water utility — Service beyond corporate boundaries — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 649.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission) on July 16, 1997, 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 an area in Hooksett which contains a total of 34 lots as described below.

The Town of Hooksett has provided written support for the proposed extension. There is no other water utility service in the proposed area. In addition, the Department of Environmental Services has confirmed the suitability and availability of Manchester's water supplies.

Based on the above facts, 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 Tax Map 38, Lots 4, 5, 6, 6-1, 7, 8, 12, 31, 32, 33, 35, 36, 37, 38, 38-1, 39, 40, 41, and 44; Tax Map 39, Lots 33, 34, 35, and 39; and Tax Map 41, Lots 1, 2, 3, 4, 85-2, 86, 89, 91, 93, 94, and

95; 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

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NH.PUC*09/04/97*[97434]*82 NH PUC 650*Manchester Water Works

[Go to End of 97434]

82 NH PUC 650

Re Manchester Water Works

DE 97-156
Order No. 22,709

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing a municipal water utility to extend service into a previously unserved area of the Town of Londonderry.

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1. SERVICE, § 210

[N.H.] Extensions — Water utility — Extraterritorial extension by municipal utility — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 650.

2. SERVICE, § 204

[N.H.] Extensions — Municipal water utility — Service beyond corporate boundaries — Factors affecting approval — Consent of adjoining town authority — Previously unserved area. p. 650.

BY THE COMMISSION:

ORDER

[1, 2] The Petitioner, Manchester Water Works (Manchester), filed with the New Hampshire Public Utilities Commission (Commission) on August 1, 1997, a petition to extend its existing service area in the Town of Londonderry, New Hampshire. Manchester intends to provide service under its existing tariff provisions for customers outside its municipal boundaries to an area in Londonderry which contains a total of 46 lots as described below.

The Town of Londonderry has provided written support for the proposed extension. There is no other water utility service in the proposed area. In addition, the Department of Environmental Services has confirmed the suitability and availability of Manchester's water supplies.

Based on the above facts, 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 Londonderry 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 Londonderry consisting of Tax Map 16; Lots 19, 20-5, 20-6, 20-7, 20-8, 20-9 and Tax Map 18; Lots 21-1 thru 21-5 and Lots 21-24 thru 21-58; 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

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NH.PUC*09/04/97*[97435]*82 NH PUC 651*TCG New Hampshire Inc.

[Go to End of 97435]

82 NH PUC 651

Re TCG New Hampshire Inc.

DE 97-173
Order No. 22,710

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 652.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 652.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 652.

BY THE COMMISSION:

ORDER

On August 21, 1997, TCG New Hampshire Inc. (TCG) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

[1-3] The Commission Staff (Staff) has reviewed TCG's petition for compliance with these standards. Staff reports that TCG has provided all the information required by Puc 1304.02. The information provided supports TCG's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of TCG as a New Hampshire CLEC.

We find that TCG has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of TCG in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because TCG has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, TCG agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, TCG seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that TCG's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than September 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

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NH.PUC*09/04/97*[97436]*82 NH PUC 652*Metracom Corporation dba Lukechop

[Go to End of 97436]

82 NH PUC 652

Re Metracom Corporation dba Lukechop

DE 97-159
Order No. 22,711

New Hampshire Public Utilities Commission

September 4, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched

Page 652

and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 653.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 653.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 653.

BY THE COMMISSION:

ORDER

On August 4, 1997, Metracom Corporation d/b/a Lukechop (Metracom) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

[1-3] The Commission Staff (Staff) has reviewed Metracom's petition for compliance with these standards. Staff reports that Metracom has provided all the information required by Puc 1304.02. The information provided supports Metracom's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Metracom as a New Hampshire CLEC.

Metracom has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

We find that Metracom has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Metracom in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because Metracom has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Metracom agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Metracom seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question

Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Metracom's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall

submit their comments or file a written request for a hearing on this matter before the Commission no later than September 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 6, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this fourth day of September, 1997.

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NH.PUC*09/04/97*[97437]*82 NH PUC 654*Public Service Company of New Hampshire

[Go to End of 97437]

82 NH PUC 654

Re Public Service Company of New Hampshire

DR 97-135
Order No. 22,712

New Hampshire Public Utilities Commission

September 4, 1997

PETITION by electric utility for authority to revise its method of calculating customers' interruptible demand; granted. The new method excludes from determinations of average load those periods during which a customer has a scheduled plant shutdown.

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1. RATES, § 323

[N.H.] Electric rate design — Load factors — Determination of — Revision in calculation method — Exclusion from average load calculations of those periods during which a customer has a scheduled plant shutdown — As to interruptible service — For purposes of assuring accurate interruptible demand credits. p. 655.

2. SERVICE, § 324

[N.H.] Electric — Interruptible service — Revisions to applicable tariffs — Revision in load calculation methods — To eliminate those periods during which a customer has a scheduled plant shutdown — For purposes of assuring accurate interruptible demand credits. p. 655.

BY THE COMMISSION:

ORDER

On July 1, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a revised tariff page: NHPUC No. 37 - Electricity, Public Service Company of New

Page 654

Hampshire, 1st Revised Page 68 to become effective July 1, 1997.

[1, 2] The revised tariff page allows PSNH to calculate a customer's Interruptible Demand under PSNH's NEPOOL Type 5 Interruptible Service Rate N-5 (Rate N-5) by excluding from the customer's average load those time periods in which the customer has a scheduled plant shutdown. The revised tariff page also eliminates periods of scheduled plant shutdowns from the definition of Daily Interruptible Period. Currently, twelve manufacturers under Rate N-5 have scheduled general plant shutdowns this summer for vacation and/or maintenance purposes.

Staff has reviewed the filing and recommends approval of the change in the tariffed rate for the following reasons: First, certain customers may not be fully compensated for the actual demand interrupted if a request for interruption has occurred during a month with a scheduled plant shutdown. Second, under the existing definition of Daily Interruptible Period, PSNH could be required to apply an Interruptible Demand Credit if an interruption were requested during a customer's plant shutdown, even though the load was already greatly diminished because of the shutdown.

The Commission has reviewed the filing and Staff's recommendation. Based on our review, we find that these changes which ensure that customers receive the correct credit for the amount of interruption they actually provide are in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed change to PSNH's tariff as filed on July 1, 1997 is APPROVED; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, PSNH 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18 , 1997; 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 Sept. 25, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on Oct. 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fourth day of September 1997.

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NH.PUC*09/04/97*[97438]*82 NH PUC 655*Public Service Company of New Hampshire

[Go to End of 97438]

82 NH PUC 655

Re Public Service Company of New Hampshire

DR 97-153
Order No. 22,713

New Hampshire Public Utilities Commission

September 4, 1997

ORDER approving an electric utility's special rate contract with Sears, Roebuck and Company for the provision of interruptible service. The contract is deemed a reasonable response to possible capacity constraints facing electric suppliers in the summer season.

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1. RATES, § 333

[N.H.] Electric rate design — Demand charges — Credits to — Pursuant to agreement for interruptible service — In response to possible summer capacity constraints. p. 656.

2. RATES, § 339

[N.H.] Electric rate design — Interruptible service — Pursuant to special service contract — Provision for demand charge credits — As response to possible summer capacity constraints. p. 656.

3. SERVICE, § 324

[N.H.] Electric — Interruptible service — Provided via special service agreement — Purpose — Easing of possible summer capacity constraints — Preservation of power pool

Page 655

resources. p. 656.

BY THE COMMISSION:

ORDER

[1-3] On July 25, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (NHPUC or Commission) a special contract, NHPUC-138, between PSNH and Sears, Roebuck & Company (Sears) to become effective August 9, 1997.

The purpose of this filing is to assist NEPOOL in ensuring an adequate supply of electricity in the region this summer. NHPUC-138 provides benefits to PSNH, its other customers and the New England region by enabling PSNH to gain 135 kilowatts (kW) of interruptible load, thereby helping PSNH to prevent a potential summer capacity problem. Under this agreement, Sears would receive a payment of $8 per kW of interruption. There is no penalty for not interrupting when called upon by NEPOOL.

NHPUC-138 allows three of Sears' locations to receive service under NEPOOL Type 5 Interruptible Service Rate N-5 (Rate N-5). Rate N-5 requires each customer to designate a minimum of 100 kW of load as interruptible. Each of Sears' locations is unable to provide the 100 kW of interruptible load, but those locations in total can provide 135 kW of interruptible load. NHPUC-138 provides for a waiver of the 100 kW minimum for each location.

Staff has reviewed the filing and recommends approval of this contract based upon the fact that it will enable PSNH to gain 135 kW of interruptible load that would not otherwise be available for interruption, thereby helping to prevent a potential capacity problem for the supply of electricity in New England this summer.

The Commission has reviewed Staff's recommendation and finds that the special contract, NHPUC-138, between PSNH and Sears is in the public interest. The Commission further believes that, as in Order No. 22,597 Special Contract No. NHPUC-137 between PSNH and Shaw's Supermarket, Inc., PSNH should file a report with the Commission regarding the interruptible load of Sears.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Special Contract No. NHPUC-138 between PSNH and Sears as filed on July 25, 1997 is APPROVED; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of Puc 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. NHPUC-138 will be retroactively effective as of August 9, 1997; and it is

FURTHER ORDERED, that PSNH file with the Commission a report, by October 1, 1997, indicating how often NEPOOL called for curtailment of interruptible load and the response of the customer, including the level and duration of interruption; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, PSNH 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 11, 1997 and to be documented by affidavit filed with this office on or before September 18, 1997; 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 September 25, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on October 6, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the New Hampshire Public Utilities Commission this fourth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-088, Order No. 22,597, 82 NH PUC 414, May 16, 1997.

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NH.PUC*09/10/97*[97439]*82 NH PUC 657*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97439]

82 NH PUC 657

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-169
Order No. 22,714

New Hampshire Public Utilities Commission

September 10, 1997

ORDER conditionally approving amendments to a special rate contract as between a local exchange telephone carrier and Lockheed Martin Corporation for the provision of Centrex service in Manchester.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Amendment of — Provision for additional lines and Caller ID — New rates for integrated services digital network options — Conditional approval. p. 657.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provision for additional lines and Caller ID — Special rate contract amendments — Conditional approval. p. 657.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract amendments — Propriety of unconditional approval — Separate opinion. p. 658.

4. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special rate contract amendments — Propriety of unconditional approval — Separate opinion. p. 658.

BY THE COMMISSION:

ORDER

[1, 2] On August 15, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, an amendment to a Special Contract (Contract) with Lockheed Martin Corporation (Lockheed) for Centrex Services in Manchester. In support of its petition, NYNEX filed a contract overview and a cost study associated with the Special Contract Amendment.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the Contract from public disclosure. The Motion for Confidentiality will be addressed in a separate order. The Commission, pursuant to Puc 204.07(b), will protect

the information from public disclosure pending review of the request for confidential treatment.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on August 29, 1997. No comments have been received by the Commission regarding this filing.

The currently established Centrex Service provides a mix of analog and Integrated Services Digital Network (ISDN) lines to several Lockheed locations in Manchester, New Hampshire. This amendment adds provisions to the Contract to provide for additional services to be added on a price-per-line basis and also establishes new rates for ISDN and caller ID services. Termination of the Contract by Lockheed, prior to the end of the term, requires them to pay the present value of any outstanding payments.

The Centrex Service provided by this Special Contract and amendment is a competitive alternative to Private Branch Exchange (PBX) Service and approval of this contract allows NYNEX to respond to the competitive market. The cost data demonstrates that the proposed rates for Centrex Service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract Amendment to be in the public interest. However, the parties to this Contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract Amendment with Lockheed 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Lockheed in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DE 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DE 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

September 10, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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[Go to End of 97440]

82 NH PUC 659

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-170
Order No. 22,715

New Hampshire Public Utilities Commission

September 10, 1997

ORDER conditionally approving a special rate contract as between a local exchange telephone carrier and Lockheed Martin Corporation for the provision of Centrex service in Nashua.

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1. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Provisions for line growth — Conditional approval. p. 659.

2. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provisions for line growth — Special rate contract — Conditional approval. p. 659.

3. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Propriety of unconditional approval — Separate opinion. p. 660.

4. SERVICE, § 463

[N.H.] Telephone — Centrex service — Special rate contract — Propriety of unconditional approval — Separate opinion. p. 660.

BY THE COMMISSION:

ORDER

[1, 2] On August 15, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Special Contract (Contract) with Lockheed Martin Corporation (Lockheed) for Centrex Services in Nashua. In support of its petition, NYNEX filed a contract overview and a cost study associated with the Special Contract.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the Contract from public disclosure. The Motion for Confidentiality will be addressed in a separate order. The Commission, pursuant to Puc 204.07(b), will protect the information from public disclosure pending review of the request for confidential treatment.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on August 29, 1997. No comments have been received by the Commission regarding this filing.

The currently established Centrex Service provides a mix of analog and Integrated Services Digital Network (ISDN) lines to several Lockheed locations in Nashua, New Hampshire. Provisions in the Contract provide for additional services to be added on a price-per-line basis. Termination of the Contract by Lockheed, prior to the end of the term, requires them to pay the present value of any outstanding payments only for the ISDN lines. There is no termination penalty for analog and T-1 service as the facilities are considered to be fully depreciated through previous contracts.

The Centrex Service provided by this Special Contract is a competitive alternative to Private Branch Exchange (PBX) Service and approval of this contract allows NYNEX to respond to the competitive market. The cost data demonstrates that the proposed rates for Centrex Service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should

recognize that the Commission may exercise its authority to revisit the terms and conditions of this Contract depending on the outcome of docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract with Lockheed 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 this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded Lockheed in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this tenth day of September, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DE 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DE 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

September 10, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*09/12/97*[97441]*82 NH PUC 661*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97441]

82 NH PUC 661

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-168
Order No. 22,716

New Hampshire Public Utilities Commission

September 12, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract for the provision of intraLATA toll service to Dartmouth Hitchcock Medical Center.

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1. RATES, § 582

[N.H.] Telephone rate design — Toll service — IntraLATA presubscription — As provided for by special contract — Conditional approval — Associated revenues as exceeding weighted average price floor — Local exchange carrier. p. 661.

2. SERVICE, § 468

[N.H.] Telephone — Toll service — IntraLATA presubscription — As provided for by special contract — Conditional approval — Associated revenues as exceeding weighted average price floor — Local exchange carrier. p. 661.

3. RATES, § 582

[N.H.] Telephone rate design — IntraLATA toll service — As provided for by special rate

contract — Propriety of unconditional approval — Separate opinion. p. 662.

4. SERVICE, § 468

[N.H.] Telephone — IntraLATA toll service — As provided for by special rate contract — Propriety of unconditional approval — Separate opinion. p. 662.

BY THE COMMISSION:

ORDER

On August 15, 1997, New England Telephone and Telegraph Company (NYNEX) filed with the New Hampshire Public Utilities Commission (Commission) redacted and unredacted copies of Special Contract No. 97-13 for toll service between NYNEX and Dartmouth Hitchcock Medical Center (DHMC). In support of its filing, NYNEX filed a price floor analysis with information detailing historical minutes of use (MOU) for each DHMC location.

The special contract was accompanied by a Motion for Protective Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Protective Treatment will be addressed in a separate order.

As directed in DR 97-035 by Order No. 22,545, NYNEX has published notice of this special contract filing with a 14 day period for comments which ended on August 28,1997. No comments have been received by the Commission regarding this filing.

In its filing, NYNEX explained that several intraLATA carriers had offered to provide toll service to DHMC at rates significantly lower than NYNEX tariffed optional plans. NYNEX responded to the competitive challenge initiated on June 2, 1997 by pre-subscription and was selected as the intraLATA carrier on the basis of their special contract proposal to DHMC.

[1, 2] NYNEX stated that the proposed special contract was filed in accordance with RSA 378:18. Staff acknowledges that the Stipulation in docket DE 90-002 addressed special contracts for toll services and that the Stipulation allows incumbent local exchange carriers (ILECs) to respond competitively in situations where they demonstrate that toll competition exists for a specific customer. The toll services must be provided at or above the average access rate for the relevant form of access for that customer plus a "negotiated add-on" as specified in the DE 90-002 Stipulation, for the term of the proposed contract. This determination of the toll price floor must consider all

customer locations and the projected minutes of use at each location.

Staff has reviewed the analysis submitted by NYNEX and noted that they employed a

weighted average price floor based on the segment specific price floors together with location specific volume forecasts. Applying this methodology, NYNEX will receive an average revenue per minute in excess of the weighted average price floor. Based on the analysis and the actual special contract pricing, Staff recommends the Commission approve the proposed special contract.

Based on Staff's recommendation, we find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of Docket DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Special Contract No. 97-13 with DHMC 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 any revision to the commitment amounts and/or rates requires prior Commission approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed during the life of Special Contract No. 97-13, 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 DHMC in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this twelfth day of September, 1997.

SEPARATE OPINION OF COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments

made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DR 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

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Bruce B. Ellsworth
Commissioner

September 12, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*09/15/97*[97442]*82 NH PUC 663*Hannaford Brothers Company, Inc.

[Go to End of 97442]

82 NH PUC 663

Re Hannaford Brothers Company, Inc.

DR 96-424
Order No. 22,717

New Hampshire Public Utilities Commission

September 15, 1997

ORDER adopting procedural schedule relative to a request by an industrial customer that an electric utility be compelled to provide backup or standby services to self-generation and cogeneration customers such as itself on an unbundled basis.

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1. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Backup or standby services — Requested unbundling of — For services provided to self-generation and cogeneration customers — Procedural schedule. p. 663.

2. RATES, § 342

[N.H.] Electric rate design — Backup or standby services — Requested unbundling of — For services provided to self-generation and cogeneration customers — Procedural schedule. p. 663.

APPEARANCES: Preti, Flaherty, Beliveau and Pachios by Donald J. Sipe, Esq. for Hannaford Bros. Co.; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1, 2] On December 31, 1997, Hannaford Bros. Co., Inc. (Hannaford) filed with the New Hampshire Public Utilities Commission a request for an order requiring Public Service Company of New Hampshire (PSNH) to provide separately priced Distribution and Transmission demand plus the related Administrative and Translation charges of PSNH's Backup Service Rate B (NHPUC No. 37-Electricity).

On July 11, 1997, PSNH filed with the Commission a Petition for Approval of Optional

Pricing to PSNH's Backup and Standby Service Rate B to become effective immediately or within 30 days pursuant to RSA 378:3 and N.H. Admin. Rules, Puc 1601.05(a)(1). This Petition proposes an optional pricing scheme that has a higher Administrative charge and a lower Distribution and Transmission charge compared to that currently under Rate B which PSNH asserts will provide for a more stable revenue stream.

By Order No. 22,676 (August 4, 1997) the Commission noted that the two filings both related to Rate B and set a prehearing conference for August 19, 1997 to address, among other things, whether PSNH's newly proposed Amendments to Rate B are discriminatory, and whether Hannaford's petition should be addressed in conjunction with PSNH's Rate B proposal.

The prehearing conference was held August 19, 1997 and the Parties and Staff stipulated to two separate procedural schedules for each proceeding after the Commission ruled orally from the bench that consolidation of the two proceedings was not in the public interest.

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The following procedural schedule was proposed by the Parties and Staff:

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

PSNH Testimony	September 4, 1997
Data Requests on PSNH Testimony	September 11, 1997
PSNH Data Responses	September 22, 1997
Staff and Hannaford Testimony	September 29, 1997
Data Requests on Hannaford and Staff Testimony	October 6, 1997
Staff and Hannaford Data Responses	October 17, 1997
Hearing on the Merits	October 30, 1997

I. COMMISSION ANALYSIS

We find the procedural schedule just and reasonable to govern our investigation into this matter.

We will also take this opportunity to memorialize our finding that consolidation of this proceeding and DR 97-141 would not be in the public interest because the two dockets can be resolved independently.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule set forth above is adopted to govern our investigation into this petition.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hannaford Brothers Co., Inc., DR 96-424, Order No. 22,676, 82 NH PUC 586, Aug. 4, 1997.

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NH.PUC*09/15/97*[97443]*82 NH PUC 664*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97443]

82 NH PUC 664

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-168
Order No. 22,718

New Hampshire Public Utilities Commission

September 15, 1997

ORDER granting proprietary treatment of certain customer-specific cost data and network information contained in a previously approved special rate contract as between a local exchange telephone carrier and Dartmouth Hitchcock Medical Center for the provision of intraLATA toll services.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — As to special telephone service contract — For intraLATA toll services — Confidentiality of customer-specific cost and

network configuration data contained therein — Benefits of nondisclosure as outweighing those of disclosure. p. 665.

BY THE COMMISSION:

ORDER

On August 15, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (D/B/A NYNEX) filed with the New Hampshire Public Utilities Commission a request for approval of a special contract between NYNEX and Dartmouth Hitchcock Medical Center. Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Dartmouth Hitchcock Medical Center as well as information NYNEX asserts is commercially and competitively

Page 664

sensitive (collectively, the Information).

NYNEX states that portions of the special contract contain customer proprietary network information (CPNI) and competitively sensitive data that are within the exemptions from disclosure set forth in RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08. Specifically, the information includes a price floor analysis, details of the customer's usage at specific locations, the nature and type of the services provided, and the rates and charges therefore. The Information, NYNEX asserts, could be used by competitive providers to undercut NYNEX's price and by future contract negotiators to unfairly leverage their bargaining posture. NYNEX also states that it regularly seeks to prevent dissemination of this Information, as required by Puc 204.08(b)(4)a.2. However, NYNEX does not provide any details as to what protective measures are taken by the company.

NYNEX contends that the benefits of non-disclosure outweigh the benefits of disclosure because of the competitive harm it foresees to its own interests and that of its customer. NYNEX also cites our order in DR 95-069 for the proposition that non-disclosure protects basic exchange rates from experiencing upward pressure as a result of discounts gained by customers who gain an unfair bargaining position through access to information which would otherwise be unavailable.

[1] We recognize that the Information is critical to our review of the special contract filed by NYNEX. We also recognize that some of the information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, NYNEX will be allowed to maintain protection over certain elements of its special contracts. Based on the company's representations, under the balancing test we have applied in prior cases, including *Re New*

England Telephone Company, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure. We will therefore exempt the information from public disclosure, pursuant to RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08, as requested by NYNEX. In the future, however, we instruct NYNEX to provide greater detail regarding the steps taken to protect information over which it seeks Commission protection.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1997.

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NH.PUC*09/15/97*[97444]*82 NH PUC 666*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97444]

82 NH PUC 666

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-169
Order No. 22,719

New Hampshire Public Utilities Commission

September 15, 1997

ORDER granting proprietary treatment of certain customer-specific cost data and network information contained in a previously approved special rate contract as between a local exchange telephone carrier and Lockheed Martin Corporation for the provision of Centrex service in Manchester.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — As to special telephone service contract — For Centrex services — Confidentiality of customer-specific cost and network configuration data contained therein — Benefits of nondisclosure as outweighing those of

disclosure. p. 666.

BY THE COMMISSION:

ORDER

On August 15, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (D/B/A NYNEX) filed with the New Hampshire Public Utilities Commission a request for approval of a special contract between NYNEX and Lockheed Martin Corporation in Manchester (hereinafter referred to as Lockheed Martin Manchester). Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Lockheed Martin Manchester as well as information NYNEX asserts is commercially and competitively sensitive (collectively, the Information).

NYNEX states that portions of the special contract contain customer proprietary network information (CPNI) and competitively sensitive data that are within the exemptions from disclosure set forth in RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08. Specifically, the Information includes a cost study giving financial details of component cost and customer-specific network design information. The Information, NYNEX asserts, could be used by competitive providers to undercut NYNEX's price and by future contract negotiators to unfairly leverage their bargaining posture. The Information also pertains to locations within New Hampshire where Lockheed Martin Manchester intends to target its business, which, if disclosed, would unfairly give competitors of Lockheed Martin Manchester valuable marketing information. NYNEX further states that it regularly seeks to prevent dissemination of this Information, as by Puc 204.08(b)(4)a.2. However, NYNEX does not provide any details as to what protective measures are taken by the company.

NYNEX contends that the benefits of non-disclosure outweigh the benefits of disclosure because of the competitive harm it foresees to its own interests and that of its customer. NYNEX also cites our order in DR 95-069 for the proposition that non-disclosure protects basic exchange rates from experiencing upward pressure as a result of discounts gained by customers who gain an unfair bargaining position through access to information which would otherwise be unavailable.

[1] We recognize that the Information is critical to our review of the special contract filed by NYNEX. We also recognize that some of the Information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, NYNEX will be allowed to maintain protection over certain elements of its special contracts. Based on the company's

representations, under the balancing test we have applied in prior cases, including *Re New England Telephone Company*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure. We will therefore exempt the Information from public disclosure, pursuant to RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08, requested as requested by NYNEX. In the future, however, we instruct NYNEX to provide greater detail regarding the steps taken to protect information over which it seeks Commission protection.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1997.

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NH.PUC*09/15/97*[97445]*82 NH PUC 667*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97445]

82 NH PUC 667

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-170
Order No. 22,720

New Hampshire Public Utilities Commission

September 15, 1997

ORDER granting proprietary treatment of certain customer-specific cost data and network information contained in a previously approved special rate contract as between a local exchange telephone carrier and Lockheed Martin Corporation for the provision of Centrex service in Nashua.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Proprietary treatment — As to special telephone service contract — For Centrex services — Confidentiality of customer-specific cost and network configuration data contained therein — Benefits of nondisclosure as outweighing those of

disclosure. p. 667.

BY THE COMMISSION:

ORDER

On August 15, 1997, pursuant to RSA 378:18, New England Telephone and Telegraph (D/B/A NYNEX) filed with the New Hampshire Public Utilities Commission a request for approval of a special contract between NYNEX and Lockheed Martin Corporation in Nashua (hereinafter referred to as Lockheed Martin Nashua) for the provision of Centrex service. Concurrently with the special contract, NYNEX filed a Motion for Protective Order (Motion) which seeks to prohibit disclosure of customer information involving Lockheed Martin Nashua as well as information NYNEX asserts is commercially and competitively sensitive (collectively, the Information).

NYNEX states that portions of the special contract contain customer proprietary network information (CPNI) and competitively sensitive data that are within the exemptions from disclosure set forth in RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08. Specifically, the Information includes a cost study giving financial details of component cost and customer-specific network design information. The Information, NYNEX asserts, could be used by competitive providers to undercut NYNEX's price and by future contract negotiators to unfairly leverage their bargaining posture. The Information also pertains to locations within New Hampshire where Lockheed Martin Nashua intends to target its business, which, if disclosed, would unfairly give competitors of Lockheed Martin Nashua valuable marketing information. NYNEX further states that it regularly seeks to prevent dissemination of this Information, as by Puc 204.08(b)(4)a.2. However, NYNEX does not provide any details as to what protective measures are taken by the company.

NYNEX contends that the benefits of non-disclosure outweigh the benefits of disclosure because of the competitive harm it foresees to its own interests and that of its customer, Lockheed Martin Nashua. NYNEX also cites our order in DR 95-069 for the proposition that non-disclosure protects basic exchange rates from experiencing upward pressure as a result of discounts gained by customers who gain an unfair bargaining position through access to information which would otherwise be unavailable.

[1] We recognize that the Information is critical to our review of the special contract filed by NYNEX. We also recognize that some of the Information contained in the filing is sensitive commercial information in a competitive market. Because many of NYNEX's competitors have no obligation to obtain Commission approval for similar contracts, NYNEX will be allowed to maintain protection over certain elements of its special contracts. Based on the company's representations, under the balancing

test we have applied in prior cases, including *Re New England Telephone Company*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure. We will therefore exempt the Information from public disclosure, pursuant to RSA 91-A:5(IV) and N.H. Admin. Rules, Puc 204.08, as requested by NYNEX. In the future, however, we instruct NYNEX to provide greater detail regarding the steps taken to protect information over which it seeks Commission protection.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1997.

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NH.PUC*09/15/97*[97446]*82 NH PUC 668*Exeter and Hampton Electric Company

[Go to End of 97446]

82 NH PUC 668

Re Exeter and Hampton Electric Company

Additional parties: Hall Farm Realty Trust;
Public Service Company of New Hampshire

DE 96-363
Order No. 22,721

New Hampshire Public Utilities Commission

September 15, 1997

ORDER denying rehearing of Order No. 22,663 (82 NH PUC 548, *supra*) in which Exeter and Hampton Electric Company (E&H) was declared the authorized service provider for a residential subdivision in the Town of Atkinson, even though such area actually was located within the franchised service territory of Public Service Company of New Hampshire (PSNH). Commission explains that the decision was not tantamount to a compensable taking of property on the part of E&H, since the franchise granted PSNH some 50 years earlier had never been exercised as to that area and had not been designated as exclusive, immutable, or perpetual.

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1. FRANCHISES, § 43

[N.H.] Construction and operation — Exclusive versus nonexclusive rights — Grant as not being immutable or perpetual — Franchise area as being subject to adjustment — Boundaries as not sacrosanct — Electric service. p. 669.

2. FRANCHISES, § 53

[N.H.] Amendment — Factors — Nonexclusiveness of original grant — Nonexercise of full grant — Partial abandonment of property rights — Changes in service needs — Customer preference — Electric service. p. 669.

3. MONOPOLY AND COMPETITION, § 28

[N.H.] Division of territory — Pursuant to franchise agreements — Changes in existing boundary lines — Factors — Nonexclusiveness of original franchise grant — Nonexercise of full grant — Changes in service needs — Changes in growth patterns — Customer preference — Electric service. p. 669.

4. CONSTITUTIONAL LAW, § 18

[N.H.] Due process issues — Takings of property without compensation — Pursuant to franchise realignment — Transfer as not constituting a compensable taking — Factors — Nonexclusiveness of original franchise grant — Nonexercise of full grant — De facto abandonment of property rights — Through refusal to serve new customers — Electric service. p. 669.

Page 668

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY.

On November 7, 1996, Exeter & Hampton Electric Company (Exeter and Hampton) and Hall Farm Realty Trust (Trust) filed with the New Hampshire Public Utilities Commission (Commission) a joint petition to authorize Exeter and Hampton to provide electric service to a subdivision (Subdivision) under development by the Trust in a limited area of the Town of

Atkinson. The Subdivision is primarily located in an area of the state designated as the service territory of Public Service Company of New Hampshire (PSNH). *See, Re New Hampshire Gas and Electric Company*, 30 NH PUC 142 (1948).

By Order No. 22,663 (July 21, 1997) the Commission granted the joint petition pursuant to the authority granted it by the legislature under RSA 374:22 and 26, finding that the public interest would be better served through the provision of electric service to the Subdivision by Exeter and Hampton rather than PSNH. *Citing generally, Appeal of Public Service Company of New Hampshire*, 141 N.H. 13 (1996).

The Commission further stated that it was not revoking PSNH's right to serve this subdivision, as would be the case in the application of RSA 374:28, but was rather authorizing Exeter and Hampton to serve this particular subdivision because the public good and public interest were better met through the provision of service to the subdivision by Exeter and Hampton. In taking this action, the Commission ruled that granting Exeter and Hampton the right to serve this subdivision, which constituted new load, did not, as PSNH had asserted, result in a compensable taking of PSNH's property rights.

On August 20, 1997 PSNH filed a motion for rehearing of Order No. 22,663 pursuant to RSA 541:3. In its motion PSNH averred that Order No. 22,663 was unlawful, unreasonable, arbitrary, capricious and an abuse of discretion for a number of reasons. The salient allegations of error were that the Commission had taken a vested property right of PSNH by revoking its "exclusive" right to provide service to the subdivision, that this action had been taken without notice and an opportunity to be heard, and that the Commission's findings of fact were in error.

On August 25, 1997, Exeter and Hampton submitted a motion in opposition to PSNH's motion for rehearing. In its motion, Exeter and Hampton took exception to PSNH's legal assertions and rebutted PSNH's assertions relative to the Commission's findings of fact.

II. COMMISSION ANALYSIS

[1-4] We find no good reason, or basis, to alter our previous decision. PSNH's claim that it has an "exclusive" right to provide service to the Subdivision, which it believes constitutes a vested property interest, is not supported by the law or the facts.

In *Re New Hampshire Gas and Electric Company*, 30 NH PUC 142 (1948) the Commission granted PSNH's predecessor in interest the right to serve this particular parcel of land. We assume that decision was based on a reasoned analysis of the perceived logical growth of transmission and distribution infrastructure at that time. Applying these same standards to the infrastructure in place today, we find that the actual growth and development of the transmission and distribution systems of the two companies relative to the parcel in question lead us to the conclusion that Exeter and Hampton should provide service to this subdivision.

We do not believe this decision results in a compensable taking of PSNH's property rights because we do not believe PSNH had any basis in fact or law to conclude that its franchise boundaries were sacrosanct. As noted above, the Commission's 1948 decision granted PSNH the right to serve this parcel; the decision did not, however, imply that the grant of this right was immutable and, therefore, never subject to change. *See* RSA 365:28.

To the extent PSNH mistakenly believed its franchise borders and the right to provide exclusive service within those borders was perpetual and, therefore, not subject to adjustment by the Commission, this belief was not justified. As the New Hampshire Supreme Court found in *Appeal of Public Service Company of New*

Hampshire, 141 N.H. 13 (1996), as early as 1930 PSNH and its predecessor companies were on notice that in theory, or at law, their rights to provide service in New Hampshire on an exclusive basis were subject to change. *Appeal of Public Service Company of New Hampshire*, 141 N.H. 13, 18 (1996).

Moreover, notwithstanding our conclusions under a public interest analysis, consistent with our findings of fact in Order No. 22,663, we find that PSNH "declined [and] unreasonably failed to render service" to the parcel of land at issue herein. RSA 374:28.

As set forth in Order No. 22,663, Mr. Saviano requested service from PSNH in 1988 and in fact provided PSNH a cash deposit for the line extension that would be required to provide his parcel with that service.[1](124) Mr. Saviano was then informed by PSNH that it could not make the requested line extension to provide his parcel with service and it could not refund his cash deposit because of PSNH's 1988 bankruptcy filing. At the hearing in this matter, counsel for PSNH represented that Mr. Saviano "is correct that we [PSNH] were not able to- we were unable to perform work for customers who had prepaid for line extensions [in 1988]." Transcript p. 90. Counsel further represented that "for a short period ... we were refusing to do the work that people had prepaid prior to the date of the bankruptcy petition." Transcript pp.90-91.

Thus, we conclude that PSNH refused to provide service to the subject parcel of land, that Mr. Saviano was forced to request service from Exeter and Hampton, and that Exeter and Hampton extended its facilities to provide service to the parcel. Therefore, to the extent PSNH had any vested property right to provide service to this parcel it abandoned that right in 1988.[2](125)

Based upon the foregoing, it is hereby

ORDERED, that for the forgoing reasons Public Service Company of New Hampshire's motion for rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 1997.

Separate Opinion of
Commissioner Bruce B. Ellsworth

For the reasons set forth in my dissent to the majority's ruling in Order No. 22,663, I would have found that E&H should not have been given the opportunity to serve Hall Farm Realty

Trust. I continue to hold to my position.

The limited issue before us, however, is whether there is additional evidence which should cause us to rehear this case, or whether there was a misunderstanding of the original evidence which, if clarified, would have led the majority to a different conclusion.

I do not find any reference to additional evidence which would help me persuade my colleagues to change their position. Additionally, our deliberations on the original evidence left me no doubts that the majority had a clear understanding of that evidence in reaching their decision.

Accordingly, I join them in finding that the motion should be denied.

Bruce B. Ellsworth
Commissioner

September 15, 1997

FOOTNOTES

[1]The recitation of "1986" in Order No. 22,663 was merely a typographical error.

[2]PSNH's claim that it was denied notice and an opportunity to be heard on this issue is without merit. The joint petition contained an affidavit of Mr. Saviano in which he testified to PSNH's refusal to serve. In fact Order No. 22,565 (April 21, 1997) issued subsequent to the prehearing conference makes reference to the fact that PSNH and Exeter and Hampton specifically contested whether PSNH had consented to Exeter and Hampton's provision of service to this parcel in 1988.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Exeter & Hampton Electric Co., DE 96-363, Order No. 22,565, 82 NH PUC 361, Apr. 21, 1997.

[N.H.] Re Exeter & Hampton Electric Co., DE 96-363, Order No. 22,663, 82 NH PUC 548, July 21, 1997.

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NH.PUC*09/16/97*[97447]*82 NH PUC 671*Keene Gas Corporation

[Go to End of 97447]

82 NH PUC 671

Re Keene Gas Corporation

DE 97-149
Order No. 22,722

New Hampshire Public Utilities Commission

September 16, 1997

ORDER, in a managerial operations investigation, granting protective treatment as to a sale and purchase agreement through which the subject of the investigation, a natural gas local distribution company, had sold its unregulated propane service affiliate.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — In managerial operations investigation — As to asset purchase contract — For the sale of an unregulated affiliate — As to commerically sensitive data contained therein — Benefits of nondisclosure as outweighing those of disclosure — Local gas distribution company. p. 671.

BY THE COMMISSION:

ORDER

On July 24, 1997, several former employees and current stockholders of Keene Gas Corporation (Keene Gas) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for an Investigation into the Operations and Management of Keene Gas. On July 29, 1997, Keene Gas filed a response stating no reasonable grounds for an investigation exist and asking that the petition be denied.

An Order of Notice was issued July 31, 1997, setting a prehearing conference for August 25, 1997.

On July 21, 1997, Keene Gas filed a Motion for Protective Order regarding an Asset Purchase Agreement (Agreement) requested by the Commission Staff (Staff) in connection with its investigation into the recent sale of the Company's unregulated propane affiliate. Keene Gas filed the Agreement under a separate cover.

Keene Gas states that the Agreement contains confidential cost information which fall within the exemption from public disclosure set forth in N.H. Admin. Rule Puc 204.08. Keene Gas also states that prior to executing the Agreement, the three unregulated entities which are parties to the Agreement entered into an oral agreement that the provisions of the Agreement would not be disclosed to third parties.

[1] The Commission recognizes that the information identified above is critical to the investigation by the Commission, the Commission Staff and the Office of the Consumer Advocate. The Commission also recognizes that the information contained in the Agreement is sensitive commercial information that could be used by competitors to the detriment of the purchaser. If that were to occur, competing propane companies may be able to fix prices in such a way as to increase profits and/or reduce competition. Thus, based on the Company's representations and using the balancing test we have applied in prior cases, we find that the benefits of non-disclosure in this case outweigh the benefits to the public of disclosure. The Agreement should, therefore, be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that Keene Gas's Motion for Protective Order and Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public to reconsider this Order in light of RSA

91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1997.

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NH.PUC*09/16/97*[97448]*82 NH PUC 672*Consumers New Hampshire Water Company

[Go to End of 97448]

82 NH PUC 672

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,723

New Hampshire Public Utilities Commission

September 16, 1997

ORDER again denying a water utility authority to establish special accounting and/or rate-making mechanisms as to rate case expenses associated with the utility's defense of a municipally initiated action in eminent domain. Commission reiterates that such costs should be addressed only upon conclusion of the case.

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1. ACCOUNTING, § 32.1

[N.H.] Rate case expense — Assessment of — As of end of proceeding — Denial of interim special accounting mechanism — Water utility. p. 673.

2. EXPENSES, § 89

[N.H.] Rate case expense — Assessment of — As of end of proceeding — Denial of interim recovery mechanism — Water utility. p. 673.

BY THE COMMISSION:

ORDER

On July 11, 1996, pursuant to RSA 38, the Town of Hudson (Hudson) petitioned the New Hampshire Public Utilities Commission (Commission) to take certain property of Consumers New Hampshire Water Company (Consumers). Subsequently, on September 27, 1996,

Consumers filed a Motion for Order Re: Accounting Treatment and Method For Recovery of CNH Rate Case Expense (The Initial Motion). In its Order No. 22,455, issued December 16, 1996, the Commission denied the Company's request, stating that such a request was premature, that RSA 38 contained no guidance for making such a determination, and that Consumers should absorb its share of the attendant costs pending the outcome of the proceeding and that the Commission would then determine what, if any, recovery was appropriate.

On July 2, 1997, Consumers filed a Motion for Establishment of Immediate Recovery Mechanism or, in the Alternative, an Appropriate Accounting Treatment for Case Expenses Incurred by CNH. In its motion, Consumers points to the amount of its case expenses incurred thus far, and the additional amounts anticipated to bring the matter to conclusion. It indicates that its actual rate of return for 1997 will be well below the rate of return authorized in its last rate proceeding, DR 95-124, due to the expenses of this proceeding. Because of this anticipated reduction in earnings, Consumers believes that it is necessary for the Commission to promptly authorize a recovery mechanism of these costs, in order to avoid an early filing for rate relief and to avoid "rate shock" if recovery of the case expenses are delayed until the conclusion of the proceeding. The Company therefore proposes that recovery of its expenses begin as soon as possible with a special surcharge on CNH's customers in Hudson in the amount of $4.55 per month beginning September 1, 1997 and continuing for one year. A reconciliation would then be performed at the conclusion of the proceeding. In the alternative, if the Commission were not to authorize this surcharge, Consumers asks that the Commission provide authorization for the accumulation of its case expenses in an appropriate deferred account for disposition at the conclusion of the case.

On July 11, 1997 the Town filed an

objection to the Motion of Consumers. The Town cited the Commission's denial of The Initial Motion filed by Consumers, and argues that Consumers request is for the Town to be assessed for CNH's attorney's fees as "damages," which are not provided for under New Hampshire law in most circumstances. The Town further argues that it has abided by the terms of RSA 38 and Commission rules, and that the reasons cited by the Commission in its denial of Consumer's Initial Motion remain valid, as the case has yet to be concluded.

[1, 2] As with the arguments raised in the Initial Motion of Consumers, we are not pursuaded that the arguments of the instant Motion should cause us to reverse our earlier decision. The Company has not provided any new arguments or any new facts which would cause us to change our previous decision. Any disposition of case expenses are appropriately made upon the conclusion of the case. At that time, we will entertain proposals from the parties for recovery of case expenses, if appropriate.

Based upon the foregoing, it is hereby

ORDERED, that Consumers' Motion for Establishment of Immediate Recovery of Case Expenses, or in the Alternative, an Appropriate Accounting Treatment for Case Expenses

Incurred by CNH, is DENIED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., DR 96-227, Order No. 22,455, 81 NH PUC 1026, Dec. 16, 1996.

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NH.PUC*09/16/97*[97449]*82 NH PUC 673*Wilton Telephone Inc.

[Go to End of 97449]

82 NH PUC 673

Re Wilton Telephone Inc.

Additional respondent: Hollis Telephone Inc.

DR 97-187
Order No. 22,724

New Hampshire Public Utilities Commission

September 16, 1997

ORDER requiring two local exchange telephone carriers to show cause why they should not be sanctioned for offering toll services and implementing intraLATA presubscription without authorization and for engaging in "slamming" of their customers.

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1. FINES AND PENALTIES, § 7

[N.H.] Grounds for imposing — Unauthorized operations — Offering of toll services without authorization — Implementation of intraLATA presubscription without notice — Show

cause order — Local exchange telephone carriers. p. 674.

2. SERVICE, § 468

[N.H.] Telephone — Toll services — IntraLATA presubscription — Effect of implementation without prior authorization and notice — Tantamount to unlawful "slamming" — Possible assessment of fine — Show cause order — Local exchange telephone carriers. p. 674.

3. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone — Toll services — IntraLATA presubscription — Effect of implementation without prior authorization and notice — Disregard of affirmative customer choice requirements — Tantamount to unlawful "slamming" — Possible assessment of fine — Show cause order — Local exchange telephone carriers. p. 674.

Page 673

BY THE COMMISSION:

ORDER

On April 29, 1997, Wilton Telephone Inc. and Hollis Telephone, Inc. (Wilton and Hollis or the Companies) filed with the New Hampshire Public Utilities Commission (Commission) tariffs purporting to reintroduce provision of toll service by the Companies. The purpose of the filing, as conveyed orally to the Commission Staff (Staff), was to become the Designated Toll Provider at the time IntraLATA Presubscription (ILP) began on June 2, 1997 pursuant to Order No. 22,281 (August 16, 1996) for all of the Companies' local service customers.

At the time of the filing, the Commission was in the process of an expedited review of a similar petition filed March 26, 1997 by Union Telephone Company (Union). The Commission granted the expedited schedule to enable Union to comply with the 30 day notice to customers prior to the implementation of ILP on June 2, 1997, as required in Order No. 22,281. Union's petition was subject to a pre-hearing conference, technical sessions, settlement meetings and evidentiary hearing. Upon Commission approval, Union commenced giving customers 30 days notice so that they could make meaningful decisions on June 2, 1997. In order for Wilton and Hollis to comply with a similar 30 day notice requirement, the Commission would have had to act on the Companies' proposed tariffs, and their implicit request to become the Designated Toll Provider, within 3 days, which could only be accomplished if there were no Commission or Staff review and no opportunity for public comment. The Companies were aware of the Union petition and the extent of Commission review associated with the petition. On different occasions, three

Staff members informed the Companies that review would be impossible within that time frame. Staff did not request that the Commission suspend the filed tariffs.

As a result of a Commission initiated inquiry regarding the Companies' rates of return in excess of their authorized rates of return, Staff discovered that the Companies are in fact providing toll services to their customers and apparently have done so since June 2, 1997, the implementation date of ILP. In addition, the Companies apparently are incurring losses as a result of their provision of toll service and propose to apply the losses to any excess earnings which may exist.

By letters dated July 10, 1997, each of the Companies informed the Commission of its implementation of the April 29th filing to reintroduce the provision of toll service. Neither Company indicated an effective date for the beginning of such provision.

[1-3] By the 6th ordering clause of Order No. 22,281, the Commission provided that "NYNEX shall continue to carry all customers' intraLATA toll calls which are not prefaced by 10-XXX or other access dialing arrangements until the customer affirmatively chooses to presubscribe to another carrier" (6th Ordering Clause). By their actions, the Companies presubscribed all of their local customers from NYNEX to Wilton and Hollis, before any affirmative action on the part of those customers. Presubscribing without the authorization of a customer is known as "slamming" and is prohibited.

The 14th and 15th ordering clauses of the Order require that the approved bill insert providing customers with relevant ILP information be mailed to customers 30 days prior to the ILP cut-over date, June 2, 1997. According to information provided to Staff by the Companies, the service and tariffs were implemented on June 2, 1997. Notice to customers occurred on June 3, 1997.

The 10th ordering clause of the Order states that "failure to comply with this order shall result in penalties pursuant to RSA 365:42." This clause reiterates the Commission's discussion within Section 6 of the Order at page 13, dealing with slamming. The Commission held that the procedures explained "are applicable to initial PIC changes at the beginning of ILP as well as to later PIC changes" (Order at p. 23). The Commission stated its intent to monitor the actions of all entities involved in PIC changes and, pursuant to RSA 365:42, respond to any instance of slamming of customers.

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. 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 Wilton and Hollis 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 September 30, 1997, to show cause why the Companies should not be held accountable, pursuant to, *inter alia*, RSA 365:42 and 374:41, for violations of Order 22,281; and it is

FURTHER ORDERED, that Wilton and Hollis shall appear before the Commission at the same hearing to show cause as to how the Companies have authority to provide toll services as the Designated Toll Provider.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re IntraLATA Presubscription, DE 96-090, Order No. 22,281, 81 NH PUC 624, 172 PUR4th 69, Aug. 16, 1996.

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NH.PUC*09/16/97*[97450]*82 NH PUC 675*AT&T Communications of New Hampshire Inc.

[Go to End of 97450]

82 NH PUC 675

Re AT&T Communications of New Hampshire Inc.

DE 97-174
Order No. 22,725

New Hampshire Public Utilities Commission

September 16, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 676.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 676.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 676.

BY THE COMMISSION:

ORDER

On August 27, 1997, AT&T Communications of New Hampshire Inc. (AT&T) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed AT&T's petition for compliance with these standards. Staff reports that AT&T has provided all the information required by Puc 1304.02. The information provided supports AT&T's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of AT&T as a New Hampshire CLEC.

[1-3] We find that AT&T has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of AT&T in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because AT&T has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, AT&T agreed to concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, AT&T seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that AT&T's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; 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 23, 1997 and to be documented by affidavit filed with this office on or before September 30, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than October 7, 1997; 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 14, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 16, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1997.

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NH.PUC*09/16/97*[97451]*82 NH PUC 677*Merrimack County Telephone Company

[Go to End of 97451]

82 NH PUC 677

Re Merrimack County Telephone Company

DR 97-160
Order No. 22,726

New Hampshire Public Utilities Commission

September 16, 1997

ORDER approving a local exchange telephone carrier's proposal to eliminate a previously required discount to its retail service rates and to reflect such discount via a reduction in intraLATA access rates instead.

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1. RATES, § 553

[N.H.] Telephone rate design — Retail service rates — Elimination of currently applicable discounts — Reductions in intraLATA access rates instead — Factors affecting approval — Preservation of revenue neutrality — Promotion of competition and market entry — Local exchange carrier. p. 677.

BY THE COMMISSION:

ORDER

[1] On August 6, 1997, Merrimack County Telephone Company (MCT), filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to remove the discount it currently applies to retail services and concurrently reduce its intraLATA access rate.

The 18.4% discount on retail services which MCT now applies to its customers' basic services and intraLATA toll bills was part of a plan to reduce MCT's overall rate of return,

ordered by the Commission in DR 95-197, 80 NH PUC 488 (1995). The discount on toll is only applied to billings for toll service provided by MCT through its designated carrier plan arrangements with NYNEX.

MCT asserts that as a result of impending competition in the intrastate toll market, significant reductions in intrastate toll rates may be imminent. As a result NYNEX will enjoy the competitive advantage of this discount which may adversely affect the development of effective toll service competition in MCT's territory. MCT proposes, therefore, to remove the retail service discount and simultaneously reduce its intraLATA access rates to the level of its interLATA access rates in effect on July 1, 1997. The estimated revenue impact of MCT's proposal results in an estimated annual revenue increase of $454,644 with the elimination of the 18.4% discount on retail services and an estimated annual revenue decrease of $358,542 with the proposed intraLATA access rate reductions. The net revenue increase of these changes, $96,102, is partially offset by an anticipated reduction in Universal Service Fund revenues in the amount of $47,192. The balance of the increase will enable MCT to earn its allowed rate of return; as of December 31, 1996, intrastate earnings were below the authorized level by $48,101. By elimination of the discount, toll and basic exchange will be charged as approved by the Commission prior to imposition of the discounts in 1995. As a result, MCT customers will experience an 18.4% increase in their current toll and basic exchange bills.

Staff has reviewed MCT's petition and recommends approval. As carriers enter New Hampshire markets, the existence of a Commission approved retail intraLATA service discount that provides for a toll discount to be applied only to the toll services of the Regional Bell Operating Company will weigh against entry in the MCT territory. In addition, reducing access rates is a mechanism that will be beneficial to competition as it moves prices toward cost. The net effect of these changes will not result in MCT earning in excess of its allowed rate of return due to anticipated reduction in Universal Service Funds and MCT's December 31, 1996 underearnings status.

We find that the requested change will promote competition in MCT's telecommunica-

tions market and is in the public good.

Although we do not consider it appropriate to mandate a reduction in toll prices commensurate with the reduction in access charges, we expect that all toll providers seeking to do business with MCT's customers will reflect the reduction in the cost of their providing service when pricing intraLATA toll.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MCT's petition for authority to reduce its intraLATA access rate and simultaneously eliminate the current discount applied to MCT retail service charges is GRANTED; 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 23, 1997 and to be documented by affidavit filed with this office on or before September 30, 1997; 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 7, 1997; 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 14, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 16, 1997, 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 October 16, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of September, 1997.

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NH.PUC*09/16/97*[97452]*82 NH PUC 678*Kearsarge Telephone Company

[Go to End of 97452]

82 NH PUC 678

Re Kearsarge Telephone Company

DE 97-070
Order No. 22,727

New Hampshire Public Utilities Commission

September 16, 1997

ORDER approving a local exchange telephone carrier's proposal to eliminate a previously required discount to its basic exchange rates and to reflect such discount via a reduction in intraLATA access rates instead.

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1. RATES, § 553

[N.H.] Telephone rate design — Basic exchange and intrastate toll services — Elimination

of currently applicable discounts — Reductions in intraLATA access rates instead — Factors affecting approval — Preservation of revenue neutrality — Augmentation of competition and market entry — Local exchange carrier. p. 678.

BY THE COMMISSION:

ORDER

[1] On January 6, 1997, Kearsarge Telephone Company (KTC), filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to revise the discount it currently applies to intra-state toll and Basic Exchange services pursuant to Order No. 21,764 in DR 95-181 and concurrently reduce its IntraLATA access rates. The filing, docketed as DR 97-002, was withdrawn after the Commission Staff advised KTC that the proposed application of the customer credit to intra-state toll and Basic Exchange services would result in a barrier to competitive entry and would, thus, be in violation of the Telecommunication Act of 1996.

On April 8, 1997, KTC filed another petition, docketed as DE 97-070, as a means to amend its original request of January 6, 1997. Staff conducted a review of the revised filing and again found it to be deficient. On Staff's recommendation, the Commission suspended the revised petition pursuant to Order No. 22,590.

On August 28, 1997, KTC filed a revised proposal to its April 8, 1997 petition and supporting documentation. The discount which KTC now applies to its customers' basic services and intraLATA toll bills was part of a plan in DR 95-181 to reduce KTC's overall rate of return. With this revised proposal, KTC will remove the discount over a one year time period. Coincident with the effective date of the proposed tariff revisions, KTC will immediately reduce intraLATA access rates.

KTC asserts the current discount on toll is only applied to billings for toll service provided by KTC through its designated carrier plan arrangements with NYNEX. Due to impending competition in the intrastate toll market, significant reductions in intrastate toll rates may be imminent and as a result NYNEX will enjoy the competitive advantage of this discount which may adversely affect the development of effective toll service competition in KTC's territory. KTC proposes, therefore, to remove the discount and simultaneously reduce its intraLATA access rates. KTC also asserts that basic exchange services should reflect costs and that the discount, as it is now being applied, distorts the appropriate price signal.

The estimated revenue impact of KTC's proposal results in an annual revenue increase of $490,000 with the elimination of the customer discount on retail services and an estimated

annual revenue decrease of $490,000 with the proposed intraLATA access rate reductions.

Staff has reviewed KTC's petition and recommends approval. As carriers enter New Hampshire markets, the existence of a Commission approved retail intraLATA service discount that provides for a toll discount to be applied only to the toll services of the Regional Bell Operating Company will weigh against entry in the KTC territory. In addition, reducing access rates is a mechanism that will be beneficial to competition as it moves prices toward cost. Staff also supports the elimination of discounts on Basic Exchange services. As a result of this order, the charges for intrastate toll calling will no longer be discounted. Because KTC had failed to implement a credit due to a change in accounting standards, KTC customers' basic exchange rates will be discounted by 16.5% rather than the current 11.26% discount. 12 months from the date of this order, the accounting related discount will have been completed and basic exchange will return to its approved rate, which will appear as a 16.5% increase to KTC customers.

We find that the requested change will promote competition in KTC's telecommunications market and is in the public good.

Although we do not consider it appropriate to mandate a reduction in toll prices commensurate with the reduction in access charges, we expect that all toll providers seeking to do business with KTC's customers will reflect the reduction in the cost of their providing service when pricing intraLATA toll.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that KTC's petition for authority to reduce its intraLATA access rate and eliminate the current discount applied to KTC retail service charges is GRANTED; 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 23, 1997 and to be documented by affidavit filed with this office on or before September 30, 1997; 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 7, 1997; 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 14, 1997; and it is

FURTHER ORDERED, that this Order

Nisi shall be effective October 16, 1997, 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 acompliance tariff with the Commission on or before October 16, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of

September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Kearsarge Teleph. Co., DR 95-181, Order No. 21,764, 80 NH PUC 485, July 21, 1995. [N.H.] Re Kearsarge Teleph. Co., DE 97-070, Order No. 22,590, 82 NH PUC 403, May 7, 1997.

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NH.PUC*09/22/97*[97453]*82 NH PUC 680*Statewide Electric Utility Restructuring Plan

[Go to End of 97453]

82 NH PUC 680

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,728

New Hampshire Public Utilities Commission

September 22, 1997

ORDER revising the procedural schedule adopted in Order No. 22,681 (82 NH PUC 592, *supra*) as to outstanding motions for rehearing and/or clarification of Order No. 22,512 (82 NH PUC 101, *supra*), which pertained to the commission's electric industry restructuring plan.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Requests for rehearing and/or clarification — Revised procedural schedule. p. 680.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges —

Requests for rehearing and/or clarification — Revised procedural schedule. p. 680.

BY THE COMMISSION:

ORDER

[1, 2] A number of parties filed requests for rehearing of various issues in our statewide electric utility restructuring plan. By Order No. 22,681 (August 12, 1997), we set a schedule for two rehearing proceedings, one addressing Public Service Company of New Hampshire (PSNH) specific issues, the other addressing energy efficiency issues.

This order revises the rehearing schedule, consistent with the Commission's announcement during the status conference conducted on September 11, 1997. The revised schedule is as follows:

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

PSNH-Specific Issues:

PSNH's responses to all outstanding data requests	September 19, 1997
Staff/Intervenor testimony	September 29, 1997
PSNH data requests	October 6, 1997
Staff/Intervenor data responses	October 15, 1997
Hearing on the Merits	October 22-24, 1997 10:00 A.M.

Energy Efficiency Issues:

Testimony/Written Comments	September 26, 1997
Hearing on the Merits	October 9, 1997 10:00 A.M.

As we indicated during the status conference, we may schedule a prehearing conference prior to the October hearings as circumstances warrant.

Based upon the foregoing, it is hereby

ORDERED, that the rehearing schedule in this proceeding is revised as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,681, 82 NH PUC 592, Aug. 12, 1997.

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NH.PUC*09/22/97*[97454]*82 NH PUC 681*Granite State Packing Company, Inc., nka JacPac Foods, Ltd. v. Public Service Company of New Hampshire

[Go to End of 97454]

82 NH PUC 681

Granite State Packing Company, Inc., nka JacPac Foods, Ltd.
v.
Public Service Company of New Hampshire

DC 97-129
Order No. 22,729

New Hampshire Public Utilities Commission

September 22, 1997

ORDER determining that the existing load of an industrial customer qualifies for service under an electric utility's discounted load retention rate while the customer's expansion load qualifies for service under the utility's discounted economic development rate. Such eligibility is premised on a finding that the customer has viable cogeneration plans and options.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Efficacy of load retention (LR) tariffs — Eligibility of industrial customer for LR rates — Viability of cogeneration option — Applicability of LR discounts to existing load only — Electric utility. p. 683.

2. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Efficacy of economic development (ED) tariffs — Eligibility of industrial customer for ED rates — Viability of cogeneration option — Applicability of ED discounts to expansion load only — Electric utility. p. 683.

3. RATES, § 339

[N.H.] Electric rate design — Service to industrial customers — Means for attracting or retaining load — Economic development (ED) and load retention (LR) tariffs — Eligibility of industrial customer for ED and LR rates — Expansion load versus existing load respectively — Viability of cogeneration option. p. 683.

4. DISCRIMINATION, § 60

[N.H.] Rates — Concessions to certain customers — Industrial customers — Means for attracting or retaining load — Economic development (ED) and load retention (LR) tariffs — Eligibility of industrial customer for ED and LR rates — Expansion load versus existing load respectively — Viability of cogeneration options — Electric service. p. 683.

5. RATES, § 211

[N.H.] Special rate contracts — As means of retaining load — Legislative preference for load retention and economic development tariffs instead. p. 683.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; James T. Rodier, Esq. and Sheehan, Phinney, Bass + Green by Peter W. Leberman, Esq. for Granite State Packing 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 17, 1997, Granite State Packing Company, Inc. n/k/a JacPac Foods, Ltd. (JacPac) filed a complaint with the New Hampshire Public Utilities Commission (Commission) alleging that it was improperly denied service under the discounted load retention tariff (Rate LR) from

Public Service Company of New Hampshire (PSNH).

JacPac also pursued service under PSNH's discounted Economic Development tariff (Rate ED) and when service was not obtained at the classification level JacPac felt would be appropriate, JacPac requested that Rate ED issues be consolidated with the Rate LR proceeding for hearing and waiver of notice requirements, to which PSNH assented. The Commission granted the request.

The Commission heard evidence on both Rate LR and Rate ED on August 22, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *JacPac*

JacPac is a food processor located in Manchester, New Hampshire. Though originally a slaughterhouse, JacPac ceased slaughtering (also referred to as "meat packing") in 1978. It now specializes in processing meat for frozen shipment to restaurants and other end users, though it also manufactures sauces, salads and other non-meat items.

JacPac sought service under Rate LR as an alternative to development and operation of its own gas fired generation. It consulted with Evantage, Inc. of Virginia to develop a cogeneration plan. PSNH concluded the cogeneration plan did not meet the 4 year payback standards it applies under the Rate LR tariff and denied Rate LR service.

JacPac argued that the tariff requires a cogeneration project to demonstrate a "simple pre-tax payback in excess of four years." According to JacPac, a simple payback analysis does not include a cost of money, though PSNH's analysis does. If PSNH in fact applied a simple payback analysis, the cogeneration project would come in under four years and thereby qualify JacPac for Rate LR. JacPac argued that it was entitled to service according to the plain meaning of the words of the tariff; if PSNH wanted to apply a different analysis in the future it should change the tariff language for subsequent customers. In addition to the payback issue, JacPac argued that cogeneration was a viable option, given the potential for sales of excess generation to up to three customers pursuant to RSA 362-C. It also presented further modifications that in its view improved the economics of the cogeneration plan.

JacPac is also seeking to expand its operations in Manchester and seeks Rate ED for the incremental load brought on to the system from that expansion. The expansion project consists primarily of a changeover from use of nitrogen freezing systems to an "impingement" freezing system, which will result in a more intensive use of electricity. JacPac anticipated its load will increase by more than 12,000,000 kWh if both phases of its expansion are completed. The expansion would create 50 to 75 jobs as well. Without both Rate LR and a classification 1 or 2 of Rate ED, the expansion will not occur.

Rate ED has three levels of discount, depending on the Standardized Industrial Classification (SIC) Code of the customer. Under the SIC Code, JacPac is identified as a "meat packer," which carries a relatively low electricity usage ratio. JacPac argued that because it is no longer a meat packer, the historic SIC Code should be ignored. Instead PSNH and the Commission should look

to the electricity usage of its current frozen foods operations, which are highly energy intensive, and allow it to be served under either

classification 1 or 2 of Rate ED. Before the expansion, JacPac's electricity cost as a percentage of product shipped is .80. With phases 1 and 2 of the expansion completed, the usage ratio will be between 1.1 and 1.5, assuming existing load is provided under Rate LR.

Manchester Mayor Wieczorek and Manchester Area Redevelopment Authority Industrial Agent Jay Taylor spoke in support of JacPac's requests, emphasizing the importance of utilizing incentives through the form of lower electric rates to maintain existing businesses and to encourage them to expand in New Hampshire.

B. *PSNH*

PSNH opposed JacPac's request for Rate LR. PSNH pointed out that the tariff language allows Rate LR if PSNH's "standard analysis shows a simple pre-tax payback in excess of four years for the total cost of generation ... " PSNH's standard analysis includes use of the carrying costs of money for the project. Using this analysis, the JacPac cogeneration plan has a greater than four year payback.

PSNH notes that the Commission has required use of the cost of money when evaluating the cogeneration plan for Isaacson Structural Steel (DR 96-068) and calculating eligibility for the Sawmill Deferral Rate (DR 93-083).

To clarify its analysis, PSNH proposed amending the tariff to replace the phrase "a simple, pre-tax payback in excess of four years" with the phrase "an undiscounted, pre-tax payback in excess of four years."

PSNH did not oppose JacPac's taking service under either classification 1 or 2 of Rate ED, provided the Commission authorized it to serve a customer whose listed SIC Code was not within the approved categories. Based on what will be JacPac's energy usage if the expansion project is completed, PSNH recommended service under classification 1, which provides the greatest discount.

C. *Staff*

Staff did not present testimony on the two rate requests.

III. COMMISSION ANALYSIS

[1-5] After review of the record, we conclude that JacPac should be entitled to take service

under Rate LR in that its cogeneration study, as well as testimony offered at hearing, demonstrate a payback that meets the language of the tariff, notwithstanding PSNH's past interpretation of the tariff. JacPac's cogeneration expert offered credible testimony of JacPac's cogeneration abilities. In addition, other factors, such as a possible tax abatement from the City of Manchester and use of an existing building, call into question PSNH's conclusion that the cogeneration plan is not viable.

The current tariff can be construed as JacPac suggests, and therefore we do not believe this customer should be penalized by PSNH's interpretation. If PSNH believes the tariff should be rewritten, it should seek such a change from the Commission. We await filing of a proposed tariff provision if PSNH seeks to change the analysis of cogeneration plans from a simple payback to one that takes into account the cost of money.

Keeping JacPac on PSNH's system with Rate LR will provide benefits to PSNH and its customers during the transition to competition by retaining JacPac's contribution toward PSNH's fixed costs. It will also allow JacPac the flexibility of purchasing generation from the competitive market once retail choice is in place. We note that JacPac has no direct competitors in New Hampshire, removing the possibility of "free riders" seeking Rate LR in response to this order. For these reasons, we find approval of Rate LR to be in the public interest.

We have reviewed the energy usage figures for JacPac that will result after the two expansions are in place and find it appropriate to allow JacPac to take Rate ED at Classification 2. The range of energy usage for this classification is 1.0 to 2.0. After both phases of the expansion are complete, JacPac's operations will have an electricity usage ratio of 1.1 to 1.5, which appropriately places it in Classification 2. We are pleased that JacPac

plans significant expansion and upgrading of its facilities rather than moving some of its operations out of New Hampshire.

Based upon the foregoing, it is hereby

ORDERED, that PSNH shall provide service to JacPac's existing load at Rate LR; and it is

FURTHER ORDERED, that PSNH shall provide service to JacPac's expansion load at Rate ED, classification 2.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of September, 1997.

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NH.PUC*09/22/97*[97455]*82 NH PUC 684*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97455]

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: NEXTEL Communications of the Mid-Atlantic Inc.

DE 97-176
Order No. 22,730

New Hampshire Public Utilities Commission

September 22, 1997

ORDER approving a cellular interconnection agreement negotiated by a local exchange telephone carrier and a cellular telecommunications carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Joint network configuration — Local exchange and cellular carriers. p. 684.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Local exchange and cellular carriers. p. 684.

3. TELEPHONES, § 14

[N.H.] Connecting carriers — Compensation — Under negotiated interconnection agreement — Between local exchange and cellular carriers — Provision for reciprocal compensation — As to calls terminating on wireless networks. p. 684.

BY THE COMMISSION:

ORDER

[1-3] On August 27, 1997, New England Telephone and Telegraph Company (NYNEX) and NEXTEL Communications of the Mid-Atlantic Inc.(NEXTEL) filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Cellular Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C. Section 252(e) of the

Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission and routing of exchange service traffic and exchange access traffic and transmission and termination of other types of traffic and joint network configuration. NYNEX and NEXTEL will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement establishes reciprocal compensation as well as negotiated rates for cellular Type I and Type IIA access. The negotiated rates are lower than the tariffed rates for Type I and Type IIA access and, according to NYNEX, are based on Total Element Long Run Incremental Costs.

Staff recommends approval of the Agreement between NYNEX and NEXTEL based on a review of the summary and actual agreement for compliance with the TAct. Staff points out

Page 684

that the Agreement is substantially consistent with the terms of previously approved interconnection agreements and that all prices are the same as other agreements between NYNEX and cellular companies.

We have reviewed the Agreement and find it meets the standards of Section 252(e)(2)(A) for approval of a negotiated agreement. The Agreement does not appear to be discriminatory with respect to any carrier not a party to the negotiations. We find that approval is consistent with the public interest in achieving a more competitive telecommunications market. Therefore, we will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between NYNEX and NEXTEL is approved; 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 29, 1997 and to be documented by affidavit filed with this office on or before October 6, 1997; 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 13, 1997; 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 20, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 22, 1997, 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

September, 1997.

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NH.PUC*09/23/97*[97456]*82 NH PUC 685*EnergyNorth Natural Gas, Inc.

[Go to End of 97456]

82 NH PUC 685

Re EnergyNorth Natural Gas, Inc.

DR 97-132
Order No. 22,731
181 PUR4th 337

New Hampshire Public Utilities Commission

September 23, 1997

ORDER authorizing a natural gas local distribution company (LDC) to continue, as modified by a settlement agreement, its currently approved residential and small commercial demand-side management (DSM) program, known as "ENERGYWI$E."

As modified, the program year will run from October 1, 1997, to September 30, 1998. However, on or before July 15, 1998, to the extent that LDC-sponsored DSM programs are still appropriate in light of the status of retail customer choice at that time, the LDC shall file a single DSM program to be effective October 1, 1998, through September 30, 1999, covering residential, commercial, and industrial customers.

The only substantive modification to the program is a 36% reduction in the budget allocated to small commercial customers. Commission — noting testimony to the effect that small commercial customers have not participated at projected levels and are perhaps better served by the large scale commercial and industrial DSM program — is satisfied that the budget reduction will not adversely impact the delivery of DSM programs to the LDC's small commercial customers.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Residential and small commercial programs — 1997-98 program year budget — Continuation of "ENERGYWI$E" program — But reductions

in small commercial components — Conservation charges — Local gas distribution company. p. 688.

2. GAS, § 7

[N.H.] Operations — Demand-side management plans — 1997-98 program year — Continuation of "ENERGYWI$E" program — But reductions in small commercial components — Conservation charges — Local gas distribution company. p. 688.

3. CONSERVATION, § 1

[N.H.] Demand-side management programs — Residential and small commercial projects — Determination of cost-effectiveness — Under revised total resource cost analysis — Free riders as a factor — Updated avoided costs — Local gas distribution company. p. 688.

4. CONSERVATION, § 1

[N.H.] Demand-side management plans — Residential and small commercial programs — Potential impact of retail choice — Local gas distribution company. p. 688.

5. RATES, § 380

[N.H.] Natural gas rate design — Special factors — Conservation charges — Demand-side management program budget — Local distribution company. p. 688.

6. RATES, § 235

[N.H.] Schedules and procedure — Initiation of rate changes — Conservation charges — Bills-rendered versus service-rendered basis — Natural gas local distribution company. p. 688.

APPEARANCES: McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. for EnergyNorth Natural Gas, Inc. and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On June 27, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) its proposed ENERGYWI$E Program effective for

the period October 1, 1997 through September 30, 1998. ENGI's filing included the prefiled testimony of Donald E. Carroll, Vice President of Gas Supply. The ENERGYWI$E Program is ENGI's Demand-Side Management (DSM) Program aimed at residential and small commercial customers. ENGI essentially proposes to continue offering its currently approved ENERGYWI$E program for an additional year.

By an Order of Notice issued July 10, 1997, the Commission scheduled a Prehearing Conference for July 31, 1997, set deadlines for intervention requests and objections thereto, outlined a procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. There were no motions to intervene filed. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor. On August 5, 1997, the Commission issued Order No. 22,677 approving the procedural schedule.

ENGI proposes a total program budget of $501,625 for its ENERGYWI$E Program which consists of a package of domestic hot water measures, heating system rebates, energy audits, attic insulation installations and setback clock thermostats. The total resource cost (TRC) test, the method approved by the Commission to evaluate the cost-effectiveness of energy efficiency programs in New Hampshire, performed for the overall program produced a benefit-cost ratio of 1.16:1. The total program net present value is estimated to be $98,814. ENGI projects no over/undercollection for residential customers and an overrecovery of $24,500 for small commercial customers. The proposed Conservation Charges are $0.0093 per therm for Domestic Heating customers and

Page 686

$0.0003 per therm for Commercial Heating customers. These compare to currently effective Conservation Charges of $0.0114 per therm and $0.0014 per therm for the Domestic Heating and Commercial Heating classes respectively.

Pursuant to the approved procedural schedule, ENGI and Staff engaged in formal discovery and technical sessions. On August 21, 1997, Staff filed the direct testimony of Michelle A. Caraway, Utility Analyst III. On September 3, 1997, ENGI and Staff participated in a settlement conference.

Subsequent to the settlement conference, ENGI and Staff entered into a Settlement Agreement (Settlement). The Settlement resolves all of the issues in this proceeding and an unsigned copy was submitted to the Commission on September 5, 1997. A hearing was held on September 9, 1997 before the Commission at which time a signed, original Settlement and testimony supporting the Settlement were presented to the Commission.

II. SETTLEMENT AGREEMENT

ENGI and Staff agreed that the ENERGYWI$E Program, as set forth in ENGI's June 27, 1997 filing, should be approved subject to the following modifications:

1. The Program Year shall run from October 1, 1997 through September 30, 1998. On or before July 15, 1998, but only to the extent that gas utility-sponsored DSM programs are still appropriate in light of the status of retail customer choice at the time, ENGI shall file a single DSM Program to be effective October 1, 1998 through September 30, 1999 covering ENGI's residential, commercial and industrial customers.

2. ENGI shall file a revised Schedule 3 of the filing and amended tariff pages to reflect revised Conservation Charges necessitated by the following:

a) A reconciliation of Lost Net Revenues for the 1996/1997 Program Year.
b) A revision to the Lost Net Revenues for the 1997/1998 Program Year.
c) Updated over/underrecoveries for the Residential and Commercial customers based on actual revenues and expenses through August 1997 and projected revenues and expenses for September and October 1997.
d) Updated sales forecasts based on ENGI's internal preliminary 1998 Fiscal Year budget.
e) An allowance for the Performance Bonus earned for the 1996/1997 Program Year. The Performance Bonus will be developed based on actual installations through August 1997 and an estimate of the free-ridership of the program from participant surveys received through the end of August 1997. The final dollar amount of the Performance Bonus, when calculated, shall be shown on the monthly reports as earned in October 1997, the first month of the 1997/1998 Program Year.
f) The above information shall be submitted to the Commission on or before October 9, 1997 to allow Staff adequate time to review the materials and to make a recommendation to the Commission so that a supplemental order approving the revised Conservation Charges.

3. ENGI and Staff shall meet on or before April 20, 1998 to discuss the future of gas utility-sponsored DSM programs. The discussion shall focus upon the Commission's position regarding the continuation of utility-sponsored DSM programs and the applicability of its final decision in DR 96-150 to gas utilities with regard to such programs. The discussion shall then contemplate the necessity of ENGI's next DSM Program filing due July 15, 1998 and/or whether ENGI's DSM Program should be phased out.

4. ENGI shall include free-riders in its calculation of the Total Resource Cost (TRC) ratios for the 1998/1999 Program Year. The percentages used for free-ridership shall be based upon the results of participant surveys performed as part of the monitoring and evaluation of the 1996/1997 ENERGYWI$E Program. Updated avoided costs, which shall be filed with the Commission in ENGI's next Least Cost Integrated Plan due June 30,

1998, shall be used in the calculation of the TRC ratios. Additionally, ENGI and Staff shall discuss at the April 20, 1998 meeting the appropriate discount rate to be used to perform the TRC ratio calculations.

5. ENGI shall modify its monthly reports for the 1997/1998 Program Year to account for Lost Net Revenues. Additionally, the monthly reports shall be revised to illustrate projected expenses and revenues for the remaining months of the Program Year.

6. The Conservation Charges shall go into effect November 1, 1997 and shall stay in effect through October 31, 1998. ENGI and Staff recommend that the Commission waive N.H. Admin. Rules, Puc 1203.05(a) to the extent that it may apply to implementation of the DSM Program, so that the Conservation Charges may be implemented on a bills-rendered basis effective as of November 1, 1997.

III. COMMISSION ANALYSIS

[1-6] After review of the Settlement, and testimony and exhibits offered at the September 9, 1997 hearing, we find that ENGI's ENERGYWI$E Program, as modified by the Settlement, is reasonable and in the public good.

The proposed 1997/1998 ENERGYWI$E Program is essentially a continuation of the DSM Program currently in effect. The only substantive modification is a reduction in the budget allocated to small commercial customers. At the hearing, Mr. Carroll stated that ENGI has not experienced the level of DSM participation projected for this customer class and has found that the needs of the small commercial customers are being better served by the Large Scale Commercial and Industrial (C&I) DSM Program which was approved by the Commission in Order No. 22,635 (July 1, 1997) in Docket DR 97-072. We are satisfied that the approximately 36% budget reduction will not adversely impact the delivery of DSM programs to ENGI's small commercial customers.

The Settlement modifies the TRC analysis in a way that will help ensure that only cost-effective DSM programs are continued by ENGI. On a forward-going basis, the TRC analysis will now incorporate the effects of free-riders and updated avoided costs. Additionally, ENGI and Staff will meet to discuss the appropriate discount rate to be used to perform the TRC analysis. These factors will improve the quality of the TRC analysis which is the basis relied upon by New Hampshire utilities to determine the effectiveness of their DSM programs.

The Settlement also provides that ENGI will submit a filing on or before October 9, 1997 which will provide the calculation of the Conservation Charges effective for November 1, 1997. The most influential revisions that will be accounted for in the October 9, 1997 filing are the corrections to Lost Net Revenues and the allowance for the Performance Bonus. During the hearing, Mr. Carroll explained that Lost Net Revenues need to be revised to take into consideration the phasing in of conservation measures during the program year as opposed to accounting for a full-year's effect. The Settlement also allows for an estimate of the Performance Bonus if ENGI meets or exceeds 50% of the therm savings estimated for the 1996/1997 program year. These two revisions, along with other minor modifications, will help ensure a more accurate Conservation Charge for both the Domestic Heating and Commercial Heating rate

classes.

As stipulated to in ENGI's Large Scale C&I DSM Program in Docket DR 97-072 and again in this docket, ENGI will file one DSM program which consolidates the needs of residential and all C&I customers for the 1998/1999 Program Year. We reiterate our belief that this should relieve some of the administrative burden of submitting two filings with separate procedural schedules. We still expect that separate budgets, DSM programs, TRC analyses and Conservation Charges will be presented for both residential and C&I customers.

Finally, consistent with treatment we have recently allowed for ENGI in Docket DR 97-072 in Order No. 22,635 (July 1, 1997), we waive the application of N.H. Admin. Rules, Puc 1203.05(a), which requires generally that rate changes be implemented on a service-rendered basis, and will allow ENGI to implement

its Conservation Charges on a bills-rendered basis. This waiver, pursuant to Puc 201.05, produces a result consistent with the principles embodied in Puc 1203.05(b), which sets forth exceptions for allowing rate changes on a bills-rendered basis, and is in the public interest because it eliminates customer confusion and reduces administrative costs.

Based upon the foregoing, it is hereby

ORDERED, that the proposed ENERGYWI$E Program, as amended by the Settlement Agreement, is APPROVED; and it is

FURTHER ORDERED, that in accordance with the Settlement Agreement, ENGI shall submit on or before October 9, 1997 a supplemental filing with the revised calculation of the Conservation Charges; and it is

FURTHER ORDERED, that Staff file a recommendation based on its review of the calculation of the Conservation Charges contained in ENGI's October 9, 1997 on or before October 15, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-072, Order No. 22,635, 82 NH PUC 494, July 1, 1997. [N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-132, Order No. 22,677, 82 NH PUC 588, Aug. 5, 1997.

82 NH PUC 689

Re EnergyNorth Natural Gas, Inc.

DR 97-189
Order No. 22,732

New Hampshire Public Utilities Commission

September 23, 1997

ORDER granting protective treatment of the identities of suppliers and certain supply contract terms within the context of a natural gas local distribution company's upcoming cost-of-gas adjustment proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment proceeding — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Local distribution company. p. 689.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Cost-of-gas adjustment proceeding — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 689.

BY THE COMMISSION:

ORDER

[1, 2] On September 15, 1997, EnergyNorth Natural Gas, Inc. (ENGI), filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment of information that would identify ENGI's gas suppliers and certain terms of the gas supply

agreements negotiated by ENGI with said suppliers. ENGI seeks protection of this information as it relates to the pending Cost of Gas Adjustment (CGA) proceeding in both the discovery and the hearing phases of this docket.

In its Motion, ENGI states that the documents contain confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08. ENGI also states that it does not disclose the

identifying information and terms to anyone outside its corporate affiliates and representatives.

The Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). This is the type of information which was anticipated would be protected when N.H. Admin. Rules, Puc 204.08(b)(4)d.1 was adopted. The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re NET (Auditel)*, 80 NH PUC 437 (1995), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits to Northern of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's Motion for Protective Treatment is GRANTED to allow Staff and the OCA to review fully the CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the CGA identifying information and terms, ENGI shall submit a redacted CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that in future filings, ENGI shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Puc 204.08 (b); and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

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[Go to End of 97458]

82 NH PUC 690

Re EnergyNorth Natural Gas, Inc.

DR 97-130
Order No. 22,733

New Hampshire Public Utilities Commission

September 23, 1997

ORDER adopting procedural schedule for considering a petition by a natural gas local distribution company for authority to recover $1.2 million in environmental remediation costs incurred in cleaning up a former manufactured gas plant site. Commission states that causation of the contamination is an issue that must be addressed within the proceeding.

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1. EXPENSES, § 20

[N.H.] Accidents and damages — Cleanup of former manufactured gas plant sites — Environmental remediation costs — Causation of contamination as a factor — Local gas distribution company — Procedural schedule. p. 691.

2. EXPENSES, § 125

[N.H.] Gas utility — Environmental remediation — Cleanup of former manufactured gas plant sites — Causation of contamination as a factor — Local distribution company — Procedural schedule. p. 691.

APPEARANCES: McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq., for EnergyNorth Natural Gas, Inc.; Office

of Consumer Advocate by Kenneth E. Traum for residential ratepayers; Amy L. Ignatius, Esq., for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

On June 23, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Recovery of Expenses Related to Environmental Investigation and Remediation Associated with a Manufactured Gas Plant Formerly Located at Gas Street in Concord, New Hampshire. The Commission previously allowed recovery of costs associated with cleanup of the gasholder at the Gas Street Property, in Dockets DE 93-168 and DR 94-306.

In the instant petition, ENGI seeks $1.2 million for costs incurred through May 31, 1997, collected over a five-year period. It also seeks recovery of over $650,000 in costs incurred in pursuing claims against insurers and prior operators of the site. Finally, ENGI seeks carrying costs on the unamortized portion of the total and proposes that the cost recovery mechanism in this case be established for further remediation work to be done at Exit 13 or the gasholder site.

The Commission issued an Order of Notice on July 22, 1997, setting a Prehearing Conference for August 29, 1997 at 10 a.m. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor. There were no other intervenors.

According to ENGI, the manufactured gas operations at the Gas Street facility between the 1880's and 1952 created by-products that ultimately ended up in the pond area next to the Merrimack River at Route 93, Exit 13. These by-products are now classified as hazardous materials by state and federal law. The State Department of Environmental Services required ENGI to cleanup the pond area, working in conjunction with the State Department of Transportation's plans for improving the Exit 13 interchange.

ENGI and Staff and OCA differed on whether ENGI should be required to submit testimony regarding the manufactured gas operations that led to the hazardous material coming to the pond area. ENGI asked that the Commission remain silent as to the prudence or imprudence of the gas operations that resulted in contamination of the pond area. Staff argued that the Commission must make a finding that the gas operations leading to contamination were prudent in order to find ratepayers responsible in whole or in part for the cost recovery for the pond cleanup. ENGI stated that preliminary discussions with a manufactured gas by-products expert suggested the cost to produce detailed testimony on this issue to be close to $100,000.

[1, 2] The Commission ruled at the prehearing conference that it agreed with Staff that ENGI should present evidence regarding the source of the contamination in the pond area, and the prudence of the operations at Gas Street that created the hazardous by-products. It stated that it did not envision an exhaustive analysis of the operations at Gas Street but needed sufficient evidence to demonstrate that the creation of these by- products were the result of prudent operation. The Commission urged the parties and Staff to discuss ways to limit the cost of this inquiry, including, if possible, meeting with ENGI's consultant in a technical session.

Staff stated that other issues it anticipated in the docket included: 1) the period of time over which to recover these costs; 2) whether carrying costs should be allowed on the unamortized

portion; 3) detailed review of the amount incurred in cleanup and efforts to recover from third parties; and, 4) whether the cleanup mechanism selected was truly the least cost alternative. This last issue might require the assistance of a consultant in environmental remediation.

OCA was not able to be present but authorized Staff to state that it would: 1) seek an increase in the number of years over which the recovery is collected; 2) oppose carrying costs on the unamortized portion; 3) seek detailed review of the total costs incurred; and, 4) explore a sharing between stockholders and ratepayers for these costs.

ENGI and Staff presented a procedural

Page 691

schedule that would apply in the event the Commission did not require further testimony regarding how the hazardous material attributable to the manufactured gas operations came to reside in the one area. Since presentation of that schedule, and at the request of the Commission, ENGI, OCA and Staff discussed amendments to the schedule to accommodate testimony on the gas operations that led to the materials coming to the pond area. By letter dated September 8, 1997, ENGI informed the Commission of a modification to the schedule agreed to by OCA and Staff. The modification is to allow ENGI to submit supplemental testimony, on or before September 21, 1997, regarding the gas operations that led to the material settling in the pond area. Agreement on supplemental testimony obviated briefs on this issue as earlier contemplated. Finally, due to a conflict with OCA, the technical session was rescheduled. The amended schedule, therefore, is as follows:

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

Petition and supporting
  testimony filed               June 23, 1997

Procedural hearing            August 29, 1997

Technical session #1       September 17, 1997

ENGI Supplemental
  testimony due            September 21, 1997

Last date for Staff/OCA data
  requests                    October 3, 1997

Last date for ENGI answers to
  data requests              October 17, 1997

Technical session #2         October 22, 1997

Staff/OCA testimony due      November 3, 1997

Data requests by ENGI       November 10, 1997

Settlement Conference #1    November 14, 1997
Staff/OCA responses to
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ENGI data requests	November 21, 1997
Settlement Conference #2	November 25, 1997
Settlement Agreement filed, if any	December 3, 1997
ENGI rebuttal testimony, if needed	December 3, 1997
Hearing on the merits	December 15-18, 1997

We find that the amended procedural schedule is appropriate for resolution of the petition and will approve it as requested. Further, we encourage informal discussion between the OCA and Staff with ENGI's consultant on by-products of manufactured gas operations to develop the record on the operations that led to the contamination of the pond area.

Based upon the foregoing, it is hereby

ORDERED, that the schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

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NH.PUC*09/23/97*[97459]*82 NH PUC 692*Northern Utilities, Inc.

[Go to End of 97459]

82 NH PUC 692

Re Northern Utilities, Inc.

DR 97-190
Order No. 22,734

New Hampshire Public Utilities Commission

September 23, 1997

ORDER granting protective treatment of the identities of suppliers and certain supply contract terms within the context of a natural gas local distribution company's upcoming cost-of-gas adjustment proceeding.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment proceeding — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Local distribution company. p. 693.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to supplier identities — As to commercially sensitive contract terms — Cost-of-gas adjustment proceeding — Benefits of nondisclosure as outweighing those of disclosure — Local distribution company. p. 693.

BY THE COMMISSION:

ORDER

[1, 2] On September 15, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) a request for protective treatment of information that would identify Northern's gas suppliers and certain terms of the gas supply agreements negotiated by Northern with its suppliers. Northern seeks protection of this information as it relates to the pending revised Cost of Gas Adjustment (CGA) proceeding in both the discovery and hearing phases of this docket.

Northern states that its revised CGA filing contains confidential commercial information and trade secrets which fall within the exemption from public disclosure set forth in RSA 91- A:5, IV and N.H. Admin. Rules, Puc 204.08. Northern also states that it does not disclose the identity of its suppliers or the terms of its gas supply agreements to anyone outside its corporate affiliates and representatives.

The Commission recognizes that the information identified above is critical to the review of the CGA filing by the Commission, the Commission Staff (Staff) and the Office of Consumer Advocate (OCA). This is the type of information which was anticipated would be protected when N.H. Admin. Rules, Puc 204.08(b)(4)d.1 was adopted. The Commission also recognizes that the information contained in the filing is sensitive commercial information in a competitive market. Thus, based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re NET (Auditel)*, 80 NH PUC 437 (1995), *Re Eastern Utilities Associates*, 76 NH PUC 236 (1991), we find that the benefits to Northern of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Motion for Protective Treatment is GRANTED to allow Staff

and the OCA to review fully the revised CGA filing and to protect from public disclosure the information delineated above which is relevant to the pending CGA proceeding; and it is

FURTHER ORDERED, that with regard to the revised CGA identifying information and contractual terms, Northern shall submit a redacted revised CGA filing for public review and provide unredacted copies to the Commission, Staff, and the OCA; and it is

FURTHER ORDERED, that, in future filings, Northern shall continue to submit, concurrent with its request for confidential treatment, both redacted and unredacted filings which the Commission shall protect from disclosure during the pendency of its review of the request for confidentiality, pursuant to N.H. Admin. Rules, Puc 204.08(b); and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

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NH.PUC*09/23/97*[97460]*82 NH PUC 694*AmeriConnect, Inc.

[Go to End of 97460]

82 NH PUC 694

Re AmeriConnect, Inc.

Additional applicant: Phoenix Network, Inc.

DE 96-376
Order No. 22,735

New Hampshire Public Utilities Commission

September 23, 1997

ORDER approving, to the extent necessary, the merger and transfer of an interexchange telephone carrier, AmeriConnect, Inc., with and into another carrier, Phoenix Network, Inc., through a series of corporate restructurings.

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1. CONSOLIDATION, MERGER, AND SALE, § 11

[N.H.] Commission jurisdiction — As to parent company transactions — Commission

discretion to review — Approval to the extent necessary — Telecommunications carriers. p. 694.

2. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Grounds for merger approval — Transparent effect on consumers — Standard of no net harm — Telecommunications carriers. p. 694.

BY THE COMMISSION:

ORDER

On October 23, 1996, AmeriConnect, Inc. (AmeriConnect) and Phoenix Network, Inc.(Phoenix) jointly filed with the New Hampshire Public Utilities Commission (Commission) notification of a proposed merger between AmeriConnect and Phoenix, by which AmeriConnect will become a wholly owned subsidiary of Phoenix.

AmeriConnect, a Delaware corporation, was authorized in Order No. 20,965 (September 13, 1993) to provide interexchange telecommunications services within the State of New Hampshire. Phoenix, a Delaware corporation, was granted such authority by Order No. 20,721 (January 6, 1993).

The merger transactions require Phoenix Merger Corp., a wholly owned subsidiary of Phoenix, to merge with and into AmeriConnect; AmeriConnect will then become a subsidiary of Phoenix. Thereafter, AmeriConnect would cease to exist separately and its Certificate of Public Convenience and Necessity would be canceled. Phoenix proposes to adopt the tariff of AmeriConnect.

[1, 2] AmeriConnect represents that the merger will be undertaken in a seamless fashion that will not affect the provision of intrastate telecommunications services and will have no adverse effect on the operations and services provided in New Hampshire. AmeriConnect also intends that customers will continue to be able to purchase the same services from Phoenix under the same rates, terms and conditions as currently available. Finally, Phoenix asserts service quality and reliability that AmeriConnect customers currently experience will not be adversely affected by this merger.

On June 20, 1997, RSA 369:8, II was enacted into law which allows the Commission the discretion not to review and approve mergers involving parent companies of public utilities regulated by the Commission if the public utility notifies the Commission in writing 30 days prior to the anticipated completion of the transaction that the transaction will not adversely affect the rates, terms, service, or operation of the public utility within the state.

Though filed prior to the effective date of this provision, the proposed merger appears to satisfy the standards of RSA 369:8, II. The public interest will not be harmed by this transaction. Accordingly, we will approve the transfer of control of AmeriConnect to Phoenix.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval of the merger of AmeriConnect into Phoenix and the transfer of authority from AmeriConnect to Phoenix is GRANTED; and it is

FURTHER ORDERED, that Phoenix file a properly annotated compliance tariff title page adopting the tariff of AmeriConnect in accordance with NH Admin. Rules, Puc 1601.01 (b)., within thirty days of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re AmeriConnect Inc. of New Hampshire, DE 93-139, Order No. 20,965, 78 NH PUC 516, Sept. 13, 1993. [N.H.] Re Phoenix Network of New Hampshire, Inc., DE 92-117, Order No. 20,721, 78 NH PUC 13, Jan. 6, 1993.

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NH.PUC*09/23/97*[97461]*82 NH PUC 695*Great Bay Water Company, Inc.

[Go to End of 97461]

82 NH PUC 695

Re Great Bay Water Company, Inc.

DE 96-369
Order No. 22,736

New Hampshire Public Utilities Commission

September 23, 1997

ORDER holding in abeyance for another six months a show cause proceeding in which a water utility must demonstrate why its operating authority should not be revoked or it should not otherwise be sanctioned for its alleged failure to upgrade its system and improve its water quality

as had been mandated in Order No. 21,630 (80 NH PUC 233).

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1. SERVICE, § 480

[N.H.] Water utility — Quality of water and service — Mandates for improvements — Alleged failure to remedy poor conditions — Possible revocation of certificate or other sanctions — Show cause proceeding — Further suspension of — Conditions pending reevaluation. p. 697.

2. FINES AND PENALTIES, § 5

[N.H.] Grounds for imposing sanctions — Failure to make mandated system improvements — Water utility — Show cause proceeding — Further suspension of — Conditions pending reevaluation. p. 697.

3. CERTIFICATES, § 149

[N.H.] Revocation — Grounds — Failure to make mandated system improvements — Water utility — Show cause proceeding — Further suspension of — Conditions pending reevaluation. p. 697.

4. FRANCHISES, § 55

[N.H.] Revocation — Grounds — Failure to make mandated system improvements — Water utility — Show cause proceeding — Further suspension of — Conditions pending reevaluation. p. 697.

5. RATES, § 133

[N.H.] Factors affecting reasonableness — Character of service — Rate reductions for poor quality of service — Grounds — Failure to make mandated system improvements — Water utility — Show cause proceeding — Further suspension of — Conditions pending reevaluation. p. 697.

APPEARANCES: Larry S. Eckhaus, Esq. for Great Bay Water Company, Inc.; Bruce J. Oronte for the Schanda Farms Homeowners Association; and Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Great Bay Water Company, Inc. (Great Bay or Company) owns and operates a community water system providing service to a subdivision in Newmarket, New Hampshire known as Schanda Farms. By Order No. 21,630 (April 25, 1995) in DR 94-185, the Commission found that Great Bay was providing "only a marginal level of adequate and reasonable service to its customers." *Re Great Bay Water Company, Inc.*, 80 NH PUC 233, 235 (1995).

The Commission based its conclusion on the testimony of Staff Engineer, Douglas W. Brogan, that the Company was supplying dirty water with a foul taste and smell which exceeded Department of Environmental Services secondary standards by as much as a factor of ten. The record further established a number of deficiencies with the operation of the system including low pressure, failures to flush the system, a failure of management to respond to outages, and a general failure in the area of customer service.

Consequently, we ordered Great Bay to implement a five step plan to improve the quality of service to its customers. We also warned the Company that failure to comply with our Order could result in rate reductions to reflect the poor quality of service, fines, or Commission receivership and ultimately the sale of the utility to a competent organization.

On November 6, 1996, Mr. Brogan filed testimony with the Commission documenting the failure of Great Bay to comply with Order No. 21,630. As a result, the Commission issued Order No. 22,415 on November 13, 1996, setting a hearing date of January 16, 1997 for the Company to show cause why its authority to operate a community water utility in the Schanda Farms development should not be revoked, or why other actions and penalties should not be imposed for failure to comply with the earlier order.

On January 6, 1997 the Company filed a letter offering to perform a number of the further remedial actions proposed in Staff's testimony and requesting to continue the hearing for two months. On January 9, 1997 the Commission continued the hearing to March 20, 1997, directing the Company to perform the proposed actions and to diligently continue its efforts to sell the system.

The hearing was subsequently continued four additional times, two at the Company's request to allow it to continue efforts toward a sale and two to avoid scheduling conflicts. The hearing was held on July 29, 1997.

On August 4, 1997, the Commission deliberated the issues raised at the hearing. By memo dated September 17, 1997, Mr. Brogan notified the Commission that a number of issues identified in deliberations had been resolved. The final list of conditions ordered by the Commission, therefore, reflects the status of completion as detailed by Mr. Brogan.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Staff*

Staff took the position that the Company had failed to comply with the conditions set forth in Order No. 21,630. Mr. Brogan testified that while minimal efforts had been made to comply with the Commission's Order, the Company continues to do no more than the bare minimum necessary to keep the system operational. Mr. Brogan described on-going water quality problems that require customers to use bottled water for their personal consumption, significantly low pressure and customers who no longer bother to complain to the Company or the Commission out of a sense of resignation that complaints are fruitless.

B. *Schanda Farms Homeowners Association*

Bruce Oronte, the president of the Schanda Farms Homeowners Association (Association), reiterated the problems identified by Mr. Brogan including low pressure, dirty water, and a failure on the part of the Company to respond to customer complaints. He also testified that these problems had led most homeowners to purchase bottled water for their personal consumption, to

install residential filtering systems, to install residential booster pumps and to feel generally resigned to the level of service they were receiving from the Company. Mr. Oronte also expressed a general sense of frustration on the part of the homeowners in seeking redress for the problems with the water system.

C. *Great Bay*

Great Bay argued that it had substantially complied with Order No. 21,630 and that the Company was actively in the process of negotiating the sale of the utility to another water utility. Great Bay also contested the conclusions of Mr. Brogan and Mr. Oronte with regard to water quality, water pressure and customer service. The Company suggested that it was willing to provide the type of service both customers and the Staff seemed to be requesting, but that level of service would come at a cost which customers must ultimately bear.

III. COMMISSION ANALYSIS

[1-5] Having considered the evidence presented at the July 29, 1997 hearing, we will hold in abeyance for six months from the date of this order a decision regarding revocation of franchise, fines and/or receivership. At the conclusion of the six months, we will review the actions of the Company to determine whether we should place the utility in receivership, revoke its authority to operate and whether fines and rate reductions should be levied.

We will impose the conditions listed below for the operation of the utility during this six month period. Should the Company fail to satisfy these conditions and improve its quality of service we will reopen the proceeding to consider whether to impose a minimum fine of $500 for its failure to comply with Order No. 21,630, and to consider any new fines as appropriate for failure to comply with the new conditions set forth below:

1. The system shall be flushed at least once every four months.

2. The Company shall hire a competent water engineering firm with clear and significant experience in small water company treatment systems to submit a specific proposal for treatment. The TAW report suggested that sequestering could be accomplished in the existing pump station relatively inexpensively. That and other options need to be evaluated for effectiveness and cost by a party with expertise in this area. The report shall be submitted by the end of October, and some form of treatment installed by the end of December, 1997.

3. Great Bay shall file a report addressing the discrepancy related to consumption exceeding production within 60 days of the date of this order.

4. Permanent "No Trespassing" signs shall be posted by the wellheads, or vertical non-metallic posts shall be installed adjacent to each wellhead to alert the public to their presence.

5. The Company shall file the following reports on a monthly basis:

a) E-14 Form, Report of Pressure Complaints.
b) E-18 Form, Report of Interruptions of Service.

6. The Company shall file the following reports on a quarterly basis:

a) Copies of the complaint log.
b) Copies of any flushing notices sent to customers.
c) A list of the number and location of service line flushings requested and the number completed.
d) A summary of production for each well and of total customer consumption.
e) A list of all remedial actions taken in accordance with paragraph 11 below.

7. The Company shall develop a customer service manual and program, to be submitted to Staff for review and comment.

It is also clear that Great Bay must improve communication with its customers. We will require Great Bay to hold two public meetings with customers, the first to be held no later than

November 21, 1997; the second to be held no later than February 19, 1998. The purpose of the meetings is for Great Bay to listen to customer complaints and inform customers of developments with the system, all with an eye towards improved communication over the long term. Great Bay shall provide customers and the Commission with written notice of meeting dates. We will instruct a Staff representative to attend each of the two meetings. Finally, Great Bay shall produce minutes of these meetings to the Commission within 30 days after the meeting date.

Based upon the foregoing, it is hereby

ORDERED, this matter shall be held in abeyance for six months at which time we shall reevaluate the Company's compliance with Order No. 21,630, the conditions set forth above and the quality of the system's water service.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

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. [N.H.] Re Great Bay Water Co., Inc., DE 96-369, Order No. 22,415, 81 NH PUC 886, Nov. 13, 1996.

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NH.PUC*09/23/97*[97462]*82 NH PUC 698*EZ Tel Corporation dba Massachusetts Wholesale Telephone

[Go to End of 97462]

82 NH PUC 698

Re EZ Tel Corporation dba Massachusetts Wholesale Telephone

DE 97-177
Order No. 22,737

New Hampshire Public Utilities Commission

September 23, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 699.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 699.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 699.

BY THE COMMISSION:

ORDER

On August 28, 1997, EZ Tel Corporation d/b/a Massachusetts Wholesale Telephone (MWT) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g.

Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when

the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) that certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed MWT's petition for compliance with these standards. Staff reports that MWT has provided all the information required by Puc 1304.02. The information provided supports MWT's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of MWT as a New Hampshire CLEC.

MWT has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that MWT has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of MWT in its intended service area, NYNEX's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because MWT has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, MWT agreed to
concur with NYNEX's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, MWT seeks to exceed NYNEX's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that MWT's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of NYNEX, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 30, 1997 and to be documented by affidavit filed with this office on or before October 7, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the

Commission no later than October 14, 1997; 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 21, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 23, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 1997.

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NH.PUC*09/29/97*[97463]*82 NH PUC 700*Statewide Electric Utility Restructuring Plan

[Go to End of 97463]

82 NH PUC 700

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,738

New Hampshire Public Utilities Commission

September 29, 1997

ORDER designating certain members of the commission staff as being decisional or advocate participants in rehearing proceedings pertaining to the restructuring of the state's electric utility industry. However, such designations are limited to those issues specific to Public Service Company of New Hampshire.

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1. COMMISSIONS, § 48

[N.H.] Investigation and action — Through staff or agents — Designation of decisional staff — Designation of advocate staff — Necessity of adherence to rules on ex parte contacts — In rehearing proceeding addressing restructuring of electric utility industry — As limited to utility-specific issues. p. 700.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Associated rehearing proceeding — Procedural matters — Designation of commission staff as decisional versus advocate participants — As limited to utility-specific matters only. p. 700.

BY THE COMMISSION:

ORDER

Public Service Company of New Hampshire (PSNH) requests, *inter alia*, that the New Hampshire Public Utilities Commission (Commission) designate its Staff as decisional employees or advocates pursuant to RSA 363:30-36 and N.H. Admin. Rules, Puc 203.15. In addition to designation of Staff, PSNH seeks to "disqualify" Commission Staff member, George McCluskey, from participating in the remainder of this proceeding. Finally, PSNH asks the Commission to "rigorously abide by and enforce the statutory standards of conduct set forth in RSA 363:12, RSA 363:34 and RSA 541-A:36 throughout the remainder of this proceeding." Each of these matters is addressed below.

PSNH filed the aforementioned motion on April 14, 1997. To date, the Commission has deferred its ruling on PSNH's request because the rehearing process was suspended in order to accommodate a confidential mediation process.[1(126)] In light of the Commission's decision to proceed with the rehearing process, *See*, Order No. 22,681 (August 12, 1997), the issues raised by PSNH with respect to Staff designation are appropriate for disposition.

[1, 2] By statute, the Commission is required to designate Staff in any adjudicative proceeding whenever one of four enumerated conditions exists. *See*, RSA 363:32, I(a). Consistent with our previous orders in this docket, we agree that designation of Staff is appropriate relative to those issues that are subject to adjudicative procedures. Thus, we designate Staff in the manner described below with respect to the "PSNH-specific" issues articulated in Order No. 22,548 (April 7, 1997). Those issues relate to PSNH's assertions that the Final Plan repudiates the Rate Agreement and will require the company (and several of its affiliates) to write off regulatory assets, which in turn purportedly will lead to the violation of certain debt covenants. We find that such issues are sufficiently "contentious or controversial" to warrant designation of Staff, *See*, RSA 363:32, I(a)(2), and our inquiry into those areas will likely require findings of fact for which the designation of Staff is appropriate. Accordingly, we designate the following Staff members, pursuant to RSA 363:32, relative to the PSNH-specific rehearing

issues: Minot Hill (decisional); Mary Coleman (decisional); Amanda Noonan (decisional); Robert Frank (decisional); and George McCluskey (advocate). In addition, we also designate Commission consultants, Richard LaCapra of LaCapra Associates[2(127)] and Scott Hempling, as decisional employees for the PSNH-specific rehearing issues.

The foregoing employees and consultants who have been designated as decisional employees shall be subject to the rules governing *ex parte* communications in RSA 363:34 with regard to the adjudicative phase of the rehearing process. That is, parties are prohibited from discussing issues in the PSNH-specific rehearing with the decisional staff.

We note for the record, however, that Mr. Frank has filed an appearance on behalf of the Commission in the federal court litigation filed by PSNH along with the Commission's outside legal counsel. In that capacity, Mr. Frank will have the necessary latitude to communicate with counsel for PSNH or other parties as well as potential witnesses in order to represent the Commission in that litigation.

In addition to designation of Staff, PSNH argues that Staff member, George McCluskey, should be "disqualified" from any further participation in this proceeding because certain unspecified public statements allegedly attributable to Mr. McCluskey have led PSNH to "question his impartiality." In Order No. 22,419, which addressed a similar request by PSNH, we held that PSNH had offered no evidence that could lead us to question Mr. McCluskey's impartiality. On the contrary, we found that the comments attributed to Mr. McCluskey were of a general nature and related to the express economic policies underlying RSA Chapter 374-F. In the instant Motion, PSNH has offered nothing which alters our previous conclusions relative to this matter. Nonetheless, we have designated Mr. McCluskey as a Staff advocate due to other concerns, specifically, the effects of the intervening mediation process during which Mr. McCluskey assisted the State of New Hampshire negotiating team. Although the parties in that proceeding were subject to a confidentiality order by the United States District Court, we believe that it is appropriate to designate Mr. McCluskey a Staff advocate in order to avoid any perception that the Commission may have access to information exchanged in mediation during the upcoming rehearing process. The Commission was not a party to the mediation and we have received no information from Mr. McCluskey or any party to the mediation relative to those discussions.

Finally, we address PSNH's request for the Commission to prospectively require Staff to adhere to the statutory standards of conduct set forth in RSA 363:12, RSA 363:34 and RSA 541-A:36. As observed above, despite PSNH's repeated protestations, we have been presented with no information that leads us to question Staff's conduct throughout this entire proceeding. Despite the absence of evidence supporting any particular relief, we understand the general nature of PSNH's concerns given the significance of this proceeding and the probability that certain issues on rehearing will be highly contested among PSNH and the intervenors. The Commission will continue to conduct this proceeding in conformance with applicable statutory

standards, and our decision herein reaffirms that commitment.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion is GRANTED IN PART and DENIED IN PART as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

FOOTNOTES

[1]*See*, Orders No. 22,599 (May 22, 1997) and 22,664 (July 21, 1997).

[2]LaCapra Associates has instituted its own separation of Staff, for those employees who assisted participants in the mediation process. Mr. LaCapra was not involved in the mediation.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,419, 81 NH PUC 896, Nov. 25, 1996.

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,599, 82 NH PUC 420, May 22, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,664, 82 NH PUC 552, July 21, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,681, 82 NH PUC 592, Aug. 12, 1997.

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82 NH PUC 702

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,739

New Hampshire Public Utilities Commission

September 29, 1997

ORDER declining to expand the scope of rehearing proceedings relative to the commission's electric restructuring plan to include the impact on stranded cost calculations of an electric utility's already completed auction of certain generating assets.

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1. PROCEDURE, § 15

[N.H.] Scope of proceedings — Proposal for expansion of — Factors affecting denial of — Timing — Opportunity for reconsideration at later time — Rehearing proceeding — As to electric restructuring plan. p. 702.

2. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Associated rehearing proceeding — Denial of expansion of scope of proceeding — But possibility of reconsideration at later time. p. 702.

BY THE COMMISSION:

ORDER

[1, 2] This order addresses a Motion to Expand Scope (Motion) filed by the Office of Consumer Advocate (OCA) on September 5, 1997. For the reasons discussed below, we deny

OCA's request.

The OCA urges the Commission to accept testimony relative to the recent auction conducted by the New England Electric System (NEES) of certain generating assets owned by a NEES affiliate, New England Power Company (NEP). According to the OCA, the proposed transaction sheds additional light on two issues generically addressed in the Final Plan, namely, the calculation of retail stranded cost recovery and the potential for horizontal market power.

Although we generally agree that the NEES auction constitutes new evidence, and that such information could be useful in further refining the Commission's calculation of retail stranded cost charges and policies relative to horizontal market power, we do not believe that it is appropriate to expand the scope of rehearing at this time. In declining to accept the OCA's proposed testimony at this time, however, we do not rule out the possibility that we will revisit this matter as circumstances warrant. Accordingly, the OCA's Motion is denied without prejudice.

Based upon the foregoing, it is hereby

ORDERED, that OCA's Motion to Expand Scope is DENIED WITHOUT PREJUDICE.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

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NH.PUC*09/29/97*[97465]*82 NH PUC 703*Public Service Company of New Hampshire

[Go to End of 97465]

82 NH PUC 703

Re Public Service Company of New Hampshire

DR 96-338
Order No. 22,740

New Hampshire Public Utilities Commission

September 29, 1997

ORDER approving a special service contract between an electric utility and a large general service customer for the construction of special facilities by which to extend service to the customer. The special arrangement is deemed reasonable in that the customer is not eligible to take service under the utility's existing line extension policies.

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1. SERVICE, § 198

[N.H.] Extensions — Electric utility — Necessity of construction of special service lines — Necessity of special contract to govern such — Factors — Customer as ineligible under standard line extension rules. p. 703.

2. SERVICE, § 176

[N.H.] Extensions — Electric utility — Rules and regulations — Standard line extension policy — As applicable only to residential and smaller general service customers — Necessity of special contract for extension to large general service customer. p. 703.

BY THE COMMISSION:

ORDER

[1, 2] Public Service Company of New Hampshire (PSNH), on October 10, 1996, filed Special Contract NHPUC-135 (Special Contract) between PSNH and SIMS Inc. (SIMS). The subject of the Special Contract is construction of 1.0 mile of aerial plant, and addition of two phases to existing single-phase facilities to serve SIMS, which is from relocating its Kit Street facilities in Keene, New Hampshire to larger facilities at Black Brook Industrial Park on Bowman Brook Road in Keene, 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. SIMS will be taking service under Large General Service Rate LG.

The income that PSNH has estimated that it will receive from energy sales to SIMS under its applicable Rate LG is sufficient to warrant the expenditure necessary to supply electric energy properly to the SIMS premises under certain assumptions. However, in consideration of PSNH's investment and the uncertainty of PSNH's future rate levels, the actual increase in energy sales to SIMS and the date SIMS will commence full service at its new location, PSNH has reserved the right to determine whether it has been adequately compensated for the line extension if SIMS elects to take electric service from another source other than PSNH within the first three years.

If SIMS elects to take electric service from another source within the first three years, PSNH may request a payment of any unrecovered investments associated with the line extension not to exceed an amount equal to PSNH's actual costs ($66,000) multiplied by the ratio of remaining months in the three year period to thirty-six months. Although PSNH's estimated costs for this line extension was $75,000 in October of 1996, its actual costs were $66,000 as of January, 1997.

We find that special circumstances exist to justify use of a special contract, namely, the inability of a rate LG customer to take advantage of PSNH's line extension policy. We conclude that the special contract is in the public interest and will approve it as filed, pursuant to RSA 378:18.

Based upon the foregoing, it is hereby

ORDERED, that approval of Special Contract NHPUC-135, as filed, is granted.

Page 703

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

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NH.PUC*09/29/97*[97466]*82 NH PUC 704*Network Long Distance, Inc.

[Go to End of 97466]

82 NH PUC 704

Re Network Long Distance, Inc.

Additional applicant: United Wats, Inc.

DE 96-381
Order No. 22,741

New Hampshire Public Utilities Commission

September 29, 1997

ORDER approving the transfer of an interexchange telephone carrier, United Wats, Inc., to another carrier, Network Long Distance, Inc., via an exchange of stock.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Transparent effect on customers — No change in operations — Compliance with standard of no net harm — Transfer effectuated via a stock exchange agreement — Telecommunications carriers. p. 704.

BY THE COMMISSION:

ORDER

[1] On November 18, 1996, Network Long Distance, Inc. (Network) and United Wats, Inc. (UWI) jointly filed with the New Hampshire Public Utilities Commission (Commission) notifications of a Share Exchange Agreement between Network and UWI, by which UWI will become a wholly owned subsidiary of Network.

Network, a Delaware corporation, was authorized, in Order No. 21,345 (September 7, 1994) to provide interexchange telecommunications services within the State of New Hampshire. UWI, a Kansas corporation, was granted similar authority by Order No. 21,679 (June 2, 1995).

The agreement transactions require UWI to become a wholly owned subsidiary of Network in exchange for shares of Network common stock. Thereafter, UWI will continue to operate independently but as a wholly owned subsidiary of Network. UWI and Network will continue to market and service customers, under their own names.

The Petition asserts that the exchange will be undertaken in a seamless fashion that will not affect the provision of intrastate telecommunications services and will have no adverse effect on the operations and services provided in New Hampshire. The Petition also asserts that customers of both UWI and Network will continue to be able to purchase the same services as under their existing tariffs. UWI and Network assert that service quality and reliability that customers currently experience will not be adversely affect by this merger.

On June 20, 1997, RSA 369:8, II was enacted into law allowing the Commission the discretion not to review and approve mergers involving parent companies of public utilities regulated by the Commission if the public utility notifies the Commission in writing 30 days prior to the anticipated completion of the transaction that the transaction will not adversely affect the rates, terms, service, or operation of the public utility within the state.

Though filed prior to the effective date of this provision, the proposed exchange satisfies the standards of RSA 369:8, II. The public interest will not be harmed by this transaction. We will, therefore, approve the Petition.

Based upon the foregoing, it is hereby

ORDERED, that the Petition for approval of the Shared Exchange Agreement is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Network Long Distance, Inc., DE 94-147, Order No. 21,345, 79 NH PUC 482, Sept. 7, 1994. [N.H.] Re United Wats, Inc., DE 95-076, Order No. 21,679, 80 NH PUC 308, June 2, 1995.

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[Go to End of 97467]

82 NH PUC 705

Re Exeter and Hampton Electric Company

DR 97-157
Order No. 22,742

Re Concord Electric Company

DR 97-175
Order No. 22,742

New Hampshire Public Utilities Commission

September 29, 1997

ORDER noting interventions and establishing a procedural schedule relative to proposals by two electric utilities for the provision of a new backup service.

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1. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Backup service — New proposal for — Adoption of procedural schedule — Issues to be addressed — Distinction between backup service and unbundled wheeling. p. 705.

2. RATES, § 342

[N.H.] Electric rate design — Backup service — New proposal for — Adoption of procedural schedule — Issues to be addressed — Distinction between backup service and unbundled wheeling. p. 705.

APPEARANCES: LeBoeuf, Lamb, Greene & McRae by Scott J. Mueller, Esq. for Exeter & Hampton Electric Company and Concord Electric Company; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Carlos Gavilondo, Esq. for Granite State Electric Company; Brown, Olson & Wilson by Amy L. Fracassini, Esq. for Concord Regional Solid Waste/Resource Recovery Cooperative; Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

[1, 2] On August 4, 1997, Exeter & Hampton Electric Company (Exeter & Hampton) filed with the New Hampshire Public Utilities Commission (Commission) a proposed rate schedule for back-up service and a Petition in Support of a Proposed Tariff for Back-up (Station) Service and for Declaratory Ruling on Applicability, for which the Commission opened docket number DR 97-157.

On August 27, 1997, Concord Electric Company (Concord Electric) filed a petition to offer a new back-up service similar to the Exeter & Hampton petition, for which the Commission opened docket number DR 97-175.

On September 2, 1997, the Commission issued Order No. 22,698 which suspended the proposed tariff of Exeter & Hampton in DR 97- 157, suspended the proposed tariff of Concord Electric in DR 97- 175, ordered that jurisdictional electric utilities are full parties to these proceedings, scheduled a prehearing conference for September 17, 1997, and set a deadline for intervention requests.

Public Service Company of New Hampshire (PSNH) on August 27, 1997 filed a Petition to Intervene and Motion for Suspension in the Exeter & Hampton proceeding, referring to DR 97-141 which is a docket opened to establish a PSNH rate for back-up service classification B. PSNH's motion to intervene is granted inasmuch as PSNH, as a jurisdictional utility, is deemed a full party to DR 97-157 pursuant to Order No. 22,698, which was issued

after PSNH filed its intervention request. PSNH's motion to suspend the proposed tariffs is rendered moot by the Commission's previous action suspending the relevant tariff pages in Order No. 22,698.

On September 8, 1997, Concord Regional Solid Waste/Resource Recovery Cooperative (Cooperative) filed a Motion to Intervene in DR 97-175. The Cooperative, pursuant to Puc 203.02, cited its interest in the proceeding as arising from possible charges under the back-up

service rate from Concord Electric which the SES Concord Company's waste-to-energy plant may seek to pass along to the Cooperative. The Cooperative disposes of its solid waste at the SES Concord Company's waste-to-energy plant, which sells the electric power generated to PSNH through an interconnection agreement between Concord Electric and PSNH. At issue is whether Concord Electric would supply back-up service under the proposed tariff rate or pursuant to a contract rate established between SES Concord Company and Concord Electric in 1989. The Cooperative has demonstrated that its substantial interests may be affected in DR 97-175 and its Motion to Intervene shall be granted.

At the prehearing conference the parties were given the opportunity to state their preliminary positions.

PSNH argued that the petitions should be dismissed without prejudice because the setting of a delivery tariff prior to full scale competition is premature.

Staff stated that it was not yet certain what position it would take, and would have to determine, in light of the Federal Energy Regulatory Commission Order No. 888, whether the proposed back-up service referred to is truly a backup service or is actually the wheeling of power over electric lines and the unbundling of a facet of electric service.

Exeter & Hampton and Concord Electric did not state any further position at the time of the prehearing conference.

Granite State Electric Company did not state a position at this time.

At the prehearing conference, Staff requested and was granted the opportunity to prepare a proposed procedural schedule following the prehearing conference. On September 17, 1997 Staff submitted the following agreed-upon schedule:

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

Data Requests by facsimile	October 1, 1997
Data Responses by facsimile	October 13, 1997
Memorandum of law	October 29, 1997
Reply memorandum	November 12, 1997

We find the proposed partial procedural schedule to be reasonable and will approve it for the duration of the case. A further procedural schedule to resolve the case on the merits will be considered once data responses and memoranda are produced as proposed.

Based upon the foregoing, it is hereby

ORDERED, that the partial procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that the Motion to Intervene and Order of Suspension of Public Service Company is granted to the extent necessary; and it is

FURTHER ORDERED, that the Cooperative is granted full party intervention in DR 97-175.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Exeter & Hampton Electric Co., DR 97-157, Order No. 22,698, 82 NH PUC 633, Sept. 2, 1997.

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NH.PUC*09/29/97*[97468]*82 NH PUC 707*EnergyNorth Natural Gas, Inc.

[Go to End of 97468]

82 NH PUC 707

Re EnergyNorth Natural Gas, Inc.

DF 97-178
Order No. 22,743

New Hampshire Public Utilities Commission

September 29, 1997

ORDER again extending the termination date and increasing the credit limit of a natural gas local distribution company's fuel inventory trust. The trust and its associated revolving credit agreement are extended for another five years to February 2002, with the credit limit increased from $9.5 million to $10.5 million.

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1. SECURITY ISSUES, § 111

[N.H.] Financing methods — Trusts — Associated revolving credit agreement — For financing fuel inventory — Extension of trust term — Increase in credit limit — Local gas distribution company. p. 708.

2. VALUATION, § 301

[N.H.] Fuel inventory — Financing of — Trust and associated revolving credit agreement — Extension of trust term — Increase in credit limit — Local gas distribution company. p. 708.

BY THE COMMISSION:

ORDER

On August 29, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed an Application for Approval of an Extension and Increase in Credit Limit of Fuel Inventory Trust (Trust). ENGI requested to extend the termination date of its Trust and related Revolving Credit Agreement from November 1997 to February 2002 and to increase the credit limit of the Revolving Credit Agreement from $9,500,000 to $10,500,000.

By Order No. 15,988 (November 15, 1982) in Docket DF 82-254, the New Hampshire Public Utilities Commission (Commission) established a fuel inventory trust financing mechanism. *Re Gas Service, Inc. Proposal for the Establishment of a Fuel Inventory Trust for a Gas Company*, 67 NH PUC 795 (1982). Gas Service, Inc. was permitted to sell fuel to the trust to be held for resale to the company on demand. The creation of the inventory trust fund removed fuel inventory from the Gas Service, Inc.'s rate base, thereby reducing basic rates. The Commission also authorized separate financing under a fuel inventory trust for ENGI's predecessor, Manchester Gas Company. *Re Manchester Gas Company Petition for Balance Sheet Treatment of Fuel Obtained through Special Fuel Inventory Financing*, 67 NH PUC 844 (1982).

By Order No. 20,551 (July 28, 1992), the Commission extended the termination date of ENGI's Trust and related Revolving Credit Agreement from November 1992 to November 1997 and increased the credit limit. Order No. 21,059 (December 14, 1993) further increased the Trust's credit limit to the current $9,500,000.

The Trust's purchase of fuel from ENGI is financed under a Revolving Credit Agreement between the Trust and Fleet Bank-New Hampshire (Fleet). The commitment fee is three-eighths of one percent (0.00375) of the credit line and interest is charged at either the Prime Rate or the London Interbank Offered Rates (LIBOR). LIBOR-based rates are applied to fuel inventory that is turned over at either 30, 60 or 90-day intervals. ENGI typically turns the fuel inventory over at the above mentioned intervals in order to take advantage of the lower LIBOR rates. LIBOR rates as quoted in the September 19, 1997 Wall Street Journal are under six percent.

The Trust and ENGI have an agency agreement whereby the Trust has appointed ENGI as its exclusive agent for handling all matters regarding the fuel during the period of the Trust's ownership of the fuel. The gas

included in the fuel inventory trust consists of liquid natural gas, liquid propane gas and storage natural gas. The price of the fuel sold to the trust is the price ENGI pays to purchase and transport the fuel. ENGI repurchases the fuel at the original selling price plus finance charges and a trust management fee. These costs are recorded by ENGI as a cost of gas.

Based on a cashflow analysis performed by ENGI using current prices, ENGI anticipates that it will exceed its credit limit by the end of November 1997. Should the price of gas increase during the remaining storage injection period, the amount of fuel inventory not financed by the Trust would be even greater. If ENGI is unable to finance its gas purchases through the Trust, then those purchases would have to be financed within the limits of its short-term borrowings from which working capital expenditures and other items must also be financed. In addition, financing a portion of the fuel inventory with short-term borrowing jeopardizes the advantages of excluding fuel inventory from rate base in future rate proceedings.

[1, 2] The Commission approved the Trust in 1982 (see order cited above) and has both extended and increased the credit limit in the ensuing years to provide ENGI financial flexibility to meet its other capital requirements, enhance its ability to have adequate supplies of fuel available, and save money for the customers. We believe the Trust continues to provide those advantages and that an increase in the credit limit is necessary to allow for price volatility in the gas markets. Therefore, and in accordance with RSA 369, we find that approval of the petition is in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that EnergyNorth Natural Gas, Inc.'s request for authorization to extend its Fuel Inventory Trust and related Revolving Credit Agreement from November 1997 to February 2002 and to increase the credit limit from $9,500,000 to $10,500,000 is APPROVED; and it is

FURTHER ORDERED, that ENGI shall file with this Commission copies of the executed Fuel Inventory Trust and Revolving Credit Agreement within ten (10) days of the date they are entered into; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, ENGI 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 6, 1997 and to be documented by affidavit filed with this office on or before October 13, 1997; 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 20, 1997; 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 27, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 29, 1997, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DF 92-134, Order No. 20,551, 77 NH PUC 392, July 28, 1992. [N.H.] Re EnergyNorth Natural Gas, Inc., DF 93-238, Order No. 21,059, 78 NH PUC 717, Dec. 14, 1993. [N.H.] Re Gas Service, Inc., DF 82-254, Order No. 15,988, 67 NH PUC 795, Nov. 15, 1982.

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NH.PUC*09/30/97*[97469]*82 NH PUC 709*WESCO Utilities, Inc.

[Go to End of 97469]

82 NH PUC 709

Re WESCO Utilities, Inc.

DR 97-025
Order No. 22,744

New Hampshire Public Utilities Commission

September 30, 1997

APPLICATION by water utility for authority to increase rates by $2,644 (27%); granted as modified, pursuant to settlement, in the amount of $2,605 (26.8%). The utility, with a capital structure of 100% equity, is authorized a rate of return of 9.85%. Commission directs the utility to consider a possible transfer of its system to the Hooksett Village Precinct.

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1. RETURN, § 115

[N.H.] Water utility — Capital structure of 100% equity — Rate of return of 9.85% — Settlement. p. 710.

2. RATES, § 597

[N.H.] Water rate design — Special factors — Eight-year period since last rate increase — Move to quarterly billings — Necessity of system improvements — Justifiable increase of over

25%. p. 710.

3. RATES, § 603

[N.H.] Water rate design — Billing components — Quarterly minimum charge — Separate usage charges — Additional but temporary surcharge mechanism — For the recovery of rate case expenses. p. 710.

4. SERVICE, § 473

[N.H.] Water — Equipment and facilities — Necessity of system improvements — As partial justification for rate increase. p. 710.

5. CONSOLIDATION, MERGER, AND SALE, § 1

[N.H.] Transfer and acquisition possibilities — Necessity of exploratory discussions — Small independent water utility and village water precinct. p. 710.

6. EXPENSES, § 89

[N.H.] Rate case expense — Effect of eight-year gap since last rate case — Voluntary limit on recoverable costs — Recovery via quarterly surcharge — Two-year amortization period — Water utility. p. 710.

APPEARANCES: Stephen P. St. Cyr for WESCO Utilities, Inc.; Amy L. Ignatius, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On April 22, 1997, WESCO Utilities, Inc. (WESCO) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an increase in annual revenue of $2,644. This annual increase would result in an increase in permanent rates of approximately 27% to the 24 customers served by WESCO in a limited portion of the Town of Hooksett, New Hampshire. WESCO submitted testimony and supporting documentation for the permanent rate increase.

On May 27, 1997, the Commission by Order No. 22,603 suspended the proposed increase in rates from taking effect and ordered a prehearing conference be held to address procedural matters and to seek intervention by interested parties in the permanent rate proceeding. A duly noticed prehearing conference was held at the Commission offices in Concord on June 24, 1997.

Advocate is a statutorily authorized intervenor but did not participate and there were no requests for intervention. Staff and the petitioner submitted a proposed procedural schedule governing the remainder of the proceeding. Commission Staff prefiled testimony of Thomas M. Sculley and Douglas W. Brogan on July 31 and August 22, 1997, respectively. On September 5, 1997, Staff and WESCO filed a Settlement Agreement (Settlement) resolving all issues in the permanent rate proceeding. The Commission heard testimony on the Settlement on September 10, 1997.

On September 19, 1997, Staff submitted a memo addressing WESCO's request for rate case expenses.

II. SETTLEMENT AGREEMENT

[1-6] The Settlement details all terms agreed to between WESCO and Staff, which are summarized herein.

WESCO and Staff agreed to: 1) cost of capital of 9.85% (for a company that is 100% equity); 2) revenue increase of $2,605; 3) rate base of $18,039; 4) revenue requirement of $12,330 or an increase of 26.8% over the test year revenue; 5) rates set on a flat fee basis effective October 1, 1997, issued quarterly in arrears; 6) permanent rates as follows: minimum charge of $151.94 per year or $37.98 per quarter and consumption charge of $4.67 per 100 cubic feet; 7) improvements being made to the water system as follows: a) immediately address cause of entrained air in system; b) by September 30, 1997, move eight outside customer meter readers and increase pump station operating pressure range to 50-65 psi; c) by October 15, 1997, report status of (a) and (b) above to the Commission; (d) by March 15, 1998, apply for waiver of DES testing requirements; (e) by September 30, 1998, purchase a back up well pump end, install well air tube and tank sight tubes, replace pump station compressor, mag starter and light fixture provided, however, that these expenditures shall not be incurred prior to resolution of issues regarding potential transfer of the water system to the Hooksett Village Precinct or prior to six months from the Commission's order, whichever occurs first; (f) by September 30, 1998, complete testing of all customer meters, address the stolen water issue and implement any appropriate counter-measures and install a single two inch blowoff at the intersection of Springer Road and Pine Street; and (g) annually, the company owner or owners attend at least one water-related seminar, meeting or course; and 8) mitigate rate shock to the 24 customers by recovering the Commission approved costs of the above improvements in a step adjustment whereby after completion of the improvements listed above and approval of expenses submitted by WESCO, the Commission shall update rate base, the number of customers then on the system and modify permanent rates accordingly. Staff estimates the cost of the improvements to be approximately $3,200, though meter upgrades, if needed, and the cost to resolve the entrained air problem,

depending on the cause, could bring the total higher.

In addition, Staff testified that it was important for WESCO to engage in meaningful discussions with the Hooksett Village Precinct regarding the possibility of transfer of the system to the Precinct. The Precinct has reported to Staff that it has adequate water to provide to WESCO's customers, at a fraction of the cost and would consider taking over the system though details would have to be worked out. WESCO reported that the Precinct may have difficulty meeting the additional demand and that some of the terms under which it would take the system would be unacceptable. Staff offered to act as a facilitator of these discussions.

After the hearing, Staff filed a memo, in which WESCO concurred, to limit rate case expenses to $500, to be amortized over a two- year period. With 24 customers, $500 collected over eight quarters will result in a surcharge of $2.60 per customer per quarter, beginning with the January 1, 1998 quarterly bill.

III. COMMISSION ANALYSIS

After review of the evidence, we find that the terms and conditions in the Settlement will result in just and reasonable rates while

Page 710

providing WESCO an opportunity to earn a reasonable return on its investment. Although the nearly 27% increase in annual rates is a significant amount, we do note that the current rates have been in effect since May of 1989. The average bill, as a result of this increase, will be approximately $525, depending on usage.

The Settlement also addresses future improvements to the system which we agree will promote adequate and reliable service in the future. The costs of the system improvements have been roughly estimated by our Staff to be approximately $3,200 though possibly higher. Use of a step adjustment at the time of completion as well as adjusting the rates to reflect additional customers, is reasonable and will avoid significant rate case expenses 12 months from now. The annual charge for water, after the step adjustment, is estimated to be in the neighborhood of $600, depending on usage.

We conclude that the Settlement is in the public interest and therefore we will approve it, pursuant to RSA 378:7. The record reveals that the plant included in rate base is used and useful and the investment in that plant has been reasonably and prudently incurred.

We agree with Staff that the possibility of transferring the system to the Hooksett Village Precinct is worth exploring and that Staff's presence may help to keep the discussions moving forward. We will instruct Staff to initiate a meeting or meetings as needed between WESCO and the Precinct and notify us if the discussions lead to a transfer agreement.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement entered into between WESCO and Staff is APPROVED; and it is

FURTHER ORDERED, that WESCO submit a properly annotated tariff with the Commission within 14 days of the date of this order in accordance with N.H. Admin. Rules, Puc 1601.01(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re WESCO Utilities Water Co., Inc., DR 97-025, Order No. 22,603, 82 NH PUC 430, May 27, 1997.

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NH.PUC*09/30/97*[97470]*82 NH PUC 711*Manchester Water Works

[Go to End of 97470]

82 NH PUC 711

Re Manchester Water Works

Additional applicant: Consumers New Hampshire Water Company

DR 97-100
Order No. 22,745

New Hampshire Public Utilities Commission

September 30, 1997

ORDER approving an amendment/extension of a wholesale water supply contract between a municipal water utility and an investor-owned water utility.

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1. RATES, § 431

[N.H.] Municipally provided service — Wholesale service — Water supplies — Extension

of existing contract — Slight modification of terms — New fire protection charges — New metering points. p. 712.

2. RATES, § 625

[N.H.] Water rate design — Wholesale service — Supply of water by municipal utility to retail public utility — Extension of existing contract — Slight modification of terms — New fire protection charges — New metering points. p. 712.

BY THE COMMISSION:

Page 711

ORDER

[1, 2] On May 28, 1997, Manchester Water Works (MWW) filed a wholesale water agreement with Consumers New Hampshire Water Company (CNHW). The Agreement is a modification to a currently approved Special Contract between CNHW and MWW which expires on December 31, 2008. The existing contract was approved by the Commission in Order No. 19,021 (February 25, 1988) in Docket No. DR 87-217.

The amended Special Contract between MWW and CNHW retains the basic terms and conditions set forth in the originally approved contract with a limited number of changes. The wholesale water rate of $796.90 per million gallons will remain in effect. This rate was established with the understanding that MWW would not be providing fire protection service when in fact this service was being provided. The existing contract has a term of twenty years whereas the amended contract has a term of twenty-five years from date of execution.

The amended rate reflects a fire protection charge which increases the rate to $1,040 per million gallons. This charge is consistent with rates charged by MWW in other wholesale agreements. The amended contract identifies new metering points through which MWW may supply water to CNHW. The manner in which payments are made to MWW by CNHW for the Merrimack Source Development Charge has been modified to reflect actual rather that estimated usage. The current contract (based on projections) estimated more gallons than actually supplied to CNHW. This resulted in MWW reimbursing CNHW for payments made since actual usage was not as great as projected. Other modifications include monthly meter charges based on size of meter as approved by the Commission and in accordance with MWW rate schedules.

Staff reviewed the amended contract and recommended to the Commission that it be approved as submitted.

We have reviewed the revised contract as well as Staff's recommendation and believe that approval of the amended contract is consistent with RSA 378:18 and in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed amended agreement between Manchester Water Works and Consumers New Hampshire Water Company as filed with the Commission on May 28, 1997 is APPROVED; 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 October 7, 1997 and to be documented by affidavit filed with this office on or before October 14, 1997; 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 21, 1997; 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 28, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 30, 1997, 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 October 30, 1997, in accordance with N.H. Admin. Rules, Puc 1601.04(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Southern New Hampshire Water Co., DE 87-217, Order No. 19,021, 73 NH PUC 81, Feb. 25, 1988.

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NH.PUC*10/06/97*[97471]*82 NH PUC 713*Public Service Company of New Hampshire

[Go to End of 97471]

82 NH PUC 713

Re Public Service Company of New Hampshire

DR 96-035

Order No. 22,746

New Hampshire Public Utilities Commission

October 6, 1997

ORDER approving a revised special rate contract as between an electric utility and an industrial customer, Praxair, Inc., which revisions pertained to certain sole source supplier and 10-year contract terms that the commission had found objectionable when first reviewing the contract in Order No. 22,375 (81 NH PUC 800). Because the customer is found not to have been diligent in negotiating the revisions, the commission declines to give the new contract rates retroactive effect.

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1. RATES, § 217

[N.H.] Special rate contracts — Change and modification — Pursuant to commission directives — Approval as contingent on such revision — Necessity of good faith by parties — New effective date of contract — Electric service. p. 714.

2. RATES, § 212

[N.H.] Special rate contracts — Validity of — When commission approval is contingent on certain revisions — Effective date — As of date of approval of revisions — Electric service. p. 714.

3. RATES, § 213

[N.H.] Special rate contracts — Commission approval — As conditioned on filing of revisions — Effect of lack of good faith on part of one party — Delay in validating contract — Delay in effectuating special contract rates — Electric service. p. 714.

4. RATES, § 332

[N.H.] Electric rate design — Special charges and discounts — Pursuant to special rate contract — Commission approval as conditioned on filing of revisions — Effect of lack of good faith on part of one party — Delay in validating contract — Delay in implementing special rates — No backdating of contract's effective date. p. 714.

5. RATES, § 250

[N.H.] Schedules and procedure — Effective date — Of special rate contract — Request for retroactive application — When contract revisions required — Effect of lack of good faith on part of one party — Delay in validating contract — Refusal to backdate contract's effective date — Electric service. p. 714.

BY THE COMMISSION:

ORDER

On June 13, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a revised Special Contract No. NHPUC-127 (NHPUC-127) between PSNH and Praxair, Incorporated (Praxair). This revised special contract conforms to the required changes in *Article 7 - PSNH as Sole Supplier* and *Article 9 - Effective Date and Contract Term* as required by the Order *Nisi* approving the contract with conditions (Order No. 22,375, October 21, 1996). No other changes were made to the original special contract.

A considerable period of time has passed since the effective date of the Commission's Order No. 22,375. That passage of time can be explained by what PSNH understands to be the customer's misunderstanding of the status of the contractual relations. Praxair understood the original special contract to be binding and the revised special contract to be merely an addendum to an otherwise valid and enforceable

agreement. During the period following the issuance of Order No. 22,375 until this filing was made on June 13, 1997, PSNH representatives repeatedly attempted to contact Praxair officials who had the authority to execute the revised special contract. PSNH's understanding is that the revised special contract was referred for legal review. Furthermore, the business person at Praxair who negotiated the original special contract was replaced and the new manager in charge of the special contract did not fully understand the status or importance of the Commission's actions.

PSNH is considering re-billing Praxair for service supplied to the Manchester facility at the special contract rate for the period from the effective date of the Order *Nisi* (Order No. 22,375 to become effective November 20, 1996) through the current bill. PSNH believes this action is reasonable for the following reasons. Due to the change in personnel responsible for the contract, Praxair was not aware of the importance of the Commission approval process and the need for execution of a new replacement special contract. Praxair went forward and constructed these facilities in reliance on the provision of lower rates through the special contract. The Manchester facility will complete its minimum five-year term sooner if the billing could commence as of November 20, 1996 when Order No. 22,375 became effective rather than the date of this filing. The Praxair load would then be available for competition several months sooner than anticipated.

[1-5] For these reasons, PSNH requests a waiver under Puc 201.05 from the Commission's rules on the effective date of the special contracts, either Puc 1601.02(c) if the Praxair contract is

considered a new special contract or Puc 1601.05(n) if this submission is considered an amended special contract.

Staff has reviewed this filing and raises the following issue. In Order No. 22,375, it was indicated that Praxair agreed to work with PSNH and participate in appropriate conservation and load management programs offered by PSNH and approved by the Commission. Staff believes that Praxair has not worked closely with PSNH as evidenced by PSNH's repeated attempts to contact Praxair and Praxair's lack of contact with PSNH.

The Commission has reviewed the revised Special Contract NHPUC-127 and finds, based on Staff's recommendation, that Praxair did not make good faith attempts to work with PSNH and therefore, did not maintain the spirit of the original special contract. Further, the Commission approved Special Contract No. NHPUC-127 between PSNH and Praxair, subject to the condition that PSNH file NHPUC-127 in accordance with *Article 7 - PSNH as Sole Supplier* and *Article 9 - Effective Date and Contract Term*. Since PSNH did not file the revised special contract until June 13, 1997, we believe it is appropriate to make June 13, 1997, the effective date of Special Contract NHPUC-127.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that the Revised Special Contract No. NHPUC-127 between PSNH and Praxair, Incorporated which includes the required changes in *Article 7 - PSNH as Sole Supplier* and *Article 9 - Effective Date and Contract Term* as required by the Order *Nisi* approving the contract with conditions, Order No. 22,375 is APPROVED effective June 13, 1997; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1601.05, the Petitioner shall cause a copy of this Order to be published once in a statewide newspaper of general circulation, such publication to be no later than October 13, 1997 and to be documented by affidavit filed with this office on or before October 20, 1997; 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 27, 1997; 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 3, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective as of June 13, 1997, 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 October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 96-035, Order No. 22,375, 81 NH PUC 800, Oct. 21, 1996.

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[Go to End of 97472]

82 NH PUC 715

Re Public Service Company of New Hampshire

DR 95-022, DR 95-246, DR 95-247, DR 95-268
Order No. 22,747

New Hampshire Public Utilities Commission

October 6, 1997

MOTION by electric utility for protective treatment of the underlying cost data used to calculate the benefits and savings expected from the utility's efforts to renegotiate certain power purchase agreements with wood-fired small power producers; granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to cost data — Used to derive expected savings from contract renegotiations — Benefits of nondisclosure as outweighing those of disclosure — Electric utility. p. 715.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 16, 1994, 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 and the six remaining "non-settling" wood-burning small power producers ... ." *Re Public Service Company of New Hampshire/Small Power Producers*, Order No. 21,495 at p. 1 (January 9, 1995). Negotiations over the past years have resulted in the filing of six renegotiated agreements between Public Service Company of New Hampshire (PSNH) and six wood-burning small power producers (SPPs).[1(128)]

The Commission Staff has requested that PSNH provide it with spreadsheets containing the underlying data, assumptions, and calculations used to develop the savings claimed to result from the renegotiated agreements. The Staff will use this information to respond to questions from the Legislature and will provide summaries of the results of a spreadsheet analysis, which they will be conducting. PSNH avers that the data, assumptions, and calculations used to develop the savings are confidential commercial information and trade secrets which fall within the exemption from public disclosure of RSA 91-A:5, IV and N.H. Admin. Rules, Puc 204.08. PSNH asserts that the data contained in the spreadsheets would place it at a serious disadvantage should it be necessary to further negotiate or resume negotiations with the wood-fired plants.

[1] The Commission recognizes that the information identified above is critical to a realistic review of the filing by the Commission, the Commission Staff (Staff) and the public generally. This is the type of information which the Commission anticipated would be protected when N.H. Admin. R., Puc 204.08(b)(4)d.1 was adopted. The Commission also recognizes that the information contained in the filing is sensitive commercial information. Thus, based on the company's representations, under the balancing test we have applied in prior cases, *See e.g., Re NET (Auditel)*, 80 NH PUC 437 (1995), *Re Eastern Utilities Associates*, 76 NH PUC

236 (1991), we find that the benefits to PSNH of non-disclosure in this case outweigh the benefits to the public of disclosure. The information, therefore, is exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's request that the subject spreadsheets be provided protective treatment is GRANTED to allow Staff to review fully the proposed savings and to protect from public disclosure the information delineated above; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own Motion or on the Motion of Staff or any Party or any other member of the public to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 1997.

FOOTNOTES

[1]Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (DR 95-246), Bridgewater Power Company (DR 95-022), BioEnergy Corporation (DR 95-247), Whitefield Power and Light Company and Hemphill Power and Light Company (DR 95-268).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-300, Order No. 21,495, 80 NH PUC 19, Jan. 9, 1995.

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NH.PUC*10/07/97*[97473]*82 NH PUC 716*Implementation of the Telecommunications Act of 1996

[Go to End of 97473]

82 NH PUC 716

Re Implementation of the Telecommunications Act of 1996

DR 97-214
Order No. 22,748

New Hampshire Public Utilities Commission

October 7, 1997

ORDER directing telecommunications carriers within the state to develop and file tariffs for lifeline service rate discounts in conformity with the requirements for such contained in the federally enacted Telecommunications Act of 1996.

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1. RATES, § 125

[N.H.] Factors affecting reasonableness — Ability to pay — Low-income customers — Requirements for special lifeline service rates — Discounts via offsets to end-user subscriber line charges — Federal rather than state funding of discounts — Pursuant to Telecommunications Act of 1996 — Customer eligibility for. p. 717.

2. RATES, § 534

[N.H.] Telephone rate design — Special factors — Telecommunications Act of 1996 — Necessity of discounted lifeline service rates — Via reductions in end-user subscriber line charges — Federal rather than state funding of discounts — Customer eligibility for — Criteria and verification of income level. p. 717.

3. SERVICE, § 433

[N.H.] Telephone — Availability of lifeline services — As required by the Telecommunications Act of 1996 — Via discounts of end-user subscriber line charges — Federal rather than state funding of discounts — Customer eligibility for — Criteria and verification of income level — Additional "Link-Up"

Page 716

program to assist in initial service connections. p. 717.

BY THE COMMISSION:

ORDER

I. PROCEDURAL BACKGROUND

[1-3] Pursuant to Order No. 97-157, issued May 8, 1997 in CC Docket 96-45 (Universal Service Order), the Federal Communications Commission (FCC) requires telecommunications carriers to meet certain requirements, including, *inter alia*, the provision of the federally funded Lifeline program (Lifeline), in order to receive federal universal service funds. The Universal Service Order directs state commissions to designate qualifying carriers as Eligible Telecommunications Carriers. Because New Hampshire carriers have not been required to provide Lifeline in the past, this docket is commenced to declare the New Hampshire Public Utilities Commission's intent to maximize the federal support available for Lifeline customers and to establish the method for identifying qualified Lifeline customers, thus helping New Hampshire carriers to file appropriate Lifeline tariffs which will meet that portion of the ETC designation process. Completion of the ETC designation process is separate and subsequent to the filing of Lifeline tariffs.

II. DESCRIPTION OF LIFELINE

Lifeline provides federal funds to reduce residential end-user Subscriber Line Charges. Effective January 1, 1998, the FCC will provide a $3.50 credit to the Subscriber Line Charge and an additional $1.75 per line per month. Federal funding eligibility is contingent upon state commission approval of a tariff reducing the basic local exchange rate by $1.75, for a total Lifeline discount of $5.25 per line per month for an eligible customer. No state matching funds are required in order to obtain the federal funding of $5.25.

States may provide additional state funds to support an even greater Lifeline discount. The federal government will provide an additional contribution of no more than $1.75 if the state provides funding of $3.50, for a total Lifeline discount of $10.50 ($7.00 in federal contributions, $3.50 in state contributions).

New Hampshire, however, does not currently fund low income telecommunications customers. In New Hampshire, Bell Atlantic offers a low use measured local service for $9.61 per month.[1](129)

Independent Telephone Companies' residential rates range between $6.92 and $15.78[2](130) Lifeline would discount each of these rates for eligible customers by $5.25.

Given the low basic exchange rates available in New Hampshire, we believe a $5.25 Lifeline discount is sufficient, but we will defer to the judgment of the Legislature whether a greater discount should be provided. Such a program would, presumably, be funded through a surcharge on all New Hampshire telecommunications customers. The recently formed Joint Oversight Committee on Telecommunications might be the appropriate body to initially consider the question.

III. CUSTOMER QUALIFICATION FOR LIFELINE

Consistent with FCC orders, the Commission adopts a "means- tested" eligibility standard for identifying qualified Lifeline recipients. In order to receive Lifeline, a consumer must be a current recipient of one of the following low income assistance programs; Medicaid, food stamps, Supplementary Security Income, federal public housing assistance, or Low Income Home Energy Assistance Program. These programs are those required by 47 C.F.R. 54.409(b) as qualification criteria in states such as New Hampshire, that do not provide state Lifeline support.

Carriers are required to verify a customer's participation in one of the above-mentioned low income assistance programs. As verification, the carrier may use a document, signed by the customer and certifying under penalty of perjury that the customer is in fact receiving benefits from at least one of the assistance

programs identified above. The document must contain the names of the low income program(s) from which the customer receives assistance, as well as an agreement by the

customer to notify the carrier when the customer ceases to receive assistance. Carriers must keep the verification document on file.

IV. REVISION OF CUSTOMER QUALIFICATION FOR LINK-UP

Link-Up is an assistance program which provides a reduction in the carrier's customary charge for commencing service at a qualifying low-income consumer's principal place of residence. New Hampshire currently participates in the Link-Up program and has established qualification criteria for determining if a consumer may receive Link-Up. In order to receive Link-Up, a New Hampshire consumer must be a current recipient of one of a number of low income assistance programs. Now, as a result of regulations adopted by the FCC in Order 97-157, the qualification criteria must expand to include additional programs. Pursuant to 47 C.F.R. §54.415(a), Link-Up qualification criteria in states that provide state Lifeline service, which New Hampshire will forthwith, shall be the same as the criteria set forth in §54.409(b), *i.e.*, participation in one of the programs listed above in order to receive Lifeline. New Hampshire's Link- Up criteria currently do not include three of the programs. Therefore, by this order we will expand the Link-Up qualification criteria to include the following additional programs; Medicaid, federal public housing assistance, and the Low-Income Home Energy Assistance Program.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that New Hampshire telecommunications carriers which wish to obtain Eligible Telecommunications Carrier designation shall file with the Commission Lifeline tariffs which comply with the customer qualification methodology described herein for Lifeline; and it is

FURTHER ORDERED, that the above-mentioned tariffs shall contain the appropriate rate reductions by which New Hampshire will comply with FCC Order No. 97-157;

FURTHER ORDERED, that telecommunications carriers which offer Link-Up shall file with the Commission tariffs which comply with the customer qualification criteria described herein for Link-Up; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Put 1601.05, the Executive Director and Secretary of the Commission 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 14, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than October 28, 1997; 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 4, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective 30 days from its issuance, November 6, 1997, 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 October, 1997.

FOOTNOTES

[1]The Bell Atlantic and Independent Telephone Companies' basic exchange rates noted herein include the $3.50 Subscriber Line Charge.

[2]Hollis Telephone Company is an exception in that Hollis provides a flat rate residential service for $16.22 or a low use measured service option for $10.02.

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NH.PUC*10/13/97*[97474]*82 NH PUC 719*Granite State Telephone, Inc.

[Go to End of 97474]

82 NH PUC 719

Re Granite State Telephone, Inc.

DE 97-038
Order No. 22,749

New Hampshire Public Utilities Commission

October 13, 1997

ORDER establishing a schedule under which a local exchange telephone carrier is to conduct a poll of residents of the carrier's Chester/Sandown exchange as to whether extended area telephone service should be instituted between that exchange and ones in Plaistow, Hampstead, Atkinson, and Kingston. Balloting is to commence November 10, 1997, with results tabulated by December 23, 1997.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Factors affecting EAS expansion proposals — Necessity of poll of affected residents — Balloting schedule. p. 719.

2. RATES, § 573

[N.H.] Telephone rate design — Extended area service (EAS) — Factors affecting EAS expansion proposals — Necessity of poll of affected residents — Balloting schedule. p. 719.

BY THE COMMISSION:

ORDER

[1, 2] In Docket No. DE 97-038, Granite State Telephone, Inc. (GST) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting an expansion of the Chester-Sandown Exchange (887). GST filed the petition, pursuant to the Extended Area Service (EAS) guidelines followed by the Commission in the past, to include Plaistow (382), Hampstead (329), Atkinson (362) and Kingston (642) within Sandown's EAS calling area.

On August 18, 1997, by Order No. 22,682, the Commission granted GST's petition to conduct a poll of the customers in the Chester-Sandown exchange. Unlike the situation in DR 97-046 and DR 97-075, the Commission could not establish precise balloting dates because GST had failed to produce information necessary to calculate the rate increase needed to cover the proposed expanded calling area. Therefore, the Commission ordered GST to provide information for each exchange regarding originating and terminating minutes of use (MOU); number of residence and business access lines impacted; all associated revenues and costs; terms and conditions of current billing and collection agreements and EAS agreements; intrastate impact resulting from federal changes; any other factors GST believes should be included in the cost calculation. The Commission also ordered GST to recommend the appropriate charge for the proposed expansion and ordered NYNEX provide current toll revenue based on current toll minutes of use (MOU) and current access revenue based on current access MOU for each proposed expansion route.

GST and NYNEX filed the requested information. GST's analysis finds a $393,562.32 net revenue loss as a result of the proposed EAS expansion of exchanges 382, 329, 362 and 642. However, GST indicated that is prepared to absorb $104,502.12 of the total revenue loss. Therefore the total basic service revenues would increase by $289,060.20 if all three balloted exchange expansions passed. For a one party residential customer, expanded calling to Plaistow would cost an additional $2.95 a month, to Hampstead/Atkinson would cost an additional $1.95, and for Kingston would cost an additional $0.95. Adding all three new routes would result in an additional monthly charge of $5.85. The EAS charge for each customer class and each route will be delineated in greater detail on the ballot.

Staff has analyzed information provided by GST and determined that GST's

recommendation for the proposed basic rate increase for each exchange expansion is

reasonable.

We concur with Staff's recommendation and, therefore, will commence with the balloting of the customers in the Chester Exchange, to be conducted according to the following schedule:

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

Ballots sent by Commission November 10, 1997
Ballots returned by         December 1, 1997
Ballots tabulated by       December 23, 1997
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Based upon the foregoing, it is hereby

ORDERED, that a vote on the EAS issue by Chester customers, shall be conducted based on the local rate increase listed on the ballot, if Plaistow, and/or Hampstead/Atkinson and/or Kingston were included in the local calling area.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Telephone, Inc., DE 97-038, Order No. 22,682, 82 NH PUC 596, Aug. 18, 1997.

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NH.PUC*10/13/97*[97475]*82 NH PUC 720*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97475]

82 NH PUC 720

Re New England Telephone and Telegraph Company dba NYNEX

DR 97-114
Order No. 22,750

New Hampshire Public Utilities Commission

October 13, 1997

ORDER granting protective treatment of certain financial documents submitted by a local exchange telephone carrier in the course of its filing for tariff changes to its message telecommunications service rates. This protective order replaces an interim order that had been limited to a four-day period, upon submission by the carrier of supplemental proof of its need for confidentiality.

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1. RATES, § 584

[N.H.] Telephone rate design — Message telecommunications service — Proposed changes to rate credit threshold — Underlying financial information — Confidentiality — Local exchange carrier. p. 721.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain financial documents — Submitted as part of a proposed tariff revision — Grant of confidentiality — Upon supplemental showing of need for protective treatment — Benefits of nondisclosure as outweighing those of disclosure — Local exchange carrier. p. 721.

BY THE COMMISSION:

ORDER

On July 14, 1997, the New Hampshire Public Utilities Commission (Commission) issued Order No. 22,658 (Order) in this docket, ruling that New England Telephone and Telegraph Company (NYNEX) had not provided evidence adequate for the Commission to review NYNEX's motion requesting confidentiality for certain financial documents (hereinafter collectively the Information) relating to NYNEX's requests for tariff changes to its Message Telecommunications Service/ Switchway day rate period credit threshold and to eliminate the service establishment charges for Business Package and Business Package Plus Services. The Commission granted NYNEX permission to file supplemental

evidence in support of its motion (Order at p.4), which NYNEX did on July 21, 1997.

N.H. Admin. Rules Puc 204.08(b)(3), requires a party seeking confidential treatment to

provide facts describing the benefits of non-disclosure to the petitioner and evidence of the harm that would result from disclosure. Puc 204.08(b)(3) requires a petitioner to demonstrate that the Information is one of several types of protected information. Our Order described deficiencies in NYNEX's initial motion, relative to Puc 204.08. First, no evidence was presented to demonstrate that NYNEX had taken measures to prevent dissemination of the Information as required by Puc 204.08(b)(4). Second, no evidence was presented to demonstrate that unregulated competitors would obtain an unfair bargaining advantage as a result of disclosure of the Information. Further, no examples were provided to show how competitors would make use of the Information to the detriment of NYNEX as required by Puc 204.08(b)(3).

[1, 2] To remedy the aforementioned deficiencies, NYNEX provided an affidavit of Michael J. Agrella, Product Manager - Business Usage for the NYNEX New England states. The affidavit provides evidence that the Information is safeguarded during the normal course of business. When disseminated to non-NYNEX employees, "such as advertising agencies or other contracted service providers," the Information is clearly labeled "Proprietary" and is provided to non-NYNEX employees only under a non-disclosure agreement. Likewise, NYNEX employees have access to the Information subject to non-disclosure agreements. The affidavit also provides evidence that NYNEX has invested significant time and resources to obtain the Information and that a competing firm would have to expend significant cost to develop it. We find, as a result of the supplemental filing, that NYNEX has demonstrated that its request meets the requirement of Puc 204.08(b)(4).

With regard to Puc 204.08(3), NYNEX does not address our request for evidence demonstrating how competitors would gain a bargaining advantage from disclosure of the Information, as claimed in its motion. Apparently abandoning that argument, NYNEX instead explains how competitors would make use of the Information to NYNEX's detriment by averring that competitive companies will be able to determine characteristics of NYNEX products for market segments at specific price points. In the opinion of Mr. Agrella, the competitors will gain, unfairly, the ability to develop services in direct competition with NYNEX services. The harm NYNEX would suffer as a result of disclosure, according to Mr. Agrella, is loss of market share.

NYNEX argues that the Commission has afforded protection to NYNEX's segmented aggregate customer data in DE 94-111 by Order No. 21,267 (June 14, 1994), and to competitors' aggregate revenue and usage data in DE 90-002 by Order No. 20,916 (August 2, 1993). Such orders, NYNEX argues, underscore the competitively sensitive nature of aggregated segmented revenue and usage data. NYNEX contends that the benefits of non-disclosure outweigh the benefits of disclosure of the Information because of the unfair competitive advantage gained by competitors.

We recognize that the Information is critical to our review of the tariff change requests. Based on the supplemental evidence presented by NYNEX, under the balancing test we have applied in prior cases, including *Re New England Telephone Company*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure outweigh the benefits to the public of disclosure. We will therefore exempt the Information from public disclosure, pursuant to RSA 91-A:5(IV) and N.H. Admin. Rule Puc 204.08, as requested by NYNEX.

Based upon the foregoing, it is hereby

ORDERED, that NYNEX's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of staff or any Party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant. By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1997.

Page 721

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Generic Investigation into IntraLATA Toll Competition Access Rates, DE 90-002, Order No. 20,916, 78 NH PUC 365, Aug. 2, 1993. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 94-111, Order No. 21,267, 79 NH PUC 341, June 14, 1994. [N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 94-114, Order No. 22,658, 82 NH PUC 536, July 14, 1997.

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NH.PUC*10/13/97*[97476]*82 NH PUC 722*XCOM Telephony Inc.

[Go to End of 97476]

82 NH PUC 722

Re XCOM Telephony Inc.

DE 97-199
Order No. 22,751

New Hampshire Public Utilities Commission

October 13, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 723.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 723.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 723.

BY THE COMMISSION:

ORDER

On September 26, 1997, XCOM Telephony Inc. (XCOM) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed XCOM's petition for compliance with these standards. Staff reports that XCOM has provided all the information required by Puc 1304.02. The information provided supports XCOM's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of XCOM as a New Hampshire CLEC.

XCOM has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that XCOM has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of XCOM in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because XCOM has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, XCOM agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, XCOM seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay NYNEX could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that XCOM's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 October 20, 1997 and to be documented by affidavit filed with this office on or before October 27, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 3, 1997; 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 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 12, 1997, 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, ten days prior to commencing service, a

rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 1997.

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NH.PUC*10/13/97*[97477]*82 NH PUC 723*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97477]

82 NH PUC 723

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: ST Long Distance Inc.

DE 97-197
Order No. 22,752

New Hampshire Public Utilities Commission

October 13, 1997

ORDER approving an interconnection agreement negotiated by a competitive local carrier and an incumbent local exchange telephone carrier.

Page 723

1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Availability of dialing parity, collocation, number portability, directory assistance, and unbundled access — Additional unbundling of interoffice facility elements — Incumbent local exchange and competitive local exchange carriers. p. 724.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As

conducive to competitive local exchange market — Special features — Access to unbundled interoffice facilities — Incumbent local exchange and competitive local exchange carriers. p. 724.

BY THE COMMISSION:

ORDER

[1, 2] On September 22, 1997, ST Long Distance Inc. (STLD) and New England Telephone and Telegraph Company (NYNEX)[1(131)] filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to 47 U.S.C., section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic, transmission/termination of other types of traffic and joint network configuration. It further provides for unbundled access, resale, collocation, number portability, dialing parity, access to rights of way, access to data bases, and directory assistance service. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement is a comprehensive set of terms and conditions that will facilitate the entry of STLD as a competitive local exchange carrier in New Hampshire. The parties agree to jointly engineer, plan and operate a diverse transmission system with which they will interconnect their respective networks. The Agreement specifies the designation of interconnection points, provides for a joint grooming plan, and provides that the physical interface of facilities will be at the optical level via a fiber-meet or other comparable means with the exception of interim connections which may be electrical.

The interoffice facilities are priced on an unbundled basis to allow for use with other unbundled network elements thus creating numerous facilities based and/or resale options to STLD in the provisioning of exchange and exchange access services. The Agreement also includes detailed unbundling of local outside plant and central office facilities that would allow STLD to provide digital and other high-tech services with minimal future negotiating or "grooming" of the Agreement.

Prices in this filing are virtually the same as those in the previously approved non-cellular interconnection agreements for the services/ elements that are common. Staff points out that the TAct does not require that a telecommunications company sell each service/element for the same price or terms to each requesting party.

When a Statement of Generally Available Terms (SGAT) is implemented, STLD and other

competitors can purchase services or unbundled elements that may not be covered by an interconnection agreement. This will occur in New Hampshire per Order No. 22,692 which orders that the NYNEX SGAT shall take effect, as filed, on October 20, 1997 subject to continued review pursuant to section 252(f)(4) of the TAct.

The Staff has recommended approval of the Agreement between STLD and NYNEX based on a review of the summary, actual agreement and verbal clarification provided by NYNEX and STLD.

We have reviewed the filing and find it

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meets the standards of section 252(e)(2)(A) of the TAct for approval of a negotiated Agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between STLD and NYNEX (now Bell Atlantic) is approved; 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 October 20, 1997 and to be documented by affidavit filed with this office on or before October 27, 1997; 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 3, 1997; 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 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 12, 1997, 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 October, 1997.

FOOTNOTES

[1]The agreement as filed named NYNEX as a party. Since then the merger between NYNEX and Bell Atlantic has been approved and therefore the Agreement must be construed as applying to Bell Atlantic as well.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,692, 82 NH PUC 618, Aug. 25, 1997.

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NH.PUC*10/13/97*[97478]*82 NH PUC 725*New England Telephone and Telegraph Company dba NYNEX

[Go to End of 97478]

82 NH PUC 725

Re New England Telephone and Telegraph Company dba NYNEX

Additional applicant: New England
Brooks Fiber Communications LLC

DE 97-155
Order No. 22,753

New Hampshire Public Utilities Commission

October 13, 1997

ORDER approving an interconnection agreement negotiated by a competitive local carrier and an incumbent local exchange telephone carrier.

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1. TELEPHONES, § 11

[N.H.] Connecting carriers — Negotiated interconnection agreement — Approval — Transmission and routing of exchange and exchange access services — Availability of dialing parity, collocation, number portability, directory assistance, and unbundled access — Additional unbundling of interoffice facility elements — Incumbent local exchange and competitive local exchange carriers. p. 726.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telecommunications services — Negotiated interconnection agreement — As conducive to competitive local exchange market — Special features — Access to unbundled interoffice facilities — Incumbent local

Page 725

exchange and competitive local exchange carriers. p. 726.

BY THE COMMISSION:

ORDER

[1, 2] On August 21, 1997, New England Brooks Fiber Communications LLC (Brooks) and New England Telephone and Telegraph Company (NYNEX)[1(132)] filed with the New Hampshire Public Utilities Commission (Commission) a negotiated Interconnection Agreement (Agreement). The Agreement was filed for approval pursuant to section 252(e) of the Telecommunications Act of 1996 (TAct).

This Agreement provides, *inter alia*, for transmission/routing of exchange service traffic and exchange access traffic, transmission/termination of other types of traffic and joint network configuration. It further provides for unbundled access, resale, collocation, number portability, dialing parity, access to rights of way, access to data bases, and directory assistance service. The parties will exchange technical and traffic information which will be kept proprietary; each party will maintain facilities within its own network and will not interfere with the other party's systems.

This Agreement is a comprehensive set of terms and conditions that will facilitate the entry of Brooks as a competitive local exchange carrier in New Hampshire. The parties agree to jointly engineer, plan and operate a diverse transmission system with which they will interconnect their respective networks, focusing primarily on a Synchronous Optical Network (SONET) architecture. The Agreement specifies the designation of interconnection points, provides for a joint grooming plan, and provides that the physical interface of facilities will be at the optical level via a fiber-meet or other comparable means.

The interoffice facilities are priced on an unbundled basis to allow for use with other unbundled network elements, thus creating numerous facilities based and/or resale options to Brooks in the provisioning of exchange and exchange access services. The Agreement also includes detailed unbundling of local outside plant and central office facilities that would allow Brooks to provide digital and other high-tech services with minimal future negotiating or "grooming" of the Agreement.

Prices in this filing are virtually the same as those in the previously approved non-cellular interconnection agreements for the services/ elements that are common. Staff points out that the

TAct does not require that a telecommunications company sell each service/element for the same price or terms to each requesting party.

When a Statement of Generally Available Terms (SGAT) is implemented, Brooks and other competitors can purchase services or unbundled elements that may not be covered by an interconnection agreement. This will occur in New Hampshire per Order No. 22,692 which orders that the NYNEX SGAT shall take effect, as filed, on October 20, 1997 subject to continued review pursuant to section 252(f)(4) of the TAct.

The Staff has recommended approval of the Agreement between Brooks and NYNEX based on a review of the summary, actual agreement and verbal clarification provided by NYNEX and Brooks.

We have reviewed the filing and find it meets the standards of section 252(e)(2)(A) of the TAct for approval of a negotiated Agreement. The Agreement does not appear to be discriminatory to any carrier not a party to the negotiations and is consistent with the public interest, convenience, and necessity. We will approve it on a *nisi* basis in order to provide any interested party an opportunity to request a hearing pursuant to RSA 374:26.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the Interconnection Agreement negotiated between Brooks and NYNEX (now Bell Atlantic) is approved; 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 October 20, 1997 and to be documented by

affidavit filed with this office on or before October 27, 1997; 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 3, 1997; 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 10, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 12, 1997, 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 October, 1997.

FOOTNOTES

[1]The agreement as filed named NYNEX as a party. Since then the merger between NYNEX and Bell Atlantic has been approved and therefore the Agreement must be construed as applying to Bell Atlantic as well.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,692, 82 NH PUC 618, Aug. 25, 1997.

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NH.PUC*10/14/97*[97479]*82 NH PUC 727*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97479]

82 NH PUC 727

Re New England Telephone and Telegraph Company dba Bell Atlantic

DS 97-192
Order No. 22,754

New Hampshire Public Utilities Commission

October 14, 1997

ORDER approving a local exchange telephone carrier's proposal to apply "customer satisfaction guarantee" credits to the bills of subscribers dissatisfied with optional service features. The credits would apply to such services as custom calling options, "PhoneSmart," and "Ringmate." Any associated loss in revenues is to be borne by shareholders and not recovered from other ratepayers.

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1. RATES, § 130

[N.H.] Factors affecting reasonableness — Character of service — Institution of customer satisfaction guarantee program — Applicability of credits to bills of dissatisfied customers — As to optional services only — Shareholder responsibility for associated revenue losses — Local exchange telephone carrier. p. 727.

2. SERVICE, § 172

[N.H.] Public relations — Institution of customer satisfaction guarantee program — Applicability of credits to bills of dissatisfied customers — As to optional services only — Benefits of program — Performance incentives — Building of customer loyalty — Development of competitive niche — Local exchange telephone carrier. p. 727.

3. REPARATION, § 35

[N.H.] Grounds for — Service defects or inadequacy — Applicability of credits to bills of dissatisfied customers — Pursuant to new customer satisfaction guarantee program — As to optional services only — Local exchange telephone carrier. p. 727.

BY THE COMMISSION:

ORDER

[1-3] On September 15, 1997, Bell Atlantic

Page 727

(Bell Atlantic) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to introduce "Customer Satisfaction Guarantee" credits on bills of customers who are dissatisfied with certain optional services. The credits apply to the provision of optional, vertical telecommunication services known as Custom Calling,[1](133) PhoneSmart[2](134) and Ringmate. Optional, vertical services are discretionary services that customers purchase as additional services to their basic dial tone for a monthly fee. To earn the credit, a customer must notify Bell Atlantic of their decision to disconnect the service within sixty days of installation. The credit will be equal to the one time order charge and the pro rated monthly rate incurred by the customer for the service. According to Bell Atlantic, the estimated annual revenue effect of this filing is $18,640.00. Estimates of the revenue gain were based upon a Bell Atlantic market analysis report asserting that customer guarantees will stimulate additional demand for the services highlighted above.

Staff has reviewed the filing, the market analysis report and cost study details. The cost study demonstrates that the development of the net revenue impact was based on a reasonable set of assumptions. Furthermore, the provision of Customer Satisfaction credits allows Bell Atlantic to respond to the competitive marketplace.

Based on its review, Staff recommends approval of this filing. The Bell Atlantic cost study details indicate that the total anticipated revenue exceeds the total cost of providing the optional

services, including redeemed credits. Therefore, the optional services provide a contribution to the overall costs associated with operating the public switched telecommunications network. Staff also recommends approval because all costs associated with the provision of optional services are recovered from the same group of customers subscribing to these optional services. As a result, Bell Atlantic has eliminated the risk of subsidizing the costs of optional services from the revenue earned from other non-optional services.

In the event it is discovered in a subsequent proceeding that Bell Atlantic is not recovering the costs associated with the optional services, including the cost of credits redeemed by unsatisfied customers, from the same group of customers who subscribe to the same optional services, then Staff would recommend that Bell Atlantic be prohibited from recovering the costs from the general body of customers. The recovery of optional service costs by the general body of customers who do not subscribe to the same optional services would be in conflict with the public interest standards applied by the Commission. Rather than reallocating such costs to other customers, Staff would recommend that the costs be sponsored solely by the shareholders of Bell Atlantic.

After reviewing the petition and Staff's recommendation, we find Bell Atlantic's request to be in the public interest and will approve the filing. Approval will provide Bell Atlantic the opportunity to respond to competitive market conditions. Service guarantees, such as proposed by Bell Atlantic, serve as useful tools to increase customer loyalty which is becoming an increasingly important issue in the emerging competitive marketplace. However, Bell Atlantic will be prohibited from recovering from the general body of customers, the costs associated with the provision of optional services, including the costs of credits redeemed by unsatisfied optional service customers. The costs, if not recovered from the total revenue earned from the provision of the aforementioned optional services, will be paid solely by shareholders.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed revisions to NHPUC - No. 77 telephone tariff are approved as of the requested effective date of October 15, 1997 and it is

FURTHER ORDERED, that Bell Atlantic will be prohibited from recovering the costs associated with the aforementioned optional services, including credits redeemed by unsatisfied optional service customers, from the general body of customers who do not subscribe to aforementioned optional telecommunication services; 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 October 21, 1997 and to be documented by affidavit filed with this office on or before October 28, 1997; 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 4, 1997; 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 11, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 13, 1997, 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 November 13, 1997, 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 October, 1997.

FOOTNOTES

[1]Includes Call Forwarding, Call Forwarding II, Call Waiting, Speed Calling 8, Speed calling 30, and Three-Way calling.

[2]Includes Call Manager, Call Manager with Name, Call Return, Call Waiting ID, Call Waiting ID with Name, and Repeat Dialing.

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NH.PUC*10/20/97*[97480]*82 NH PUC 729*Statewide Electric Utility Restructuring Plan

[Go to End of 97480]

82 NH PUC 729

Re Statewide Electric Utility Restructuring Plan

Petitioner: New Hampshire Electric Cooperative, Inc.

DR 96-150
Order No. 22,755

New Hampshire Public Utilities Commission

October 20, 1997

ORDER denying a request by an electric cooperative that the commission rule on a dispute as to an amended partial requirements agreement (APRA) between the cooperative and Public Service Company of New Hampshire, the cooperative's wholesale supplier. Commission deems it inappropriate to intervene pending final rulings by the Federal Energy Regulatory Commission

as to the APRA dispute.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring — Retail competition — Treatment of associated stranded costs — Interim charges — Impact of wholesale supply arrangements — Dispute as to amended partial requirements agreement — Between cooperative and investor-owned utility — Deferral of ruling on dispute. p. 730.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring and resulting retail competition — Treatment of associated stranded costs — Interim charges — Impact of wholesale supply arrangements — Dispute as to amended partial requirements agreement — Between cooperative and investor-owned utility — Deferral of ruling on dispute. p. 730.

Page 729

3. EXPENSES, § 120

[N.H.] Electric cooperative — Stranded costs — Associated with industry restructuring plan — Interim charges — Impact of wholesale supply arrangements — Dispute as to amended partial requirements agreement — Between cooperative and investor-owned utility — Deferral of ruling on dispute. p. 730.

4. RATES, § 321

[N.H.] Electric rate design — Impact of industry restructuring — Stranded costs — Recovery via interim charges — Impact of wholesale supply arrangements — Dispute as to amended partial requirements agreement — Between cooperative and investor-owned utility — Deferral of ruling on dispute. p. 730.

BY THE COMMISSION:

ORDER

[1-4] This order addresses a Petition for "Affirmative Commission Action" (Petition) filed by the New Hampshire Electric Cooperative, Inc. (NHEC) on June 27, 1997. Public Service Company of New Hampshire (PSNH) filed an Answer to NHEC's Petition on August 19, 1997.

Briefly, the procedural history leading to NHEC's Petition is as follows. The "APRA" refers

to a wholesale requirements contract between NHEC and PSNH.[1](135) During the implementation of the Retail Competition Pilot Program (Pilot) (DR 95-250), PSNH and NHEC were unable to reach agreement with respect to the appropriate revenue impact on the two companies as a result of the Pilot. As a consequence of that dispute, PSNH requested the Federal Energy Regulatory Commission (FERC) to clarify the parties rights and obligations under the APRA.[2](136)

In general terms, the APRA dispute is over the stranded costs associated with introduction of retail access for NHEC's members. PSNH interprets the APRA as creating fixed obligations which remain unchanged even if NHEC's wholesale requirements decrease as a consequence of retail access. NHEC alleges the opposite; specifically, that its obligations to PSNH turn on the amount of electric energy and capacity that it requires at any given point in time, and that to the extent those needs decrease as result of the Pilot, its financial obligations under the APRA decline accordingly.

When we issued the Final Statewide Electric Utility Restructuring Plan, we expressed the view that the APRA dispute pending before FERC would have to be resolved before NHEC's interim stranded costs could be established. *See*, Order No. 22,513 (February 28, 1997). The sole purpose of awaiting FERC's decision in the APRA dispute was so that NHEC's post-retail access wholesale obligations could be quantified before we established NHEC's retail stranded cost charges.

After we issued Order No. 22,513, FERC released Order 888-A which clarifies various policies and rulings originally articulated by FERC in Order 888 (the so-called "Open Access Rule").[3](137) These policies and rulings potentially have significant impact on the APRA dispute and, specifically, on whether the FERC is the appropriate forum to resolve all issues raised by PSNH in the context of the APRA dispute.

Irrespective of NHEC's Petition, we have an ongoing interest to ensure that the policies articulated by FERC in the Open Access Rule are applied in a manner that is consistent with our authority to implement the retail access policies articulated in the Final Plan. We continue to evaluate the positions asserted by both PSNH and NHEC in the APRA dispute, particularly in FERC's Order 888-A, and we intend to convey to FERC our position with respect to certain matters raised in the APRA dispute. Although we anticipate taking this action soon, we do not believe that it is necessary or appropriate to do so in the context of a pending and disputed "petition" for formal relief. For this reason, we will dismiss NHEC's Petition.

Based upon the foregoing, it is hereby

ORDERED, that NHEC's Petition is DISMISSED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1997.

FOOTNOTES

[1]"APRA" is an acronym for Amended Partial Requirements Agreement. Under it, NHEC purchases over 90% of its energy and capacity requirements in order to serve its members.

[2]*See, Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc.*, Docket No. EL 96-53-000.

[3]*See, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶31,036, clarified, 76 FERC ¶61,009 and 76 FERC ¶61,347 (1996); and Order No. 888-A (Order on Rehearing), 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶30,048 (1997).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,513, 82 NH PUC 118, Feb. 28, 1997.

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NH.PUC*10/20/97*[97481]*82 NH PUC 731*Public Service Company of New Hampshire

[Go to End of 97481]

82 NH PUC 731

Re Public Service Company of New Hampshire

DR 97-141
Order No. 22,756

New Hampshire Public Utilities Commission

October 20, 1997

ORDER rejecting a proposal by an electric utility that would reduce the tariffed backup service rate for a single customer, the operator of the Seabrook nuclear generating station. Commission

finds no cost support for the proposed
reduction and notes that it does not appear necessary for load retention.

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1. SERVICE, § 320.1

[N.H.] Electric — Breakdown and auxiliary services — Backup or standby services — Proposed tariff reductions — For single customer — Rejection of — Factors — Potential harm to other ratepayers. p. 732.

2. RATES, § 342

[N.H.] Electric rate design — Backup or standby services — Proposed tariff reductions — For single customer — Rejection of — Factors — Lost revenues — Lack of cost support — No necessity for as load retention device. p. 732.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire and Eugene F. Sullivan, III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On July 11, 1997, Public Service Company of New Hampshire (PSNH) filed with the Commission proposed revisions to PSNH's tariff pages for Backup Service Rate B along with the supporting pre-filed testimony of Gary A. Long, Vice President of Customer Service and Economic Development for PSNH. The proposed optional pricing provision to Rate B was made based on pricing concerns of North Atlantic Energy Services Company (NAESCO), an affiliate of PSNH and the operator of Seabrook Station. NAESCO represents the joint owners of Seabrook Station.

The Commission issued an Order of

Notice which scheduled a pre-hearing conference and technical session for August 19, 1997. By Order No. 22,717 (September 15, 1997), the Commission ruled that it would not consolidate this proceeding with DR 96-424 involving Hannaford Brothers Company's petition regarding

Rate B. A procedural schedule was later submitted by Staff on behalf of Staff and the Parties. A hearing on the merits was held September 25, 1997.

At the hearing the Commission granted PSNH's September 4, 1997 Motion for Protective Order concerning certain load and cost data requested by Staff. Testimony was provided by Mr. Long and by Thomas C. Frantz, Chief Economist for the Commission.

II. POSITIONS OF THE PARTIES AND STAFF

A. *PSNH*

The filing for an amendment to allow an optional pricing provision of Rate B was prompted by the Seabrook joint owners' concern about their bill under Rate B when Seabrook requires back-up service. PSNH contends that the current rate design of Rate B does not work well for Seabrook. Specifically, NAESCO approached PSNH about an alternative rate design to Rate B that would lower its bill and better reflect the operating characteristics of the plant. PSNH and NAESCO agreed to an option that used a 23-month ratchet for calculating transmission and distribution (T&D) demand charges coupled with a lower T&D rate per kilowatt of Backup Contract Demand and a higher Administration charge than is reflected currently under Rate B. The monthly Administration charge would increase from $196.04 to $5,000 and the T&D charge would decrease from $5.22 per kW of Backup Contract Demand per month to $3.61 per kW.

PSNH believes the proposed changes benefit both PSNH and Seabrook. PSNH would receive a steady and predictable revenue stream while Seabrook would receive lower rates and immediate savings. PSNH stated it would seek the proposed modification immediately on a temporary basis to help Seabrook.

B. *Staff*

Staff opposed PSNH's proposal because there was no cost support for the change nor was it an appropriate way to address what Staff considered a customer billing problem. Staff also cited as additional support for its recommendation the potential revenue reduction to the Rate B class that, according to PSNH, is currently under-recovering its costs.

III. COMMISSION ANALYSIS

[1, 2] This filing was made on behalf of one customer, NAESCO, on behalf of the joint owners of Seabrook Station. It was part of a negotiation with the joint owners to reduce the PSNH back-up charges Seabrook incurs when it is not operating. No other PSNH customer would benefit from this proposal as NAESCO is the only PSNH customer that exceeds the approximately 3,000 kW of backup contract demand to break even between the existing Rate B tariff and the proposed Rate B option. Ex. 4. Moreover, as Staff pointed out and PSNH discussed during the hearing, this proposal would likely result in reduced revenue from NAESCO in the

amount of between $237,000 and $600,000, depending upon the length of Seabrook outages. Some of the rate reduction would flow through the Fuel and Purchased Power Adjustment Clause to benefit PSNH's customers, but the potential financial harm of the overall revenue reduction to PSNH outweighs that benefit. Based on PSNH's arguments in DR 97-059 concerning the need to maintain its current rate levels to preserve its financial integrity and based on PSNH's contention that this filing was not intended as a load retention proposal, we find it would not be in the public interest to approve PSNH's optional billing arrangement for Rate B.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's proposal for an optional billing arrangement to Rate B is DENIED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1997.

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EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Hannaford Bros. Co. Inc., DR 96-424, Order No. 22,717, 82 NH PUC 663, Sept. 15, 1997.

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NH.PUC*10/20/97*[97482]*82 NH PUC 733*Public Service Company of New Hampshire

[Go to End of 97482]

82 NH PUC 733

Re Public Service Company of New Hampshire

DR 97-183
Order No. 22,757

New Hampshire Public Utilities Commission

October 20, 1997

ORDER adopting procedural schedule for an electric utility's 1998 conservation and load management program/budget filing.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Annual filing — 1998 budget and programs — Continuation of existing residential energy programs — Procedural schedule — Issues to be addressed — Recovery of lost fixed costs — Verification of program spending levels — Reconciliation of residential program expenditures and revenues. p. 733.

APPEARANCES: Catherine E. Shively, Esq. for Public Service Company of New Hampshire, Kenneth E. Traum for the Office of the Consumer Advocate, and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

[1] On August 29, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) its 1998 Conservation and Load Management (C&LM) Pre-Approval filing. PSNH seeks approval for a C&LM budget of $2,345,429 of which $1,445,402 represents recovery for Lost Fixed Costs (LFC). PSNH proposes to continue the following programs which have previously been approved by the Commission: Energy Crafted Home, Energy Service, Residential Conservation, Energy Check, Education and Energy Conscious Construction.

By an Order of Notice issued September 24, 1997, the Commission scheduled a prehearing conference for October 14, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. There were no Motions to Intervene filed. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, PSNH, the OCA and Staff modified certain dates of the proposed procedural schedule as outlined in the Order of Notice. The revised procedural schedule submitted to the Commission is as follows:

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

Data Requests by Staff and Intervenors	October 20, 1997
Company Data Responses	October 27, 1997
Technical Session	October 30, 1997
Testimony by Staff and Intervenors	November 6, 1997
Responsive Testimony by Company	November 13, 1997
Settlement Conference	November 21, 1997
Filing of Settlement Agreement if any	November 26, 1997
Hearing	December 4, 1997

In accordance with the Order of Notice, PSNH, the OCA and Staff stated their positions with regard to the filing.

PSNH stated that it essentially agrees with the issues as outlined in the Order of Notice. PSNH stated that it wants to finalize the methodology used to calculate LFC and that LFC would be reset in conjunction with its base rate case. PSNH also wants the Commission to conduct such review as deemed necessary to ensure that PSNH has spent the proper amounts earmarked for C&LM programs during the fixed rate period. In regard to the 1998 C&LM Pre-Approval filing, PSNH indicated that it had discussed this issue with the OCA and Staff prior to the prehearing conference and that it is amenable to either of the 1998 filing options that would be offered by Staff.

The OCA stated that it essentially agrees with PSNH regarding the issues in this docket. The OCA indicated that its greatest concern deals with PSNH's recovery of LFC and that it wants to ensure that due to the concurrent base rate case, that there is no double recovery of LFC. The OCA also wants to ensure that PSNH's spending on Residential C&LM programs is proportionate to the revenues collected from the Residential class.

Staff stated its concerns deal primarily with: the calculation of the LFC and the actual kilowatt-hour savings associated with PSNH's C&LM programs; the verification of spending levels incurred during the fixed rate period; the appropriate budget level for the 1997 program period; and the coordination of issues related to both the C&LM filing and PSNH's base rate case. Finally, Staff stated its concern regarding when PSNH's 1998 C&LM Pre-Approval filing should be submitted. Staff offered two alternatives that were accepted by PSNH and the OCA before the prehearing conference. The alternatives are to require PSNH to submit its 1998

C&LM Pre-Approval filing thirty days after the issuance of the Commission's rehearing order in Docket DR 96-150 regarding energy efficiency programs or if the rehearing order is not issued by December 31, 1997, then PSNH would be required to make its filing by February 1, 1998.

II. COMMISSION ANALYSIS

We find the proposed procedural schedule to be reasonable and will approve it for the duration of the proceeding.

Regarding PSNH's 1998 C&LM Pre-Approval filing, the Commission believes that its rehearing order in Docket DR 96-150 regarding how energy efficiency programs will proceed in a restructured electric utility environment will enable PSNH to construct a program that adheres to the Commission's directives. Thus, we will require PSNH to submit its 1998 C&LM Pre-Approval filing within thirty days from the date of the rehearing order regarding energy efficiency programs.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that PSNH shall submit its 1998 C&LM Pre-Approval filing within thirty days after the issuance of the rehearing order regarding energy efficiency programs in Docket DR 96-150.

By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1997.

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NH.PUC*10/20/97*[97483]*82 NH PUC 735*Consumers New Hampshire Water Company

[Go to End of 97483]

82 NH PUC 735

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,758

New Hampshire Public Utilities Commission

October 20, 1997

ORDER bifurcating a proceeding reviewing the reasonableness of a proposed settlement as to the sale of the assets and operations of a water utility. The first phase will look at those parts of the settlement providing for assets within the municipal boundaries of Hudson to be acquired by

the Town of Hudson. The second phase will address those parts of the settlement providing for assets located outside of Hudson to be acquired by the Pennichuck Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 62

[N.H.] Procedure — Scope of proceedings — Bifurcation of — To address sale of intramunicipal versus extramunicipal assets — Dispensation of water utility assets — Pursuant to settlement. p. 735.

2. PROCEDURE, § 8

[N.H.] Severance — Bifurcation of proceedings — To address sale of intramunicipal versus extramunicipal assets — Dispensation of water utility assets — Pursuant to settlement. p. 735.

BY THE COMMISSION:

ORDER

The Town of Hudson (Hudson) commenced the instant action by filing a Declaration of Taking against Consumers New Hampshire Water Company (Consumers) with the New Hampshire Public Utilities Commission (Commission) on July 11, 1996. The Parties and Staff exchanged discovery and filed testimony pursuant to a procedural schedule approved by the Commission by Order No. 22,286. As a result of settlement discussions between the primary parties, Hudson and Consumers presented a proposed settlement agreement to the Commission at a hearing on October 16, 1997.

The proposed settlement agreement includes, among other provisions, a sale of all New Hampshire water utility assets of Consumers to Hudson; the subsequent sale, with certain exceptions, of Consumers' utility assets outside Hudson to Pennichuck Corporation, and the contracted for operation of the Hudson water system by a newly formed Pennichuck Corporation subsidiary.

[1, 2] At the hearing on October 16, 1997, the Commission decided to separate its consideration of the settlement into two phases. The first phase consists of consideration of whether the sale of Consumers to Hudson comports with the requirements of RSA 38. The Commission deliberated the Phase 1 issues at its October 20, 1997, public meeting. A separate order will issue containing the results of those deliberations. Phase 2 consists of consideration of the proposed sale of the water assets outside Hudson, with the exception of certain water supply facilities in the town of Litchfield, to a subsidiary of Pennichuck Corporation.

The issues raised in Phase 2 include, but are not limited to, the following:

1. The managerial, technical, and financial capability of the proposed operator of the non-Hudson water system;

2. The nature of the new Pennichuck Corporation subsidiary, including its capital structure and management agreements;

3. Short-term and long-term rate impacts on customers;

4. Terms governing the transfer of water into, out of, and through Hudson by the Pennichuck Corporation subsidiary or others;

5. Water storage rights;

6. The effect of the transfer upon

Page 735

existing contracts between Consumers and both Manchester Water Works and the Town of Derry.

Staff and all parties, including Pennichuck Corporation, agreed to the following abbreviated procedural schedule for Phase 2:

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

Rolling Discovery	until November 5, 1997
Testimony by Staff & Intervenors	November 7, 1997
Technical Sessions	November 10 and November 12, 1997
Hearing	November 13, 1997 at 10:00 A.M.

Based upon the foregoing, it is hereby

ORDERED, that the above abbreviated procedural schedule is approved; and it is

FURTHER ORDERED, that Pennichuck Corporation is a mandatory party to the Phase 2 proceedings; and it is

FURTHER ORDERED, that Hudson shall notify all affected ratepayers, including Pennichuck ratepayers and Consumers ratepayers located outside of Hudson, by publishing a copy of this Order no later than October 23, 1997, in a newspaper of statewide circulation or of general circulation in that portion of the state in which operations are conducted, to be

documented by affidavit filed with the Commission on or before November 13, 1997; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.02, any party seeking to intervene in the proceeding should submit to the Commission an original and eight copies of a Petition to Intervene with copies sent to the Office of the Consumer Advocate on or before November 5, 1997, 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 and R.A. 541-A:32, I,(b).

By order of the Public Utilities Commission of New Hampshire this twentieth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Town of Hudson v. Consumers New Hampshire Water Co., DE 96-227, Order No. 22,286, 81 NH PUC 646, Aug. 26, 1996.

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NH.PUC*10/21/97*[97484]*82 NH PUC 736*EnergyNorth Natural Gas, Inc.

[Go to End of 97484]

82 NH PUC 736

Re EnergyNorth Natural Gas, Inc.

DR 97-132
Order No. 22,759

New Hampshire Public Utilities Commission

October 21, 1997

ORDER approving amended tariffs submitted by a natural gas local distribution company as to conservation charges associated with its "ENERGYWI$E" program, which revisions are deemed to comport with the requirements of Order No. 22,731 (82 NH PUC 685, *supra*). ENERGYWI$E is a demand-side management program targeted at residential and small commercial customers.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Residential and small commercial programs — "ENERGYWI$E" program — Associated conservation charges — Approval of amended tariffs — Local gas distribution company. p. 737.

2. GAS, § 7

[N.H.] Operations — Demand-side management plans — Residential and small commercial programs — "ENERGYWI$E" program

Page 736

— Associated conservation charges — Approval of amended tariffs — Local gas distribution company. p. 737.

3. RATES, § 380

[N.H.] Natural gas rate design — Special factors — Conservation charges — As to residential and small commercial demand-side management programs — Approval of amended tariffs — Local distribution company. p. 737.

BY THE COMMISSION:

ORDER

[1-3] In accordance with Order No. 22,731 (September 23, 1997) issued by the New Hampshire Public Utilities Commission (Commission) in this docket, the Commission approved a Settlement Agreement which provided that EnergyNorth Natural Gas, Inc.'s (ENGI) proposed Residential and Small Commercial Demand-Side Management (DSM) Program called ENERGYWI$E be effective for the period October 1, 1997 through September 30, 1998. The order also required ENGI to file amended tariff pages to reflect revised Conservation Charges which would be effective on November 1, 1997. On October 9, 1997, ENGI submitted revised Schedule 3 of the filing which details the calculation of the Conservation Charges, supporting workpapers and the amended tariff pages.

The revised Conservation Charges were necessitated by the following:

1) A reconciliation of Lost Net Revenues for the 1996/1997 Program Year.

2) A revision to the Lost Net Revenues for the 1997/1998 Program Year.

3) Updated estimates of the over/underrecoveries for the Residential and Commercial classes.

4) Updated sales forecasts based on ENGI's internal preliminary 1998 Fiscal Year budget.

5) An allowance for the estimated Performance Bonus earned for the 1996/1997 Program Year.

The Commission further ordered Commission Staff (Staff) to file a recommendation based on its review of the calculation of the Conservation Charges contained in ENGI's October 9, 1997 filing.

On October 16, 1997, Staff submitted a recommendation to the Commission stating that it had reviewed the October 9, 1997 filing and found that the Conservation Charges were revised consistent with Order No. 22,731. Staff made additional recommendations which included requiring ENGI to submit a true-up of the Performance Bonus earned for the 1996/1997 Program Year and to submit a revised Schedule 4 of the original filing to reflect a minor discrepancy noted during Staff's review.

After review of ENGI's October 9, 1997 filing and Staff's recommendation, we find that the revised Conservation Charges are consistent with the Settlement Agreement approved by the Commission in Order No. 22,731. Additionally, we believe Staff's additional recommendations requesting two additional submittals from ENGI will serve to provide an accurate and complete record.

Based upon the foregoing, it is hereby

ORDERED, that ENGI's Conservation Charges of $0.0088 per therm for the Residential class and $0.0001 per therm for the Small Commercial class are APPROVED effective November 1, 1997 on a bills-rendered basis; and it is

FURTHER ORDERED, that ENGI shall submit a true-up of the Performance Bonus earned for the 1996/1997 Program Year. The submittal shall include workpapers supporting the actual costs incurred and the actual benefits earned during the 1996/1997 Program Year associated with the ENERGYWI$E Program. Also, ENGI's calculation of the free-ridership shall also be submitted. Separate Performance Bonuses shall be calculated for the Residential and Small Commercial classes and be shown on ENGI's monthly reports as earned on October

1, 1997. The true-up shall be submitted no later than January 1, 1998; and it is

FURTHER ORDERED, that ENGI shall submit a revised Schedule 4 to correct the estimated savings for the Residential class to be 128,549 therms which is supported by original Schedule 3 and workpapers submitted by ENGI on October 9, 1997. The 50% threshold for the Residential class would then be revised to be 64,274 therms; and it is

FURTHER ORDERED, that ENGI shall file compliance tariff pages within ten days of the date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-132, Order No. 22,731, 82 NH PUC 685, Sept. 23, 1997.

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NH.PUC*10/21/97*[97485]*82 NH PUC 738*GTE Communications Corporation

[Go to End of 97485]

82 NH PUC 738

Re GTE Communications Corporation

DE 97-200
Order No. 22,760

New Hampshire Public Utilities Commission

October 21, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 739.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 739.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 739.

BY THE COMMISSION:

ORDER

On September 26, 1997, GTE Communications Corporation (GTE) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources,

managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed GTE's petition for compliance with these standards. Staff reports that GTE has provided all the information required by Puc 1304.02. The information provided supports GTE's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of GTE as a New Hampshire CLEC.

GTE has provided a sworn statement and request for waiver of the surety bond requirement

in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that GTE has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of GTE in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because GTE has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, GTE agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, GTE seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that GTE's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 October 28, 1997 and to be documented by affidavit filed with this office on or before November 4, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 11, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

82 NH PUC 740

Re Granite State Electric Company

DF 97-202
Order No. 22,761

New Hampshire Public Utilities Commission

October 21, 1997

ORDER authorizing an electric utility to issue up to $5 million in long-term notes at an interest rate not to exceed 9%, so as to refinance other debt to take advantage of lower interest rates.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Refinancing of short-term debt — Through issuance of long-term debt — To take advantage of lower interest rates — Electric utility. p. 741.

2. SECURITY ISSUES, § 107

[N.H.] Sale price and interest rate — Issuance of long-term notes — By which to refinance short-term debt — Maximum acceptable interest rate of 9% — Electric utility. p. 741.

BY THE COMMISSION:

ORDER

I. PROCEDURAL BACKGROUND

On September 26, 1997, Granite State Electric Company (GSEC) filed a petition seeking authorization to issue and sell one or more long-term note(s) up to $5 million through December 31, 1998 at interest rates not to exceed 10%. In its petition, GSEC provided testimony and exhibits of Roger W. Pageau, Manager of Banking and Cash Management within the Corporate

Finance Department of New England Power Service Company (NEPSCO). NEPSCO provides engineering, construction, and financial services to the New England Electric System (NEES) companies, including GSEC.

II. GSEC FILING

GSEC requests authority to issue and sell, on or before December 31, 1998, one or more long-term notes (the Notes) in an aggregate principal amount not to exceed $5 million. Each Note will be issued pursuant to a note agreement, the specific terms of which will be negotiated with a purchaser. GSEC expects that the Notes will mature in a period not to exceed 30 years and will bear interest at a fixed rate not to exceed 10%. As GSEC did not know when it would actually seek the financing it could not provide the actual interest rate it expected to obtain for its financing.

GSEC proposes that the Notes may be redeemable at any time at its, upon reasonable notice, at the then outstanding principal amount plus accrued interest and redemption premium. GSEC's currently outstanding notes are noncallable or contain provisions restricting the ability of GSEC to call them.

Prior to soliciting bids from potential investors for a note issue, GSEC will file a copy of the Private Placement Memorandum with the Commission. Within a 5-day period, the Commission will then review the terms and conditions to determine whether the financing is appropriate and in the public good.

The proceeds from the sale of the proposed Notes will be applied by GSEC to the payment of short-term borrowing incurred for, or to the cost of, or to the reimbursement of the treasury for capitalized additions and improvements to the plant and property of GSEC, or other capitalized expenditures of GSEC.

GSEC's proposal satisfies the interest coverage requirements of its outstanding long-term notes.

III. STAFF RECOMMENDATION

Staff recommends two changes to GSEC's proposal. First, Staff recommends that the

Commission reduce the interest from a maximum of 10% to a maximum of 9% for the proposed time period October 1997 through December 31, 1998. Staff makes this recommendation, in part, on information contained in the filing wherein GSEC notes that interest rates currently are relatively low. The testimony of Mr. Pageau (Page 5, Lines 12-19) states that interest rates, as of September 11, 1997, are in the range of 7.25% to 7.80%. This compares to long-term notes currently held by GSEC which are in the range of 7.37% to 9.44%. Also, Staff

notes that prime rates are well below 10%, currently standing at 8.5%. Based on the above, Staff believes that an interest rate not to exceed a maximum of 9% is reasonable. GSEC indicated to Staff that, although its proposal includes a maximum interest rate of 10%, it will not oppose Staff recommendation of 9%.

Second, Staff recommends that, in addition to filing a copy of the Private Placement Memorandum, GSEC should file a copy of the final executed Note. Staff believes that this is necessary in order for the Commission to verify that the terms and conditions of the final executed Note are substantially similar to those contained in the Private Placement Memorandum. On October 13, 1997, in response to Staff data requests, GSEC agreed to provide a copy of the final executed note agreement.

Staff supports GSEC's proposal to try to include a callable feature in the Notes. By making the Notes callable, GSEC would have the opportunity to refinance and lock in more favorable rates, if possible, in the future. Staff recommends that GSEC should advise the Commission if it decides to exercise this callable feature in the future.

Finally, Staff notes that based on its review of the interest coverage requirements, the Company meets its interest and long-term debt requirements of its three outstanding long-term notes.

IV. COMMISSION ANALYSIS

[1, 2] Based on the above, we believe that the ceiling interest rate should be lowered from 10% to 9%. The 9% maximum appears to be reasonable in light of the current market rates. Further, based on the above, it appears that if GSEC can lock in long-term rates as soon as possible, it can take advantage of the current favorable market conditions.

The Commission believes that it is in the public interest that, prior to soliciting bids from potential investors for a note issue, the Company should 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 continues to be appropriate and in the public good.

The Commission will require GSEC to file a copy of the final executed Note or Notes for review in order to ensure that the terms and conditions are substantially similar to those contained in the Private Placement Memorandum.

Also, the Commission believes that, if GSEC is successful in obtaining a callable feature and decides to exercise this feature, any redemption of the Notes should be reported to the Commission. Any subsequent replacement notes will be subject to Commission rules on Issuance of Securities.

Based on our review of the filing, we find that the petition is in the public good and should be approved.

Based upon the foregoing, it is hereby

ORDERED, that GSEC's petition for authorization to issue and sell one or more long-term

Notes in the amount of $5 million over the October 1997 through December 31, 1998 period is approved; and it is

FURTHER ORDERED, that GSEC may seek the proposed financing at a maximum interest rate not to exceed 9%; and it is

FURTHER ORDERED, that GSEC shall file its Private Placement Memorandum, for the Commission to review within a 5-day period, the terms and conditions to determine if the financing continues to be appropriate and in the public good, prior to the solicitation of bids for any issuance of such financing; and it is

FURTHER ORDERED, that if GSEC exercises the callable feature, it shall advise this Commission and shall file its petition to issue new securities; and it is

FURTHER ORDERED, that GSEC shall file a Disposition of Proceeds Report on January 1st and July 1st of each year.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

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NH.PUC*10/21/97*[97487]*82 NH PUC 742*Atlas Communications LTD. dba ACS Communications

[Go to End of 97487]

82 NH PUC 742

Re Atlas Communications LTD. dba ACS Communications

DE 97-024
Order No. 22,762

New Hampshire Public Utilities Commission

October 21, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 743.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 743.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier —
Mirroring of incumbent carrier's rates. p. 743.

BY THE COMMISSION:

ORDER

On February 19, 1997, Atlas Communications LTD. d/b/a ACS Communications (ACS) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in R.A. 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of R.A. 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed the ACS petition for compliance with these standards. Staff reports that ACS has provided all the information required by Puc 1304.02. The information provided supports ACS's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of ACS as a New Hampshire CLEC.

ACS has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not

require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that ACS has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of ACS in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by R.A. 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because ACS has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, ACS agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, ACS seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ACS's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 October 28, 1997 and to be documented by affidavit filed with this office on or before November 4, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 11, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1997, 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, ten days prior to commencing service, a

rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

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NH.PUC*10/21/97*[97488]*82 NH PUC 743*LDM Systems Inc.

[Go to End of 97488]

82 NH PUC 743

Re LDM Systems Inc.

DE 97-039
Order No. 22,763

New Hampshire Public Utilities Commission

October 21, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meet-

ing of financial, technical, and managerial criteria. p. 744.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 744.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 744.

BY THE COMMISSION:

ORDER

On February 28, 1997, LDM Systems Inc. (LDM) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed LDM's petition for compliance with these standards. Staff reports that LDM has provided all the information required by Puc 1304.02. The information provided supports LDM's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of LDM as a New Hampshire CLEC.

LDM has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that LDM has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of LDM in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because LDM has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, LDM agreed to concur with Bell Atlantic's present and future rates

for intraLATA switched access or to charge a lower rate. If, at any point, LDM seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that LDM's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic,

is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 October 28, 1997 and to be documented by affidavit filed with this office on or before November 4, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 11, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

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NH.PUC*10/21/97*[97489]*82 NH PUC 745*Easton Telecom Services Inc.

[Go to End of 97489]

DE 97-040
Order No. 22,764

New Hampshire Public Utilities Commission

October 21, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 746.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 746.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 746.

BY THE COMMISSION:

ORDER

On March 7, 1997, Easton Telecom Services Inc. (ETS) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted

N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers

(CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed ETS's petition for compliance with these standards. Staff reports that ETS has provided all the information required by Puc 1304.02. The information provided supports ETS's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of ETS as a New Hampshire CLEC.

ETS has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that ETS has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of ETS in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because ETS has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, ETS agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, ETS seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that ETS's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; 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 October 28, 1997 and to be documented by affidavit filed with this office on or before November 4, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 11, 1997; 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 18, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 20, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-first day of October, 1997.

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NH.PUC*10/22/97*[97490]*82 NH PUC 747*Contoocook Valley Telephone Company

[Go to End of 97490]

82 NH PUC 747

Re Contoocook Valley Telephone Company

DS 97-216
Order No. 22,765

New Hampshire Public Utilities Commission

October 22, 1997

ORDER approving a local exchange telephone carrier's proposal to reduce its intrastate switched access rates by 70%, thereby decreasing intrastate revenue by $1.565 million.

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1. RATES, § 572

[N.H.] Telephone rate design — Switching service — Intrastate switched access rates —

Reduction of 70% in — Factors affecting approval — Resolution of overearnings — Promotion of competition and market entry — Local exchange carrier. p. 747.

BY THE COMMISSION:

ORDER

[1] On October 2, 1997, Contoocook Valley Telephone Company (CVT), filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to reduce intrastate switched access rates. The proposed access rates include rate element reductions in Originating and Terminating Carrier Common Line access rate elements; Originating and Terminating Local Transport; and Originating and Terminating End Office Local Switching. CVT's proposed intrastate access rate of $0.052082 represents a 70% reduction from CVT's current rate.

This filing results in an intrastate revenue reduction of $1,565,085 on an annualized basis and is the result of Staff's investigation of CVT's earnings level. Staff analysis indicated that the source of CVT's over earning was its intrastate access revenues.

We find that the requested change will promote competition in CVT's telecommunications market and is in the public good.

Although we do not consider it appropriate to mandate a reduction in toll prices commensurate with the reduction in access charges, we expect that all toll providers seeking to do business with CVT's customers will reflect the reduction in the cost of providing service when pricing intraLATA toll.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the following pages of CVT's tariff, NHPUC 12 are approved for effect as filed:

Section 3 3rd Revised Page 9

Section 6 4th Revised Page 81

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 October 29, 1997 and to be documented by affidavit filed with this office on or before November 5, 1997; 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 12, 1997; 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 19, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective November 21, 1997, 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 November 21, 1997, 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 November, 1997.

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NH.PUC*10/24/97*[97491]*82 NH PUC 748*Statewide Electric Utility Restructuring Plan

[Go to End of 97491]

82 NH PUC 748

Re Statewide Electric Utility Restructuring Plan

DR 96-150
Order No. 22,766

New Hampshire Public Utilities Commission

October 24, 1997

ORDER further modifying the procedural schedule as to rehearing proceedings vis-a-vis Order No. 22,512 (82 NH PUC 101, *supra*), which pertained to the commission's electric industry restructuring plan. The revised schedule is deemed necessary due to enlargement of the scope of issues being addressed at rehearing.

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1. ELECTRICITY, § 1

[N.H.] Industry restructuring plan — Legal claims and challenges — Requests for rehearing and/or clarification — Further modification of procedural schedule — Due to enlargement of

scope of rehearing. p. 749.

2. MONOPOLY AND COMPETITION, § 54

[N.H.] Electric service — Industry restructuring plan — Legal claims and challenges — Requests for rehearing and/or clarification — Further modification of procedural schedule — Due to enlargement of scope of rehearing. p. 749.

3. EXPENSES, § 120

[N.H.] Electric utilities — Stranded costs — Associated with industry restructuring plan — Legal claims and challenges — Requests for rehearing and/or clarification — Further modification of procedural schedule — Due to enlargement of scope of rehearing — Consideration of alternative rate-setting methods — Interim stranded cost charges. p. 749.

BY THE COMMISSION:

ORDER

This order memorializes a decision by the New Hampshire Public Utilities Commission (Commission) to modify the rehearing schedule established in Order No. 22,728 (September 22, 1997) relative to the establishment of interim stranded cost charges for Public Service Company Of New Hampshire (PSNH). The decision was announced by the Commission during a hearing in this matter on October 22, 1997.

By way of brief background, in Order No. 22,548 (April 7, 1997) the Commission identified several issues raised in rehearing requests relative to the implications of setting PSNH's interim stranded cost charges using the methodology adopted in the Final Plan (Order No. 22,514). The Commission granted rehearing with respect to two specific issues articulated in Order 22,548. Hearings on those issues were originally scheduled to take place during May, 1997; however, the Commission suspended the rehearing process at the request of PSNH and other parties who sought to participate in a confidential mediation process under the supervision of the United States District Court for the District Of New Hampshire.[1(138)]

At the beginning of the October 22, 1997 hearing, intervenor, Cabletron Systems, Inc. (Cabletron), offered an oral motion to postpone the hearings so that the Commission could modify and expand the scope of the hearings. Specifically, Cabletron and others asked the Commission to consider new alternative proposals for setting PSNH's interim stranded cost charges; such proposals were advanced by

Cabletron and others in testimony filed on September 29, 1997. The following parties concurred with Cabletron's request: Office of Consumer Advocate, Retail Merchants Association, Governor's Office of Energy and Community Services, Enron Trade & Resources, Inc., and PSNH. The City of Manchester objected to Cabletron's Motion.

[1-3] During the October 22, 1997 hearing we announced our decision to re-schedule the hearings relative to the establishment of PSNH's interim stranded cost charges so that we could expand the scope of the proceeding and provide an appropriate corresponding notice. Those hearings are now scheduled for November 20, 21, and 24-26, 1997. Consistent with the decision announced yesterday, we will expand the original scope of the hearings to encompass the alternative rate-setting methodologies proposed by the intervenors in their "rehearing testimony" filed on September 29, 1997. Specifically, we will consider all such proposals and will make a determination as a result of the aforementioned hearings whether PSNH's interim stranded cost charges should be set using an alternative approach. If we so conclude, we will then set the charges utilizing the approach that we conclude is appropriate. In other words, it is our intent to determine the methodology and the actual interim stranded cost charges for PSNH as a result of the upcoming hearings.

We also direct PSNH to specifically respond to each of the proposals advanced by the intervenors in their most recent testimony and to answer the following questions:

1. What specific adjustments could be made to the current Commission order establishing PSNH's interim stranded cost charges to avoid the accounting problems identified by PSNH? Specifically, how can the Commission modify its order so that the Company avoids the need to write off regulatory assets based on the wording of FAS 71?

2. What are the accounting and financial implications of each such proposal? PSNH is directed to specifically identify any adverse consequences from an accounting or financial standpoint with respect to the proposals advanced by the intervenors.

3. How does each proposal comport with PSNH's view as to the obligations of the State and/or this Commission under the Rate Agreement and what specific adjustments, if any, would need to be made to each such proposal so that it is consistent with the Rate Agreement?

In addition, PSNH is directed to file any new proposal which it has to the extent that it differs from the proposal filed earlier in this proceeding. PSNH is also directed to provide an update to the FAS 71 testimony specifically to address the Emerging Issues Task Force's most recent position on FAS 71.

PSNH shall provide the foregoing information through written testimony which shall be filed with the Commission and served upon the intervenors who have filed testimony in the rehearing on or before November 5, 1997. Because PSNH has had the opportunity to evaluate such proposals since they were filed on September 29, 1997, we believe the aforementioned deadline is reasonable. The intervenors shall be afforded the opportunity to submit data requests to PSNH with respect to PSNH's testimony by November 10, 1997; PSNH's responses to such requests shall be served upon the parties no later than November 17, 1997. We plan to keep to the same

order of witnesses for these hearings as outlined in the letter from the Commission dated October 20, 1997, with the exception of Mr. Little, who will testify on November 21st, and Ms. Brown, who will testify before November 26.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule in this matter is modified and amended as set forth herein.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 1997.

FOOTNOTES

[1]See, Orders No. 22,599 (May 22, 1997) 22,664 (July 21, 1997) and 22,681 (August 12, 1997) for a complete procedural history of the rehearing schedule

that was suspended as a result of the requests of PSNH, the State of New Hampshire and others.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,514, 82 NH PUC 122, Feb. 28, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,548, 82 NH PUC 325, Apr. 7, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,599, 82 NH PUC 420, May 22, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,664, 82 NH PUC 552, July 21, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,681, 82 NH PUC 592, Aug. 12, 1997. [N.H.] Re Statewide Electric Utility Restructuring Plan, DR 96-150, Order No. 22,728, 82 NH PUC 680, Sept. 22, 1997.

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82 NH PUC 750

Re New England Telephone and Telegraph Company dba Bell Atlantic

DE 97-171
Order No. 22,767

New Hampshire Public Utilities Commission

October 27, 1997

ORDER requiring that new cost studies be conducted and analyzed as part of a local exchange telephone carrier's filing of a statement of generally available terms and conditions of service.

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1. TELEPHONES, § 3

[N.H.] Operating practices — Filing of statement of generally available terms and conditions — Necessity of associated cost studies — Local exchange carrier. p. 751.

2. SERVICE, § 151

[N.H.] Terms and conditions of service — Local exchange telephone carrier — Filing of statement of generally available terms and conditions — Necessity of associated cost studies. p. 751.

3. RATES, § 143

[N.H.] Factors affecting reasonableness — Cost of service — Requirements for cost studies — Local exchange telephone carrier — Pertinent to its filing of statement of generally available terms and conditions of service. p. 751.

BY THE COMMISSION:

ORDER

In July, 1997, New England Telephone and Telegraph Company, d/b/a Bell Atlantic - New Hampshire (formerly d/b/a NYNEX, hereinafter referred to as Bell Atlantic) filed for approval by the New Hampshire Public Utilities Commission (Commission) a Statement of Generally Available Terms (SGAT) as part of docket DE 97-013. By Order No. 22,692, the Commission transferred the SGAT portion of docket DE 97-013 to this docket, DE 97-171, and held a

prehearing conference on September 9, 1997 to establish a procedural schedule.

Bell Atlantic, MCI, AT&T Communications of New Hampshire, Inc.(AT&T), Vanguard Cellular, New England Cable Television Association, Inc. (NECTA), VITTS Corporation, the Office of the Consumer Advocate (OCA), and the Commission Staff (Staff) participated in the prehearing conference. Sprint Communications Company, a full intervenor, did not attend. On September 9, 1997, RCN Telecom Services Inc. filed a written Motion for Leave to Intervene, to which no objection has been filed.

At the prehearing conference, the parties

did not reach agreement regarding a procedural schedule due to differences about the necessary scope of the investigation into costs. Staff contended that proper review of Bell Atlantic's SGAT requires examination of a comprehensive cost study of the recurring, non-recurring, and on-set costs, rather than the document filed by Bell Atlantic which is based upon figures determined in Docket No. DE 96-252, the arbitrated interconnection agreement between AT&T and Bell Atlantic. Staff pointed out that the figures used for purposes of the interconnection agreement were not subject to rigorous review. Staff argued that a comprehensive cost study would be appropriate for use in other upcoming dockets as well, particularly universal service.

Bell Atlantic contended that the cost studies submitted, with the addition of a soon-to-be-filed cost study regarding the one-time onset costs, are sufficient for review of the SGAT. Bell Atlantic stated that the Commission's needs for federal universal service studies will not be served by ordering a comprehensive cost study in this docket because the company cannot complete a comprehensive cost study by February 6, 1998, the deadline by which the Commission must submit a cost model for federal universal service fund allocations. Further, Bell Atlantic argued that a comprehensive cost study includes elements not required for SGAT review, and a comprehensive study will therefore delay completion of the SGAT docket unnecessarily and, in turn, delay the beginning of competition in New Hampshire.

MCI, Vanguard, and AT&T supported Staff's proposal. Vanguard pointed out that even the limited review proposed by Bell Atlantic would entail a procedural schedule extending beyond the February 6th date. AT&T and MCI pointed out that non-cost issues also arise, particularly operational readiness, which must be addressed in the SGAT proceeding.

VITTS argued against any delay. VITTS took the position that the SGAT as filed is inadequate; therefore, the Commission should rule, as quickly as possible, that the SGAT fails. In addition, the interconnection agreement between VITTS and Bell Atlantic will change to match an effective SGAT. The filed SGAT will have the effect of increasing prices for VITTS.

[1-3] Having considered the arguments presented, we find that a more comprehensive cost study than the one Bell Atlantic has filed is necessary for adequate review of the SGAT. We will order the parties and Staff to submit forthwith a proposed procedural schedule by which we can

complete our SGAT review and issue a ruling before August 1, 1998. The procedural schedule must encompass completion of the cost study, analysis by the Commission, and hearings on all issues. We recognize the demands placed on Bell Atlantic's resources. However, the onset costs portion filed October 2, 1997 is complete; the recurring and non- recurring costs were prepared last year for the DE 96-252 arbitration; and Bell Atlantic is currently engaged in similar cases in Maine, Massachusetts, Vermont, and Rhode Island. Given the foregoing, Bell Atlantic should be capable of filing its cost study much sooner than it suggested at the prehearing conference. Accordingly, we will direct Bell Atlantic to work with Staff and the other parties to submit to the Commission on or before November 21, 1997 a schedule that will provide for the submission of a cost of service study and the completion of this docket well in advance of August 1, 1998.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Leave to Intervene filed by RCN Telecom Services, Inc. is granted, and it is

FURTHER ORDERED, that the parties and Staff shall submit a proposed procedural schedule on or before November 21, 1997.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-013, Order No. 22,692, 82 NH PUC 618, Aug. 25, 1997.

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NH.PUC*10/27/97*[97493]*82 NH PUC 752*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97493]

82 NH PUC 752

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-210
Order No. 22,768

New Hampshire Public Utilities Commission

October 27, 1997

ORDER conditionally approving a special rate contract as between a local exchange telephone carrier and Vitts Corporation for the provision of high-speed digital data transmission service.

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1. RATES, § 553

[N.H.] Telephone rate design — High-speed digital data transmission service — Special rate contract — Factors — Rates as exceeding price floor — Existence of competitive providers — Conditional approval. p. 752.

2. SERVICE, § 449

[N.H.] Telephone — High-speed digital data transmission service — Special service contract — Factors — Rates as exceeding price floor — Existence of competitive providers — Conditional approval. p. 752.

3. RATES, § 553

[N.H.] Telephone rate design — High-speed digital data transmission service — Special rate contract — Propriety of unconditional approval — Separate opinion. p. 753.

4. SERVICE, § 449

[N.H.] Telephone — High-speed digital data transmission service — Special service contract — Propriety of unconditional approval — Separate opinion. p. 753.

BY THE COMMISSION:

ORDER

On October 1, 1997, New England Telephone and Telegraph Company now d/b/a Bell Atlantic, formerly d/b/a NYNEX and hereinafter referred to as Bell Atlantic, filed with the New Hampshire Public Utilities Commission (Commission) redacted and unredacted copies of a special contract for 1.544MB services between Bell Atlantic and Vitts Corporation (Vitts) pursuant to RSA 378:18. In support of its filing, Bell Atlantic filed a price floor analysis with information detailing mileage charges associated with service paths of various lengths.

The special contract was accompanied by a Motion for Protective Treatment to exempt

portions of the special contract and supporting materials from public disclosure. The Motion for Protective Treatment will be addressed in a separate order.

As directed in DR 97-035 by Order No. 22,545, Bell Atlantic has published notice of this special contract filing with a 14 day period for comments which ended on October 14, 1997. No comments have been received by the Commission regarding this filing.

In its filing, Bell Atlantic explained that several intraLATA carriers had offered to provide 1.544MB service to Vitts at rates significantly lower than Bell Atlantic's tariffed optional payment plans (OPP). Bell Atlantic responded to the competitive challenge by offering Vitts a special contract and was selected as the provider on the basis of their contract proposal.

[1, 2] Staff reports that 1.544MB services are available to Vitts from several providers. In Staff's opinion, the discounted prices provided to Vitts by this contract will allow Vitts to compete with Bell Atlantic in the retail sale of 1.544MB and associated services. Staff has reviewed the analysis submitted by Bell Atlantic and noted that they employed a price floor based on the costs approved in DR 94-108, which restructured 1.544MB service. Applying this methodology, Bell Atlantic will receive revenue for each 1.544MB service in excess of the price floor. Based on the analysis and the actual

special contract pricing, Staff recommends the Commission approve the proposed special contract pursuant to RSA 378:18-b.

Based on Staff's recommendation, we find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the Commission may exercise its authority to revisit the terms and conditions of this contract depending on the outcome of DE 96-420.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Special Contract with Vitts is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by Bell Atlantic of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that any revision to the commitment amounts and/or rates requires prior Commission approval; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed during the life of Special Contract No. 97-14, 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 Vitts in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1997.

SEPARATE OPINION OF

COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DE 96- 420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we consider the "Fresh Look" docket. The schedule in docket DE 96-420 is intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we consider these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

October 27, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*10/27/97*[97494]*82 NH PUC 754*Public Service Company of New Hampshire

[Go to End of 97494]

82 NH PUC 754

Re Public Service Company of New Hampshire

DR 97-014
Order No. 22,769

New Hampshire Public Utilities Commission

October 27, 1997

ORDER consolidating an electric utility's summer and winter period fuel and purchased power adjustment clause (FPPAC) proceedings, adopting an accelerated procedural schedule for the consolidated docket, and granting protective treatment of certain operating data thereto. However, the commission denies the utility's request to implement an interim FPPAC rate change under a previously approved trigger mechanism since a permanent decision is to be made within five weeks.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause (FPPAC) rates — Consolidation of summer and winter FPPAC dockets — Accelerated procedural schedule — Consequent denial of interim FPPAC rate change under trigger mechanism — Electric utility. p. 755.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Of plant operating data — In fuel and purchased power adjustment clause proceeding — Balancing test in favor of nondisclosure — Necessity of showing need for protection — Electric utility. p. 755.

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Dean, Rice and Howard by Mark W. Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; Jacqueline Lake Killgore, Esq. for Public Utilities Policy Institute; Robert R. Cushing for Campaign for Ratepayers Rights; Morrison and Foerster by Andrew D. Weissman, Esq. for Cabletron Systems, Inc.; James T. Rodier, Esq. for Freedom Energy Company; F. Anne Ross, Esq. for Retail Merchants Association of New Hampshire; New Hampshire Department of Justice by Martin P. Honigberg, Senior Assistant Attorney General for the Governor's Office of Energy and Community Service; 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

On March 14, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period from June 1, 1997 through November 30, 1997, along with supporting testimony and exhibits. PSNH proposed a change in the FPPAC rate from a credit of $0.00848 (8.48 mills) per kWh to a charge of $0.00118 (1.18 mills) per kWh, an increase of $0.00966 (9.66 mills) per kWh.

On March 24, 1997, the Commission issued Order No. 22,529 which, among other things, granted PSNH's March 4, 1997 motion to defer consideration of certain nuclear outages and recovery of replacement power costs until a future FPPAC proceeding.

On May 2, 1997, the Office of Consumer Advocate (OCA) filed direct testimony of Kenneth E. Traum. Commission Staff (Staff), on May 2, 1997, filed joint testimony of Chester A. Kokoszka, James R. Thyng and Scott J. Joyce

and on May 7, 1997, filed testimony of Michael D. Cannata, Jr. and Eugene F. Sullivan, Jr.

On May 9, 1997, PSNH filed a motion to suspend the proceeding and to impose a new FPPAC rate, effective June 1, 1997, contingent upon the Commission granting PSNH's motion to suspend three other dockets: DR 96-150 (Electric Utility Restructuring); DR 96-424 (Petition of Hannaford Brothers Company); and DR 97-059 (PSNH Base Rate Case). PSNH requested a temporary, reconcilable FPPAC credit of $0.00427 (4.27 mills) per kWh on May 13, 1997, effective June 1, 1997 if all four dockets were suspended.

The Commission, by Order No. 22,604 (May 27, 1997), granted PSNH's request for suspension of these four dockets until July 2, 1997 to facilitate a negotiated resolution of PSNH's legal claims in DR 96-150. The Commission also instituted the FPPAC credit of $0.00481 per kWh, effective June 1, 1997. The rate is reconcilable to that date when the issues raised in this proceeding are addressed. Deferred for a future proceeding was the request of the OCA to examine the sale of Seabrook Unit II steam generators and the sale's relationship to the Acquisition Premium, stranded cost recovery and future ratemaking.

Though the rest of the proceeding was suspended, the Commission ordered PSNH to submit testimony for presentation at a hearing on June 9, 1997 regarding the potential for widespread capacity and energy problems during the summer period. PSNH, on May 3, 1997, submitted testimony of James R. Shuckerow and Paul Shortley regarding summer capacity and energy problems. The Commission heard evidence on this issue on June 9 and 10, 1997.

The Commission, by Order No. 22,665 (July 21, 1997), granted PSNH's motion for continued stay of this docket to August 5, 1997 and granted PSNH's request to establish the current FPPAC rate, which is a credit of $0.00481 per kWh, on a temporary basis, effective June 1, 1997.

On August 1, 1997, PSNH filed a further motion to continue the suspension of the docket beyond August 5, 1997. The Commission heard evidence on August 4, 1997 regarding the status of the mediation and granted further suspension until September 2, 1997. It also scheduled a prehearing conference for September 11, 1997 to develop a new procedural schedule, as the mediation process would have concluded by that point, pursuant to Federal Court order.

Over the long course of this docket, the Commission granted intervention to the following: New Hampshire Electric Cooperative, Inc., Campaign for Ratepayers Rights, Retail Merchants Association of New Hampshire, Public Utilities Policy Institute, Freedom Energy Company, Cabletron Systems, Inc., and the Governor's Office of Energy and Community Services. The OCA is a statutory party.

II. TRIGGER MECHANISM RECOVERY

A. *Positions of the Parties and Staff*

PSNH, on September 10, 1997, filed a request to increase the FPPAC rate, effective October 1, 1997, pursuant to the Trigger Mechanism established by the Commission in Order No. 20,794 (March 23, 1993). PSNH stated it anticipated an underrecovery of approximately $15 million as of December 1, 1997. Increasing the FPPAC rate from a credit of $0.00481 per kWh to a charge of $0.0 would generate $5 million, thereby reducing to $10 million its anticipated December 1, 1997 underrecovery.

A number of parties and Staff opposed the request for a separate rate adjustment under the trigger mechanism on October 1, 1997 when the full FPPAC rate is due to be set by December 1, 1997. In addition, NHEC argued that PSNH was not entitled to a hearing on the trigger filing. OCA asserted that PSNH should not be afforded the benefit of a trigger mechanism rate increase

when issues of importance to the OCA, such as sale of the steam generators from Seabrook Unit II, had been deferred by the Commission for future consideration.

B. *Commission Analysis*

[1] Having reviewed the evidence, we conclude that PSNH is not necessarily entitled to an increase by operation of the trigger mechanism created in 1993. The trigger mechanism allows for, but does not automatically grant, a rate

increase under certain circumstances. At the time of the trigger mechanism filing, there were four proceedings that would affect PSNH: PSNH's temporary rate petition, PSNH's base rate increase petition, the June through November, 1997 FPPAC period proceeding and the December through May, 1998 FPPAC period proceeding. The potential for rates moving up and down in a short period of time, therefore, was enormous.

As we indicated at the September 10, 1997 prehearing conference, we see no merit in multiple proceedings, occurring simultaneously, affecting the same rates. We will consolidate matters to the extent appropriate to conserve resources and avoid unnecessary rate instability. We will, therefore, consolidate the two FPPAC periods into one FPPAC proceeding, for rates to be set by December 1, 1997. We will not approve the trigger mechanism or set it for hearing, instead allowing the adjustment PSNH seeks to be heard as part of the full FPPAC proceeding. In addition, since the hearing on the trigger mechanism, in PSNH's temporary rate proceeding, DE 97-059, we established current rates as temporary rates, effective July 1, 1997 and lowered rates, also on a temporary basis, effective for bills rendered on or after December 1, 1997. The timing of the rate reduction was designed, in part, to coincide with any change in the FPPAC rate.

III. PROCEDURAL SCHEDULE

PSNH subsequently submitted a proposed procedural schedule, agreed upon by the Parties and Staff, which the Commission approved on October 7, 1997. The schedule is as follows:

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

PSNH testimony	September 16, 1997
Technical Session, majority of data requests given orally	September 29, 1997
Staff faxes questions	

from Technical Session	September 30, 1997
Staff, Intervenors, OCA fax corrected data requests	October 1, 1997
Staff, Intervenors, OCA fax remaining data requests	October 2, 1997
PSNH notify of problematic data requests	October 3, 1997
Responses to data requests	October 14, 1997
Technical Session as needed	October 20, 1997
Responses to questions raised at Technical Session	October 24, 1997
Updated Exhibits	October 28, 1997
Staff, Intervenor, OCA testimony faxed	November 3, 1997
Rebuttal testimony faxed	November 7, 1997
Statement of resolved and contested issues filed	November 7, 1997
Hearings on the merits	November 14, 1997 9:00 November 17, 1997 1:30 November 18, 1997 9:00 November 19, 1997 9:00
Last transcript delivered	November 20, 1997
Briefs filed	November 24, 1997
Commission decision	December 1, 1997

IV. REQUEST FOR PROTECTIVE ORDER

A. *PSNH Motion*

On October 14, 1997, PSNH filed a Motion for Protective Order regarding responses to two data responses propounded by Staff. Data request Staff-035 asks for a summary of revenues related to capacity sales transactions, broken down by month and by individual components. PSNH argues that though some of this data is contained in publicly available reports filed with the Federal Energy Regulatory Commission, it is not reported in the

manner in which Staff requests. To break it out as Staff requests would be of benefit to future wholesale and retail customers when negotiating supply arrangements with Northeast Utilities (NU) system companies and, therefore, would put the NU companies at a competitive

disadvantage.

Data Request Staff-036 asks for operations and maintenance figures for all fossil fuel units. PSNH asserts that this information would reveal data that would be of use in the event of a competitive sale of its fossil units. In order to maximize the value of these generation assets, if they are to be sold, PSNH argues, this information should be kept confidential.

Neither Staff nor any intervenor responded to the Motion for Protective Order.

B. *Commission Analysis*

[2] We have reviewed the Motion for Protective Order and conclude that the materials for which PSNH seeks protection fall within the standards of N.H. Admin. Rules, Puc 204.08(b)(4)b. and RSA 91-A:5,IV regarding exemption from disclosure to the public. Under the balancing test we have applied in prior cases, *e.g., Re New England Telephone and Telegraph Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to PSNH of non-disclosure in this case outweigh the benefits to the public of disclosure.

We note, however, that our ability to determine whether this information should be protected is based as much on our knowledge of the types of information at stake as it is on the arguments and facts alleged in PSNH's Motion. PSNH has failed to do more than assert the need for protection in a cursory fashion. We will give PSNH the benefit of the doubt in this case, given the shortened time frame allowed for discovery during FPPAC proceedings, but will put PSNH and all others who routinely practice before the Commission on notice that motions for protective order must follow the standards of our administrative rules and make a showing as to why protection is needed, rather than merely
alleging that protection is appropriate and leaving us to decipher which rule provision, if any, is pertinent.

Based upon the foregoing, it is hereby

ORDERED, that the June through November, 1997 and December through May, 1998 FPPAC periods are hereby consolidated for single hearings in November, 1997; and it is

FURTHER ORDERED, that the procedural schedule delineated herein in APPROVED; and it is

FURTHER ORDERED, that PSNH's request for a trigger mechanism increase in the FPPAC rate, effective October 1, 1997 is DENIED; and it is

FURTHER ORDERED, that PSNH's motion for protective order is GRANTED.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 92-050, DR 92-165, Order No. 20,794, 78 NH PUC 149, Mar. 23, 1993. [N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,529, 82 NH PUC 286, Mar. 24, 1997. [N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,604, 82 NH PUC 432, May 27, 1997. [N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,665, 82 NH PUC 554, July 21, 1997.

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NH.PUC*10/28/97*[97495]*82 NH PUC 758*Hampstead Area Water Company, Inc.

[Go to End of 97495]

82 NH PUC 758

Re Hampstead Area Water Company, Inc.

DR 97-154
Order No. 22,770

New Hampshire Public Utilities Commission

October 28, 1997

ORDER adopting procedural schedule as to a water utility's application for a franchise to serve areas in the towns of Danville and Sandown.

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1. FRANCHISES, § 3

[N.H.] Necessity of securing — Application for — Procedural schedule — Issues to be addressed — Contributions in aid of construction — Testing and management fees — Water utility. p. 758.

BY THE COMMISSION:

ORDER

[1] On July 28, 1997, Hampstead Area Water Company, Inc. (Hampstead) filed with the New Hampshire Public Utilities Commission (Commission),a petition for franchise and permanent rates for its Colby Pond system in the towns of Danville and Sandown.

The Commission scheduled a prehearing conference for October 10, 1997, set forth a procedural schedule, set a deadline for intervention requests and called for initial positions of the Parties and Commission Staff (Staff). Hampstead filed testimony in support of its franchise request on October 3, 1997.

No requests for intervention were submitted to the Commission and no other parties or customers attended the prehearing conference.

Staff stated at the prehearing conference that it particularly intended to review contributions in aid of construction (CIAC)and expenses, the latter including testing fees, operation and maintenance costs, and management fees associated with the new system.

At the prehearing conference, the parties requested that the hearing on the merits be changed from January 15 to January 14. No other changes were requested by the parties. The revised schedule is as follows:

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

Responses to Oral Data Requests Propounded at the 1st Technical Session	October 23, 1997
Data Requests by Staff and Intervenors	November 6, 1997
Company Data Responses	November 20, 1997
Technical Session	December 2, 1997
Testimony by Staff and Intervenors	December 23, 1997
Settlement Conference	December 30, 1997
Forwarding of Any Settlement Agreement to Commission	January 8, 1998
Hearing	January 14, 1997

We find the proposed revision to the procedural schedule to be reasonable and will approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the aforementioned procedural schedule shall be adopted.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1997.

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NH.PUC*10/28/97*[97496]*82 NH PUC 759*Beebe River Water System

[Go to End of 97496]

82 NH PUC 759

Re Beebe River Water System

DE 95-271
Order No. 22,771

New Hampshire Public Utilities Commission

October 28, 1997

ORDER appointing the Beebe River Village District as receiver for a small community water system, pending completion of the process by which the district would formally acquire ownership and control of the system.

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1. RECEIVERS, § 3

[N.H.] Commission jurisdiction — As to appointment of receiver — For a small community water system — Approval of village district as receiver — Pending formal acquisition of system by district — Maintenance of operational status quo pending such acquisition. p. 760.

2. WATER, § 13

[N.H.] Water utility operations — Under receivership — Pending municipal acquisition of system — Maintenance of status quo — Continuation of contract with current licensed system operator. p. 760.

APPEARANCES: Geoffrey J. Ransom, Assistant Attorney General, for the Department of Justice; Sheliah M. Kaufold, Esq. for Beebe River Village District; Daniel D. Crean, Esq. for Town of Campton; Thomas W. Cowie, Esq. for Beebe River Water Utility; Vernon Chase for Beebe River Utilities Corporation; Eugene F. Sullivan III, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 25, 1995, the New Hampshire Attorney General's Office of the Department of Justice (Department of Justice) filed with the New Hampshire Public Utilities Commission (Commission) a request for appointment of a receiver to operate Beebe River Water System in Campton, New Hampshire.

After numerous hearings and meetings among the affected parties and Commission Staff (Staff), the Commission, by Order No. 22,304 (September 4, 1996) placed the Beebe River Water System into receivership and contracted with Thomas Mason of Lakes Region Water Company to operate the water utility, effective September 25, 1996. The Commission extended the 30-day receivership a number of times while awaiting either transfer of the system to a responsible system operator or inclusion of the area in a village water district.

The Commission, on August 25, 1997, called for a hearing to assess whether there was a continuing need for a receiver. The Commission heard evidence on this issue September 23, 1997.

II. PROPOSAL FOR OPERATION OF THE WATER UTILITY

At the September 23, 1997 hearing, the Beebe River Village District (Village District) stated it would agree to take over the system. Under the Village District's proposal, Thomas Mason, the current operator acting as agent for the Commission, would continue to provide services to the Village District on a contract basis. The Village District's only concern was one of authority. The Village District Commissioners may not enter into a contract such as would be needed with Mr. Mason without authorization at the March 1998 Town Meeting. The Village District suggested that, for the interim before the March 1998 Town Meeting, the Commission appoint the Village District as receiver, which in turn, could contract with Mr. Mason to comply with the Commission's order. At the

March 1998 Town Meeting, the Town would vote on authorization to the Village District to operate the system.

No other party or Staff opposed the proposal.

III. COMMISSION ANALYSIS

[1, 2] We are pleased to see the willingness of the Village District to take over this troubled water utility and take the Commission out of the role it has played as receiver for over a year. We also recognize the Village District concerns regarding authority during the period prior to the

March 1998 Town Meeting.

Because the Village District does not yet have authority to voluntarily enter into an agreement to operate the water utility or to contract with others for some or all of the operation, we will appoint the Village District to act as receiver and instruct it to engage Thomas Mason or another certified operator for services as needed. We also direct the Village District to collect money from customers during the interim sufficient to reimburse the licensed operator. As a further condition of receivership, we charge the Village District to draw up and present a warrant for the March 1998 Campton Town Meeting to fully authorize the Village District to own and operate the water utility. A vote in the affirmative will lead to termination of the receivership.

Within 30 days of full authorization by the Town, the Village District shall submit to the Commission a franchise application. Our Staff will assist the Village District in developing the application and advising on utility accounting, if requested.

Based upon the foregoing, it is hereby

ORDERED, that the Village District is hereby appointed receiver of the Beebe River Water System pending an affirmative vote of the Campton Town Meeting and further action of this Commission; and it is

FURTHER ORDERED, that within 30 days of an affirmative vote, the Village District shall submit a franchise application to the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Beebe River Water System, DE 95-271, Order No. 22,304, 81 NH PUC 674, Sept. 4, 1996.

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NH.PUC*10/28/97*[97497]*82 NH PUC 760*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97497]

82 NH PUC 760

Re New England Telephone and Telegraph Company dba Bell Atlantic

DE 97-046

Order No. 22,772

New Hampshire Public Utilities Commission

October 28, 1997

ORDER approving implementation of two-way extended area telephone service (EAS) between Franklin and Laconia, based on the results of a poll of the residents of Franklin. A similar poll of the residents of Laconia is canceled as unnecessary, given efforts by the serving carrier to develop new EAS rate schedules that would allow Franklin to be added to the Laconia exchange at no extra cost for Laconia customers.

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1. SERVICE, § 445

[N.H.] Telephone — Exchange areas and boundaries — Extended area service (EAS) — Approval of EAS expansion proposal — Factors — Polling results — Availability of two-way EAS — Communities of interest. p. 761.

2. RATES, § 573

[N.H.] Telephone rate design — Extended

Page 760

area service (EAS) — Approval of EAS expansion proposal — Factors — Consumer demand — Polling results — Communities of interest — Availability of two-way EAS — At no additional charge to that exchange not requesting expanded EAS. p. 761.

BY THE COMMISSION:

ORDER

On February 18, 1997, the New Hampshire Public Utilities Commission (Commission) received a petition requesting that the Commission utilize the Extended Area Service (EAS) guidelines followed by the Commission in the past to evaluate the expansion of the Franklin exchange. The Commission also received petitions in favor of expanding the exchange signed by numerous citizens of the affected municipalities. The Commission held a hearing on June 26, 1997 concerning the Franklin EAS.

On August 4, 1997, by Order No. 22,675, the Commission granted the petition to conduct a

poll of Franklin Exchange customers to determine if they wanted to include, for an additional charge, the Laconia Exchange in their local calling area. Contingent on customer support for expansion, the Order required that Laconia customers be polled to determine if they wanted, for an additional charge, to include the Franklin Exchange in their local calling area.

Franklin customers supported expansion, therefore, Laconia will be added to the Franklin calling area in the near future. However, on October 21, 1997, the Commission received a letter from Bell Atlantic (formerly NYNEX) requesting the cancellation of the Laconia polling for the following reasons:

— Under the present rate group structure, the addition of Franklin to Laconia's local calling area would require a poll of over 20,000 customers for an increase of 30 cents to the unlimited one-party residence exchange rate.

— Bell Atlantic is presently developing a rate design proposal which will allow for the addition of Franklin to the Laconia Exchange without a rate increase.

— Bell Atlantic proposes to add Franklin to the Laconia local calling area at no additional charge until their new rate design proposal is approved or rejected by the Commission.

— Should Bell Atlantic's rate design proposal not be accepted, the Commission could order the polling of Laconia Exchange customers at a later date.

Staff has reviewed Bell Atlantic's proposal and believes that it will minimize confusion to customers as well as eliminate the costs of a potentially unnecessary poll of over 20,000 Laconia customers. Thus, Staff recommends cancellation of the Laconia balloting.

[1, 2] We have reviewed the Bell Atlantic proposal and the Staff recommendation and are in agreement that the postponement of the Laconia polling and the temporary inclusion of the Laconia customers in the two-way EAS area of Franklin are in the best interest of the customers involved and does not unduly discriminate against other customers. We appreciate the efforts of Bell Atlantic to maintain two-way EAS calling to the fullest extent possible and are currently advised that two-way EAS is provided to every exchange in New Hampshire by Bell Atlantic and the independent telephone companies.

Based upon the foregoing, it is hereby

ORDERED, that a poll to add the Franklin Exchange to the Laconia local calling area is canceled; and it is

FURTHER ORDERED, that Bell Atlantic shall add the Franklin Exchange to the local calling area of the Laconia Exchange customers at no additional charge as soon as central office programming and billing changes can be made.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DE 97-046, Order No. 22,675, 82 NH PUC 580, Aug. 4, 1997.

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NH.PUC*10/30/97*[97498]*82 NH PUC 762*Northern Utilities, Inc. - New Hampshire Division

[Go to End of 97498]

82 NH PUC 762

Re Northern Utilities, Inc. - New Hampshire Division

DR 97-190
Order No. 22,773

New Hampshire Public Utilities Commission

October 30, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a rate of 2.53 cents per therm, which represents a significant decrease from its last authorized winter CGA.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Decrease in rate — Factors — Significant prior-period overcollections — Decreases in winter demand charges — Projected reductions in supply costs — Increases in interstate pipeline refunds — Local distribution company. p. 764.

2. GAS, § 7

[N.H.] Operations — Supply procurement practices — Reasonableness of portfolio mix —

Necessity of efforts to mitigate price volatility — Impact on winter cost-of-gas adjustment filing — Local distribution company. p. 764.

3. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Recovery via winter cost-of-gas adjustment — Factors — Reasonableness of procurement practices — Efforts to minimize commodity costs. p. 764.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Susan L. Geiser, Esq. and Scott J. Mueller, Esq. on behalf of Northern Utilities, Inc.; and Stephen P. Frink and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 15, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its Cost of Gas Adjustment (CGA) for the period November 1, 1997 through April 30, 1998 for effect November 1, 1997. The filing was accompanied by the pre-filed direct testimony and supporting attachments of Michael J. Harn, Rate Analyst, and Francisco C. DaFonte, Director of Gas Control, which explained the filing. The proposed 1997/1998 Winter CGA is a charge of $0.0253 per therm.

On September 15, 1997, Northern filed a Motion for Protective Order and Confidential Treatment which was granted by the Commission on September 23, 1997 in Order No. 22,734.

An Order of Notice was issued on September 24, 1997 setting the date of the hearing for October 21, 1997 at 10:30 a.m. at the Commission's office in Concord, New Hampshire.

Apart from the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor, there were no intervenors in this docket. A duly noticed hearing on the merits was held at the Commission on October 21, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

Northern

Northern witnesses Michael J. Harn and Francisco C. DaFonte addressed the following issues: a) calculation of the Firm Sales CGA and the impact on customer bills; b) factors contributing to the decreased rate; c) risk management; and d) changes incorporated since the September 15, 1997 filing.

A. Calculation and Impact of the Firm Sales CGA

The proposed 1997/1998 Winter CGA charge of $0.0253 per therm was calculated by reducing the anticipated cost of gas of $15,632,400 for net adjustments of ($562,509) and dividing the resulting anticipated costs of $15,069,891 by projected therms sales of 36,761,660.

Northern's proposed 1997/1998 Winter CGA is a charge of $0.0253 per therm representing a decrease of $0.1237 per therm from the 1996/1997 Revised Winter CGA charge of $0.1490 per therm in effect from February 1997 through April 1997. The proposed CGA charge represents a $0.0410 per therm decrease from the 1996/1997 Winter CGA charge of $0.0663 per therm in effect for the months of November 1996 through January 1997.

A comparison of an average residential heating customer's annual gas bill using the rates in effect for the year ending April 1997 and the proposed and effective rates for the year ending April 1998 results in a savings of $77.02 or 7.5%.

B. Factors Contributing to the Decreased CGA

Three factors contributed significantly to the decrease in the proposed 1997/1998 Winter CGA charge. The most significant was the change in the over/undercollection. The 1996/97 Winter CGA included an undercollection and related interest of $250,556, compared to a 1997/1998 Winter CGA overcollection and interest of $1,212,430, resulting in a $0.0403 per therm reduction in the CGA charge.

A decrease in the projected per therm cost of gas for the 1997/1998 winter period resulted in a $0.0196 per therm reduction from the 1996/97 Winter CGA rate. Demand charges related to winter gas supplies in the 1997/1998 winter period are projected to be $4,938,388, a decrease of $346,062 from the 1996/1997 winter demand charges of $5,284,450 even though projected volumes have increased seven percent from last winter.

The third factor that resulted in a significant reduction to the 1997/1998 Winter CGA was an increase in pipeline refunds. The 1996/1997 Winter CGA calculation included refunds of $62,371 compared to 1997/1998 Winter refunds of $588,973, reducing the CGA charge by $0.0142. Settlement of a Tennessee Gas Pipeline rate case in 1997 resulted in refunds of $467,588 being credited to this winter's CGA.

C. Risk Management

Northern has managed its price risk through the creation of a diverse portfolio mix. The

pricing inherent in that portfolio mix acts as a natural hedge against the volatility in the domestic gas market. Northern's gas supplies consist of approximately 45% Canadian, 35% domestic and 22% storage. The price of Canadian gas is based on a basket price which includes oil as a substantial component as well as natural gas and is therefore much less susceptible to price spikes than domestic supplies. Storage supplies are primarily purchased prior to the heating season and therefore fluctuate very little during the winter.

This type of portfolio is designed to allow participation in the downside of the market without having to use any additional ratepayer money to purchase financial instruments for hedging purposes.

D. Changes Since Filing

The September 15, 1997 CGA filing included anticipated contract prices for both propane and 151 day firm base load as well as

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domestic natural gas prices based on the natural gas futures prices as quoted in the September 11, 1997 *Wall Street Journal*. The propane and 151 day firm base load contracts were finalized at a cost slightly higher than those which had been anticipated and used in the calculation of the proposed 1997/1998 Winter CGA filing and which, if the actual price were used, would have a minimal impact on the proposed rate.

In addition, the domestic prices as reflected in the October 20, 1997 *Wall Street Journal*, have increased. Recalculating the CGA to reflect the current futures prices would result in a 1997/1998 Winter CGA charge of $0.0395 per therm, $0.0142 per therm greater than the filed rate of $0.0253 per therm. A $0.0142 per therm increase in the proposed Winter CGA would increase the average residential heating customer's monthly bill by approximately $2 per month for the winter period.

Northern also experienced changes in other cost and revenue areas that would serve to decrease the proposed rate. The Bay State off-system price is lower than had been anticipated and certain revenues that are credited to the CGA are coming in greater than forecast.

Northern did not propose a change to the CGA because it does not consider the potential increase to be significant in terms of the residential heating class rate.

Staff

Staff presented no testimony but indicated that it had reviewed the filing and supported Northern's revised 1997 CGA filing.

III. COMMISSION ANALYSIS

[1-3] We agree that the increase in the natural gas futures prices since Northern's September 15, 1997 filing does not have a significant impact on the proposed Winter CGA rate and note that daily fluctuations in the futures market are not necessarily reflective of what natural gas prices will be at the time of purchase. If the change in prices should become significant, then Northern would be expected to file a revised Winter CGA rate at that time.

Northern's portfolio mix may serve to mitigate the price risks inherent in the natural gas market but to the extent that Northern has had to file revised Winter CGA's in each of the past two winters, we recommend that Northern continue to explore additional means by which to mitigate price volatility for natural gas sales customers at a minimal cost and implement such programs prior to next winter's CGA proceeding.

Based upon Staff's review of the filing, Northern's books and records and the record developed in this proceeding, the Commission finds that the proposed CGA rate is just and reasonable and in the public interest. Accordingly, we will approve the rate effective November 1, 1997.

Based upon the foregoing, it is hereby

ORDERED, that Northern's Twenty-third Revised Page 32, Sheet No. 1 and Proposed Eighteenth Revised Page 32, Sheet No. 2, respectively, N.H.P.U.C. tariff of Northern Utilities, Inc. - New Hampshire Division, providing for a Winter Cost of Gas Adjustment of $0.0253 per therm for the period of November 1, 1997 through April 30, 1998 is hereby APPROVED, said rate to become effective for bills rendered on or after November 1, 1997 in accordance with N.H. Admin. Rules, Puc 1203.05(b); and it is

FURTHER ORDERED, that the over/undercollection shall accrue interest at the Prime Rate as reported in the *Wall Street Journal*. The rate shall 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 ten percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that the Company shall file properly annotated tariff pages in compliance with this Order no later than fifteen days from the issuance date of this Order as required by N.H. Admin. Rules, Puc 1603.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 97-190, Order No. 22,734, 82 NH PUC 692, Sept. 23, 1997.

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NH.PUC*10/30/97*[97499]*82 NH PUC 765*Northern Utilities, Inc. - Pelham Division

[Go to End of 97499]

82 NH PUC 765

Re Northern Utilities, Inc. - Pelham Division

DR 97-191
Order No. 22,774

New Hampshire Public Utilities Commission

October 30, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a charge of 22.44 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 — Prior-period overcollections — Conversion of propane customers to natural gas — Local distribution company. p. 766.

2. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Recovery via winter cost-of-gas adjustment — Factors — Minimization of costs — Conversion of more costly propane customers to natural gas. p. 766.

APPEARANCES: LeBoeuf, Lamb, Greene, and MacRae by Susan L. Geiser, Esq. and Scott J.

Mueller, Esq., on behalf of Northern Utilities, Inc.; and Stephen P. Frink and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On September 15, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its Pelham Division's Cost of Gas Adjustment (CGA) for effect November 1, 1997. The filing was accompanied by a cover letter and supporting schedules from Michael J. Harn, Rate Analyst.

An Order of Notice was issued on September 24, 1997 setting the date of the hearing for October 21, 1997 at 10:00 a.m. at the Commission's office in Concord, New Hampshire and directing Northern to have the Order of Notice published in a newspaper of general circulation in that portion of the state in which operations are conducted and to serve a copy of the Order of Notice on current and known prospective customers by first class U.S. Mail by October 1, 1997.

Northern did notice the hearing through publication of the Order of Notice in a local newspaper serving the area but did not mail the Order of Notice to the current and prospective customers. Staff notified the owner of the metered properties, who had filed a rate complaint with the Commission earlier in the year, of the scheduled CGA hearing and was advised that he did not wish to take part in the proceeding. Apart from the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor, there were no intervenors in this docket. A hearing on the merits was held at the Commission on October 21, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Northern*

Northern's witness Michael J. Harn, Rate Analyst, prepared the filing and testified at the October 21, 1997 hearing.

Northern requested a CGA charge for the 1997/1998 Winter CGA of $0.2244 per therm, a decrease of $0.1740 per therm from the

1996/1997 revised winter CGA charge of $0.3984 per therm in effect from February 1997 through April 1997, and a decrease of $0.0402 from the 1996/1997 winter CGA charge of $0.2646 per therm in effect from November 1996 through January 1997.

The proposed 1997/1998 Winter CGA rate was derived in the following manner. Total anticipated gas costs for the period of $29,383 were offset by a prior period overcollection and related interest of $453 resulting in anticipated period costs of $28,930 to be recovered. The anticipated period costs to be recovered were divided by projected sales of 47,505 therms to arrive at a unit cost of gas of $0.6090 per therm. Deducting Northern's $0.3846 per therm winter base unit cost of gas from the anticipated unit cost of gas for the period results in the proposed CGA charge of $0.2244 per therm.

The projected Pelham gas costs are based on the market price in Mont Belvieu, Texas, the pipeline transportation and odorizing costs to deliver the product to Selkirk, New York, and the trucking costs from Selkirk to Pelham. Mr. Harn testified that Northern seeks competitive bids from approximately six wholesale propane suppliers for Pelham supplies and a contract is awarded based on the lowest price.

Mr. Harn testified that the overcollection was due in part to the Copper Beech customers who had been propane customers during the 1996/1997 winter period but have since been connected to Northern's natural gas distribution system and are now New Hampshire Division customers. Mr. Harn calculated that the Copper Beech customers were responsible for approximately one third of the overcollection, about $148, and that reducing the New Hampshire Division's 1997/1998 projected winter gas costs by that amount would have no impact on the New Hampshire Division's CGA rate. Mr. Harn also noted that the intra-divisional subsidies between the Copper Beech system and the Pelham system had benefited the Copper Beech customers in past CGA's.

The firm sales projection is based on the Pelham customers usage during the prior winter period adjusted for the weather.

The Pelham Division consists of 18 customers that fall into two classes, commercial heating and commercial non-heating. Northern determined the average customer usage of each class and calculated the impact on the annual bill for each of those classes using the proposed rate compared to last year's rate. Use of the proposed rate results in an eight percent reduction for the average commercial heating customer and a seven percent reduction for the average commercial non-heating customer.

B. *Staff*

Upon review of Northern's filing, Staff indicated its support for its 1997/1998 Winter CGA filing.

III. COMMISSION ANALYSIS

[1, 2] Although Northern did not notice the existing customers through the mail, as ordered,

Northern did notice potential and current customers of the hearing through publication of the Order of Notice in a local newspaper. Staff contacted the owner of the property where the meters are installed and was informed that he was not interested in intervening or attending the CGA hearing. With the exception of the property owner, no other existing customers had previously attended a CGA hearing or expressed an interest in so doing. Therefore, we decided to hear Northern's petition as scheduled and advise Northern to notify customers as ordered in future proceedings.

Based on Northern's testimony that the Copper Beech customers have previously paid CGA rates designed to recover less than the associated gas costs to provide service to those customers and the limited amount of the associated overcollection, we accept Northern's decision to retain the associated overcollection in the Pelham Division.

Having reviewed the record, including Staff's recommendation, we find that the proposed CGA rate is just and reasonable and in the public interest. We will, therefore, approve the rate effective for bills rendered on or after November 1, 1997.

Based upon the foregoing, it is hereby

ORDERED, that Fifteenth Revised Page 33, N.H.P.U.C. tariff of Northern Utilities, Inc. - Pelham Division, providing for the Winter 1997/1998 Cost of Gas Adjustment charge of

$0.2244 per therm for the period November 1, 1997 through April 30, 1998 is hereby APPROVED, said rate to become effective for bills rendered on or after November 1, 1997 in accordance with Puc 1203.05 (b); and it is

FURTHER ORDERED, that the over/undercollection will accrue interest at the Prime Rate as 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 ten percent trigger mechanism, Northern shall file a revised Cost of Gas Adjustment; and it is

FURTHER ORDERED, that Northern file properly annotated compliance tariff pages no later than fifteen days from the issuance date of this Order as required by N.H. Admin. Rules, Puc 1603.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

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82 NH PUC 767

Re EnergyNorth Natural Gas, Inc.

DR 97-189
Order No. 22,775

New Hampshire Public Utilities Commission

October 30, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment (CGA) filing, resulting in a rate of 5.99 cents per therm for firm sales service and 0.22 cents per therm for firm transportation service, both of which represent decreases from the company's last authorized CGAs.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Decrease in rate — For firm sales customers — Factors — Mitigation of prior-period undercollections — Decrease in projected supply costs — Institution of hedging program and use of futures market — 280-day margin recovery surcharge — Local distribution company. p. 771.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Winter cost-of-gas adjustment (CGA) — For firm transportation (FT) service customers — Rejection of proposed elimination of FT CGA — Decrease in rate instead — Factors — Recognition of supplemental fuel costs, however minimal — Refunding of prior-period overcollections — Local distribution company. p. 771.

3. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Cost-of-gas adjustment — Winter season — Decrease in rates — Separate rates for firm sales and firm transportation customers — Factors — Prior-period under- and overcollections — Projected decreases in commodity costs — Development of hedging program — Reasonableness of procurement practices. p. 771.

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esquire, on behalf of EnergyNorth Natural Gas, Inc.; and Stephen P. Frink and Michelle A. Caraway for the

Staff of the New Hampshire Public Utilities Commission.

ORDER

I. PROCEDURAL HISTORY

On September 15, 1997, EnergyNorth Natural Gas, Inc. (ENGI) filed with the New Hampshire Public Utilities Commission (Commission), its Cost of Gas Adjustment (CGA) for the 1997/1998 winter period. Accompanying its CGA filing was a Motion for Protective Order and Confidential Treatment, which was granted September 23, 1997 (Order No. 22,732). ENGI's filing included the direct testimony and supporting attachments of Mark G. Savoie, Rate Analyst, and Donald E. Carroll, Vice President of Gas Supply.

An Order of Notice was issued on September 24, 1997 setting the date of the hearing for October 22, 1997 at 9:00 a.m. at the Commission's office in Concord, New Hampshire.

Apart from the Office of Consumer Advocate (OCA) which is a statutorily recognized intervenor, there were no intervenors in this docket. A duly noticed hearing on the merits was held at the Commission on October 22, 1997. At the hearing, ENGI filed revised CGA's. ENGI's revised proposed 1997/1998 Winter CGA is a charge of $0.0599 per therm for Firm Sales and $0.0000 per therm for Firm Transportation. ENGI's filing included a proposed $0.0001 reduction in the winter surcharge to recover the 280 Day Sales margin, from $0.0013 to $0.0012 per therm and proposed revisions in the projected therms and unamortized cost used in recovering the Gas Street relief holder costs, although the Gas Street relief holder surcharge would remain unchanged at $.0045 per therm.

II. POSITIONS OF THE PARTIES AND STAFF

EnergyNorth

EnergyNorth witnesses Mark G. Savoie, Rate Analyst, and Donald E. Carroll, Vice President of Gas Supply addressed the following issues: a) calculation of the Firm Sales CGA and the impact on customer bills; b) factors contributing to the decreased rate; c) hedging costs; and d) calculation and purpose of the FT CGA.

A. Calculation and Impact of the Firm Sales CGA

The proposed 1997/1998 Winter CGA charge of $0.0599 per therm was calculated by reducing the anticipated cost of gas of $35,313,867 for net adjustments of ($535,834) and dividing the resulting anticipated costs of $34,778,034 by projected therms sales of 74,409,939

and deducting the base winter cost of gas of $0.4075 per therm.

ENGI's proposed 1997/1998 Winter CGA is a charge of $0.0599 per therm for Firm Sales, representing a decrease of $0.0837 per therm from the 1996/1997 Revised Winter CGA rate of $0.1436 per therm in effect from January 1997 through March 1997, and an increase of $0.0383 per therm from the 1996/1997 Winter CGA rate of $0.0216 per therm in effect for the months of November 1996 and December 1996.

The proposed firm sales CGA rate of $0.0599 will decrease an average residential heating customer's monthly bill over last winter's revised rate by approximately $14, or 9 percent.

B. Factors Contributing to the Decreased CGA

Two factors were primarily responsible for the decrease in the proposed CGA rate: a decrease in projected gas costs and prior period undercollections. The 1996/1997 revised winter CGA rate resulted from November and December gas costs being significantly higher than anticipated and a substantial increase in the natural gas futures prices for the remaining winter months. The revised 1996/1997 Winter CGA filing anticipated gas costs of $38,998,487 for the winter period, whereas the 1997/1998 gas costs are estimated to be $35,313,867. The $3,684,620 reduction in anticipated gas costs accounts for a $0.0318 per therm reduction in the proposed CGA rate.

In addition to the anticipated gas costs, there are a number of other items that are included in the CGA. Of those adjusting items, only one has more than a penny per therm impact on the proposed CGA rate. The

undercollection included in the 1996/97 Winter CGA was $2,980,786 compared to $438,959 in the proposed 1997/1998 Winter CGA, a $2,541,827 decrease resulting in a $0.0328 per therm reduction.

C. Hedging Costs

NHPUC Order 22,699 (September 2, 1997) approved ENGI's Natural Gas Price Risk Management Policy (hedging) designed to mitigate natural gas price volatility which have substantially increased gas costs in the past. Hedging costs, up to $500,000, are to be flowed through the CGA.

ENGI's hedging expenses included in the proposed CGA are $332,475, increasing the proposed CGA rate $0.0045 per therm. As of the day of the hearing, the contracts had a value of nearly double the investment for an unrealized gain of $327,900. ENGI has hedged approximately 36% of Domestic supplies.

In calculating the monthly Cost of Gas Reconciliation Reports related to the 1997/1998 Winter CGA, the natural gas futures market prices quoted in the *Wall Street Journal* will be applied to the respective monthly volumes to be taken by ENGI, except in cases where ENGI holds options with a strike price less than the futures price, in which case the strike price is applied to the volumes contracted for. This will help limit the amount of any projected undercollection where actual and futures prices exceed the strike prices ENGI has contracted for.

ENGI is closely monitoring the natural gas options markets and additional hedging costs are possible, although the amount and timing of those costs is unknown and have not been included in the current CGA calculation. Total hedging costs are not expected to exceed $500,000 and any additional costs up to $500,000 will be included in the final 1997/1998 Winter CGA reconciliation.

D. Firm Transportation Cost of Gas Adjustment

ENGI filed a revised 1997/1998 Firm Transportation Cost of Gas Adjustment (FT CGA)rate of zero ($0.0000 per therm), $0.0147 per therm less than the FT CGA charge for the January 1997 through March 1997 Winter period and $0.0110 less than the FT CGA charge for the November 1996 and December 1996 Winter period.

In its original CGA filing, ENGI proposed a FT CGA charge of $0.0078 per therm based on anticipated costs of $54,842 for the winter period offset by prior period overcollections of $22,528. The net amount of $32,314 to be collected from transportation customers was divided by projected firm transportation throughput of 4,139,777 therms to arrive at the proposed rate.

The Commission approved the Firm Gas Transportation Compliance Tariff of ENGI (Re EnergyNorth Natural Gas, Inc., DE 91-149, Order No. 21,313, 79 NH PUC 437, August 9, 1994) that established firm transportation rates and approved the FT CGA.

The rationale for the FT CGA was that a portion of the supplemental fuels ENGI uses during the winter period is required to maintain adequate pressures on the distribution system in certain capacity constrained areas, which benefits both firm transportation and firm sales customers. The FT CGA was a crude attempt to eliminate the subsidization of the firm transportation customers by the firm sales customers. The methodology employed to accomplish this was to determine the anticipated cost of supplemental gas supplies and assign those costs on a pro rata basis, based on firm throughput.

The Commission recently established new transportation rates based on the actual cost of firm transportation service determined through a Cost of Service Study (*Re EnergyNorth Natural Gas, Inc.*, DE 95-121, Order No. 22,671, July 28, 1997). As part of 1997/1998 Winter CGA proceeding, Staff requested ENGI to review the FT CGA based on the findings in the Cost of Service Study.

The Cost of Service Study indicated that only 14.3 percent of the supplemental fuel is required for pressure support. ENGI submitted a revised FT CGA that allocates 14.3 percent of the anticipated supplemental fuel cost for the winter period to the firm transportation and firm sales customers on a pro rata basis. Based on

the new methodology and updated transportation sales, the cost assigned to the firm transportation customers in the 1997/1998 Winter CGA is $10,301. Offsetting this with the prior period overcollection and dividing by the anticipated throughput results in a FT CGA credit of $0.0022 per therm.

ENGI proposed that the overcollection be used to offset the period costs, and that any remaining overcollection be applied against future FT CGA costs. Mr. Savoie explained that while there have been credit CGA's for Firm Sales customers in the past, those credits have been applied against a base rate and have never resulted in an anticipated gas cost of less than zero. Because the FT CGA does not have a base rate component and without deferring a portion of the prior period overcollection the resulting FT CGA credit would reflect a negative cost of gas.

ENGI supports the FT CGA because it sends an important message to the transportation customers that they bear a cost for peak shaving. And while that cost may be insignificant at this time, the use of transportation service is growing and that cost could become significant in the future. On cross-examination, Mr. Savoie stated that the anticipated peak shaving costs to serve the firm transportation customers were approximately $10,000 out of a total anticipated cost of gas for the period of approximately $35 million. The impact of eliminating the FT CGA would be to increase the CGA by $0.0001 per therm, which would increase an average residential heating customer's monthly bill by 3 cents.

Mr. Savoie stated that while the new methodology for calculating the FT CGA is appropriate at this time, the methodology employed prior to replacing the trial rates was based on different terms and conditions and may have been appropriate at that time. He went on to state that regardless of the appropriateness of the prior FT CGA rates, any perceived inequities from the past should not be made up in future rates.

Mr. Savoie testified that exempting Hitchiner Manufacturing Company, Inc. (Hitchiner) from the FT CGA in a special contract, approved by Commission Order 22,667 (July 22, 1997), was necessary to reach an agreement and was in the public interest. Hitchiner wanted a fixed rate and was willing to commit to minimum takes over an extended period of time. At the time of the Hitchiner contract it appeared transportation rates would be reduced and that the rate Hitchiner was agreeing to would be higher than other transportation customers would be paying. Therefore, it wouldn't be fair to make Hitchiner pay the FT CGA as well.

Mr. Carroll testified that while system improvements could reduce capacity constraints, there are currently no plans for system improvements that would have a significant impact on those constraints and reduce peaking costs.

Staff

With the exception of the FT CGA issue, after a thorough review of the filing and discovery,

Staff supported the proposed 1997/1998 CGA charge of $0.0599.

Staff recommended eliminating the FT CGA and crediting the related overcollection to the firm sales customers.

Mr. Frink testified that based on the new methodology used to calculate the FT CGA those costs are de minimis, that transportation customers currently pay higher margins than sales customers, that the firm transportation customers have overpaid for the service since the FT CGA was first implemented, that the largest firm transportation customer on the system (Hitchiner) does not pay the FT CGA, that ENGI is the only Local Distribution Company in New Hampshire that has an FT CGA, that refunding the overcollection to the firm sales customers would cover the related cost for some time and that elimination would simplify the CGA proceedings and transportation bills.

Mr. Frink stated that the anticipated FT CGA cost for maintaining the pressure on the distribution system was only three one hundreds of a percent of the total CGA costs and from a practical standpoint there is no need for the FT CGA. On cross-examination, Mr. Frink did agree that those costs would increase if firm transportation service continued to grow. Mr.

Page 770

Frink also pointed out, however, that if firm transportation service were to reach the point where that cost became significant, ENGI would likely open a general rate case and the issue of whether an FT CGA would was appropriate would be addressed at that time. Mr. Frink explained that in the most recent transportation docket, ENGI had raised the issue of including some additional costs in the FT CGA but did not pursue it. Those issues may be addressed in the next general rate case and a revised FT CGA is possible. A general rate case would be likely in the event that transportation service grew to the point where the FT CGA became a significant cost. The recent transportation order reduced the margins that ENGI earns from transportation customers, margins which were included when the current rates designed. Therefore, if firm sales customers migrate to firm transportation and those margins are not offset elsewhere, ENGI would likely file a general rate case.

Mr. Frink also pointed out the system constraints that give rise to the FT CGA costs may be addressed in the future through capital improvements and offset the increased cost from added transportation service.

Mr. Frink stated that it was Staff's position that if the FT CGA were not eliminated, then the entire prior period overcollection should be refunded in the 1997/1998 winter period. The current FT CGA calculation included over fifty customers compared to twenty-seven in the 1996/1997 Winter CGA and it is last winter's customers who should be refunded. If firm transportation service continues to grow, the customers that contributed to the overcollection will receive even less of the refunded in future CGA's.

III. REPORT OF THE HEARINGS EXAMINER

The Hearings Examiner reviewed the filing and supporting testimony presented at the October 22, 1997 hearing and has recommended that the Commission does not eliminate the FT CGA but does refund the entire overcollection in the 1997/1998 Winter FT CGA.

IV. COMMISSION ANALYSIS

[1-3] We have reviewed the filing, testimony and the Report of the Hearings Examiner and agree that the proposed revised 1997/1998 Firm Sales Winter CGA charge, the proposed 280 Day Margin Recovery Surcharge and proposed revision to the projected therms and unamortized cost used in recovering the Gas Street relief holder costs will result in just and reasonable rates and are hereby approved.

We concur with the recommendation in the Report of the Hearing Examiner that the FT CGA not be eliminated. While we agree with Staff that the present FT CGA costs are insignificant, the theory behind the creation of the FT CGA is still valid. There are actual commodity costs related to serving the transportation customers during the winter months and with continued growth in firm transportation service those costs are likely to rise in the future. The fact that Hitchiner is not subject to the FT CGA in no way changes the validity of that argument, the Hitchiner Special Contract is a stand alone agreement that was determined to be in the public's best interest. We have also considered the fact that both ENGI and Staff agree that the accounting, billing and review costs associated with continuing the FT CGA are minimal. Therefore, we do not approve Staff's proposal to eliminate the FT CGA in this proceeding.

We do, however, agree with Staff and the recommendation of the Hearings Examiner that the prior period overcollection should be refunded as part of the 1997/1998 Winter FT CGA. The customers that contributed to the overcollection should be the primary recipients of any refund and any additional growth in transportation customers will dilute the return of those overpayments to the contributing customers.

We instruct ENGI to file appropriate tariffs in accordance with this Order.

Based upon the foregoing, it is hereby

ORDERED, that EnergyNorth Natural Gas, Inc.'s Seventh Revised Page 32 issued in lieu of Sixth Revised Page 32, providing for a Revised Firm Sales Winter CGA of $.0599 per therm for the period of November 1, 1997

through March 31, 1998, is approved, effective for bills rendered on or after November 1, 1997; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc.'s Tariff Page 33 providing for a Firm Transportation Winter CGA credit of $0.0022 per therm for the period of November 1, 1997 through March 31, 1998, is approved, effective for bills rendered on or after November 1,

1997; 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 EnergyNorth Natural Gas, Inc.'s Third Revised Page 73 Superseding Second Revised Page 73, providing for a winter period surcharge to recover the 280 Day Sales Margin of $.0012 per therm for the period of November 1, 1997 through March 31, 1998, is approved, effective for bills rendered on or after November 1, 1997; and it is

FURTHER ORDERED, that EnergyNorth Natural Gas, Inc.'s Third Revised Page 74 Superseding Second Revised Page 74, providing for a revision to the projected therms and unamortized cost used in recovering the Gas Street relief holder costs, is approved, effective for bills rendered on or after November 1, 1997; and it is

FURTHER ORDERED, that ENGI file properly annotated tariff pages in compliance with this Order no later than 15 days from the issuance date of this order, as required by N.H. Admin. Rules, PUC 1603.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-057, Order No. 22,667, 82 NH PUC 557, July 22, 1997.
[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-140, Order No. 22,699, 82 NH PUC 635, Sept. 3, 1997.
[N.H.] Re EnergyNorth Natural Gas, Inc., DR 97-189, Order No. 22,732, 82 NH PUC 689, Sept. 23, 1997.
[N.H.] Re Northern Utilities, Inc., DE 95-121, Order No. 22,671, 82 NH PUC 566, July 28, 1997.

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NH.PUC*10/30/97*[97501]*82 NH PUC 772*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97501]

82 NH PUC 772

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-150
Order No. 22,776

New Hampshire Public Utilities Commission

October 30, 1997

ORDER granting protective treatment of certain customer proprietary network information contained in a previously approved special rate contract as between a local exchange telephone carrier and Hadco Corporation for the provision of fiber distributed data interface service.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to special telephone service contract — For fiber distributed data interface service — Confidentiality of customer proprietary network information contained therein — Benefits of nondisclosure as outweighing those of disclosure. p. 773.

BY THE COMMISSION:

ORDER

On July 24, 1997, New England Telephone and Telegraph Company (formerly d/b/a NYNEX, now d/b/a Bell Atlantic and hereinafter referred to as Bell Atlantic) filed with the New Hampshire Public Utilities Commission

(Commission), pursuant to RSA 378:18, a special contract with Hadco Corporation (Hadco) for Fiber Distributed Data Interface (FDDI) Services. Bell Atlantic filed a contract overview and a cost study in support of the special contract.

On the same date, Bell Atlantic filed a Motion for Proprietary Treatment to exempt from disclosure portions of the cost study and certain terms within the special contract and appendices (collectively the Information).

In its motion, Bell Atlantic states that the Information contains Customer Proprietary Network Information (CPNI) that is within the exemptions from disclosure set forth in RSA

91-A:5,IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and Section 222(f)of the Communications Act of 1934 which was incorporated in the Telecommunications Act of 1996.

Bell Atlantic also states that the Information consists of competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental component costs. Bell Atlantic does not redact the relevant rates and charges, nor seek to protect the term of years, consistent with recent Commission orders.

As a result of DR 94-165, new procedural rules, Chapter Puc 200, took effect September 19, 1997. Puc 204.06 now governs confidential treatment and, in condensed form, requires a petitioner to file a motion containing: documents or types of information for which confidentiality is sought; reference to a legal basis for confidentiality; a description of the benefits of non-disclosure; and, evidence showing that the information is not generally available and either (1) that it is the petitioner's information which if made public would create a competitive disadvantage or (2) that it is the petitioner's customer's information and is commercially sensitive or its release could constitute an invasion of privacy.

Bell Atlantic's motion was filed prior to the September 19, 1997 effective date of the Commission's new rules on Confidential Treatment, Puc 204.06. We will, nevertheless, review the motion on its merits in relation to the new rules.

[1] It appears that the Information Bell Atlantic seeks to protect is customer information classified as CPNI. Bell Atlantic's motion satisfies the elements of Puc 204.06(b)(1), (2) and (3) inasmuch as it has supplied an appendix containing the type of information at issue; it has included a reference to 47 USCA 222(f) governing protection of CPNI; and, it has described the benefits of non-disclosure. Finally, Bell Atlantic has provided, consistent with Puc 204.06(c) (2) and (3), evidence in the form of assertions by counsel that Hadco's Information is not generally available and the Information is both commercially sensitive and that its release would constitute an invasion of privacy.

Accordingly, based on the company's representations, under the balancing test we have applied in prior cases, *e.g.*, *Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Motion for Proprietary Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

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82 NH PUC 774

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-210
Order No. 22,777

New Hampshire Public Utilities Commission

October 30, 1997

ORDER granting protective treatment of certain customer proprietary network information contained in a previously approved special rate contract as between a local exchange telephone carrier and Vitts Networks Inc. for the provision of high-speed digital data transmission service.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to special telephone service contract — For high-speed digital data transmission service — Confidentiality of customer proprietary network information contained therein — Benefits of nondisclosure as outweighing those of disclosure. p. 774.

BY THE COMMISSION:

ORDER

On October 1, 1997, New England Telephone and Telegraph Company (formerly d/b/a NYNEX, now d/b/a Bell Atlantic, and hereinafter referred to as Bell Atlantic) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a special contract with Vitts Networks Inc.(Vitts) for 1.544MB digital services. Bell Atlantic filed a contract overview and a cost study in support of the special contract.

On the same date, Bell Atlantic filed a Motion for Proprietary Treatment to exempt from disclosure certain terms within the special contract's Appendix B (collectively the Information).

In its motion, Bell Atlantic states that the Information contains Customer Proprietary Network Information (CPNI) that is within the exemptions from disclosure set forth in RSA 91-A:5,IV and N.H. Admin. Rules, Puc 204.08 as well as Federal Communications Commission rules and Section 222(f)of the Communications Act of 1934 which was incorporated into the

Telecommunications Act of 1996.

Bell Atlantic also states that the Information consists of competitively sensitive data within the exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.08, including specific service features, pricing and incremental component costs. Bell Atlantic does not redact the relevant rates and charges, nor seek to protect the term of years, consistent with recent Commission orders.

As a result of DR 94-165, new procedural rules, Chapter Puc 200, took effect September 19, 1997. Puc 204.06 now governs confidential treatment and, in condensed form, requires a petitioner to file a motion containing: documents or types of information for which confidentiality is sought; reference to a legal basis for confidentiality; a description of the benefits of non-disclosure; and, evidence showing that the information is not generally available and either (1) that it is the petitioner's information which if made public would create a competitive disadvantage or (2) that it is the petitioner's customer's information and is commercially sensitive or its release could constitute an invasion of privacy.

[1] While Bell Atlantic submitted its motion in reliance on rules which had lapsed, we will, nevertheless, review the motion on its merits in relation to the new rules. In that context, it appears that the information it seeks to protect is customer information classified as CPNI. Bell Atlantic's motion satisfies the elements of Puc 204.06(b)(1), (2) and (3) inasmuch as it has supplied an appendix containing the type of information at issue; it has included a reference to 47 USCA 222(f) governing protection of CPNI; and, it has described the benefits of non-disclosure. Finally, Bell

Atlantic has provided, consistent with Puc 204.06(c) (2) and (3), evidence in the form of assertions by counsel that Vitts' Information is not generally available and the Information is both commercially sensitive and that its release would constitute an invasion of privacy.

Accordingly, based on the company's representations, under the balancing test we have applied in prior cases, *e.g.*, *Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to NYNEX of non-disclosure in this case outweigh the benefits to the public of disclosure. However, Bell Atlantic is advised that, henceforth, motions filed in reliance on the lapsed rules will be rejected.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Motion for Proprietary Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

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NH.PUC*10/30/97*[97503]*82 NH PUC 775*Consumers New Hampshire Water Company

[Go to End of 97503]

82 NH PUC 775

Re Consumers New Hampshire Water Company

DR 96-227
Order No. 22,778

New Hampshire Public Utilities Commission

October 30, 1997

ORDER accepting settlement and stipulation by which the Town of Hudson will purchase and acquire those assets and operations of a water utility that are located within municipal boundaries. The settlement is deemed reasonable in that it will avoid protracted litigation while at the same time addressing long-standing rate and quality-of-service concerns of Hudson citizens. The dispensation of those utility assets located outside of the town will be addressed by separate settlement with the Pennichuck Corporation.

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Acquisition of utility by municipality — Citizen affirmation — Reasonableness of purchase price — Implementation of rate reductions — Compliance with standard of no net harm — Water utility — Settlement. p. 777.

2. CONSOLIDATION, MERGER, AND SALE, § 49

[N.H.] Terms and conditions — Municipal right to acquire — Pursuant to settlement — Water utility — Establishment of municipal water system — In response to citizen concerns as to high rates and poor quality of service. p. 777.

3. CONSOLIDATION, MERGER, AND SALE, § 52

[N.H.] Terms and conditions — Sale price — Reasonableness — Price in excess of net book value — Municipal acquisition of water utility — Settlement. p. 777.

4. CONSOLIDATION, MERGER, AND SALE, § 56.1

[N.H.] Terms and conditions — Service requirements — Recognition of ongoing transmission service rights — Upon municipal acquisition of water utility — Settlement. p. 778.

5. TAXES, § 1

[N.H.] Municipally assessed taxes — Effect of municipal acquisition of water utility — Lost tax revenues — Partial offset via payments in lieu of taxes — Decreased tax revenue as insufficient basis to block acquisition —

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Matter of municipal jurisdiction and discretion. p. 778.

Appearances: Donahue, Tucker & Ciandella by John J. Rattigan, Esq. and Susan W. Chamberlin, Esq. For the Town of Hudson, Sulloway & Hollis by Martin L. Gross, Esq. for Consumers New Hampshire Water Company, Bossie, Kelly, Hodes & Buckley by Jay L. Hodes, Esq. for the Town of Litchfield, Mark A. Pinard, Esq. for the Towns of Derry and Londonderry, Bernard H. Campbell, Esq. for the Town of Windham, the Office of the Consumer Advocate by Kenneth Traum for residential rate payers, and E. Barclay Jackson, Esq. for the Staff of the Commission.

BY THE COMMISSION:

ORDER

I. Procedural History

Consistent with the provisions of RSA 38:5, the Town of Hudson (Hudson) voted to acquire such utility assets of the Consumers New Hampshire Water Company (Consumers) as Hudson would need to operate a municipal water system. Hudson notified Consumers of the vote in accordance with RSA 38:6. Consumers responded to said notice pursuant to RSA 38:7 by indicating that it was unwilling to sell its property. On July 11, 1996, pursuant to RSA 38:10, Hudson petitioned the New Hampshire Public Utilities Commission (Commission) to determine just compensation for the taking of Consumers' property and that such a taking is in the public interest. A number of interested parties intervened, including the Towns of Windham, Litchfield, Derry and Londonderry, the New Hampshire Municipal Association, and Mr. Leonard Smith. The Office of the Consumer Advocate is a statutory party but did not participate in this docket.

After a lengthy discovery period, the filing of testimony, and a technical session, Hudson and Consumers, which had conducted ongoing settlement discussions, presented a proposed

settlement agreement to the Commission at hearings on October 16 and 17, 1997. On October 22, 1997, intervenor Town of Litchfield filed written comments on the proposed settlement.

By Order No. 22,758, issued on October 20, 1997, the Commission segregated consideration of the proposed settlement docket into two phases. The first phase, which is the subject of this order, consists of determining whether a sale of all of Consumers' property to Hudson comports with the requirements of RSA 38. The second phase consists of determining the appropriateness of a subsequent sale to Pennichuck Corporation of the following assets: all water utility assets outside Hudson, with the exception of the Litchfield wells; water transmission rights to the transmission main linking the Litchfield wells to the Town of Hudson; Litchfield personalty necessary for well operation and maintenance; and a portion of the old Derry Road transmission line in Litchfield which connects portions of the Hudson property Litchfield.

II. Summary of Proposed Settlement

Hudson and Consumers propose that Hudson will purchase all of the business assets owned by Consumers as of December 31, 1996, related to its water service business in New Hampshire. The business will be purchased as a going concern, with assets including: real estate, personalty, fixtures, seller's accounts receivable, books, records, computer data, rights of action, deposits and deposit accounts, and other assets necessary for conducting water utility business in New Hampshire. The purchase specifically does not include Consumers' cash on hand and bank account balances, insurance policies, specified computer equipment, assets not related to water utility service in New Hampshire, the corporate name and stock records and Consumers' rights under the Purchase and Sale Agreement with Hudson.

The purchase price is $34,000,000. In addition, Hudson will pay an amount up to $500,000 for property additions made in the ordinary course of business between January 1, 1997 and April 1, 1998. Hudson will obtain

financing by issuing general obligation municipal bonds in an aggregate principal amount up to $34,500,000, with an average coupon rate not to exceed 6.5%.

Hudson will contract with Pennichuck Corporation (Pennichuck) for management of utility operations in Hudson for an initial period of five years, automatically renewed for an additional two years unless six months prior notice is given.

Hudson agrees to petition the Commission for leave to convey to Pennichuck, or a duly created subsidiary of Pennichuck, the non- Hudson portion of the property purchased from Consumers with the exceptions noted above, subject to an agreement that service will be provided to non-Hudson customers by Pennichuck at rates at or below current levels charged by Consumers.

The conveyance from Consumers to Hudson will go forward only if a majority of Hudson

voters approve the transaction at a special town meeting held pursuant to RSA 38:11.

The Stipulation anticipates an immediate 10% rate decrease for Hudson ratepayers. The Stipulation also provides for "best efforts" to implement a 10% rate decrease for non-Hudson ratepayers within one year.

According to Hudson and Consumers the proposed Stipulation represents fair compensation for the property taken. The purchase price includes an amount Hudson stated is payment for the "subsidy" of non-Hudson ratepayers. Because the stipulated price is agreed upon by the buyer and the seller in this case, it is *ipso facto* fair compensation, according to Consumers.

Hudson and Consumers contend that the transaction is in the public good because (1) it enables the parties to avoid protracted litigation, (2) it enables New Hampshire to retain a jurisdictional water utility in the Hudson area, (3) it enables Consumers to avoid operating the residual, small non-Hudson water system while providing Consumers with recovery of investment, (4) it enables Hudson to operate its own water system at rates that do not subsidize non-Hudson consumers, (5) it enables Pennichuck to acquire the non-Hudson system at a stepped-down basis, and (6) it produces a rate reduction for Hudson ratepayers and a future rate reduction for non-Hudson ratepayers.

III. Commission Analysis

[1-3] We have considered the proposed Stipulation and the exhibits adduced at hearing on October 16 and 17, 1997, including the Purchase and Sale agreement between Consumers and Hudson and a letter of intent for operation and maintenance between Hudson and Pennichuck Corporation. We have also reviewed the concerns of the intervenors and Staff regarding the proposed Stipulation, including written comments provided by the Town of Litchfield.

To the extent that we may be required by statute to make this determination,[1(139)] we find that the proposed Stipulation provides fair compensation for Consumers. The testimony of Hudson's witness, Mr. Sansoucy, clearly demonstrated that the purchase price, which is above net book value, is based upon Hudson's thorough analysis of Consumers' records, many of which were used to support Consumers' last rate increase in Docket No. 95-124. Moreover, the sale of utility assets at a price above net book cost may be approved by the Commission so long as the Commission finds it consistent with the public good. *See Public Service Company of New Hampshire v. New Hampton*, 101 NH 142, 150-151 (1957).

We further find that the purchase of Consumers by Hudson, as contemplated in the Stipulation, is in the public interest,[2(140)]

especially given that Hudson intends to contract with Pennichuck for operation and maintenance of the system. Over the past few years, and especially during Consumers' last rate case, its customers have voiced numerous complaints about Consumers' rates and the quality of its service. We see this transaction as a means of addressing many of those concerns. We also find that, based upon the totality of the circumstances, there is no net harm to the public as the result of the Stipulation. Although the "no harm" test is the public good/public interest standard

previously applied in cases involving acquisition of one public utility by another, *see, Pennichuck*, 77 NH PUC 708, 712-713 (1992), we see no reason why the standard should not be applied

to this proposed taking of a public utility by a municipality. In *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539 (1915), the New Hampshire Supreme Court couched the test of what constitutes the "public good" in terms of the liberty of public utilities to take an "action not forbidden by law, and ... a thing reasonably to be permitted under all the circumstances of the case." *Id.* at 540.

Here the transfer of Consumers' assets is neither illegal nor unreasonable under the circumstances. Accordingly, it meets both the public interest and public good standards set forth in RSAs 38:10 and 374:30, respectively.

The concern raised by the Town of Litchfield regarding fire protection is a proper issue for us to address and we will do so in the Phase 2, Hudson-Pennichuck, portion of this docket, which is scheduled to be heard on November 13, 1997.

[4] We will address concerns raised by Staff regarding transmission rights across Hudson property. Currently, Consumers transports water across Hudson property to other communities. When Hudson acquires Consumers, Hudson could choose to forbid the transportation of water across its property to those other communities. To prevent that result, Hudson has provided assurances in the form of a summary of the terms and conditions of an agreement with Pennichuck Water Works by which Hudson will share the water resources. The agreement also includes transmission rights. We are satisfied that Staff's concern has been addressed sufficiently for our public interest analysis. As part of our Phase 2 proceeding we will require Hudson to insure adequate transmission rights for non-Hudson customers now and in the future.

[5] Finally, we find that the concern raised by the Town of Litchfield regarding possible reduced tax revenues is not a proper issue for us to consider as part of our public interest analysis. As stated in *Grafton County Electric Light and Power Co. v. State*," ... it is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service." *Grafton County*, 77 NH at 540. We find that denying Consumers the right to sell its property due to the possible decrease in municipal tax revenue resulting from municipal ownership of formerly taxed utility assets would be an unreasonable restraint. Insofar as Hudson is concerned, the decrease in its tax revenue resulting from its ownership of Consumers' assets in Hudson was either considered by the Selectmen when they approved the settlement agreement or will be considered by Hudson voters when they undertake their ratification vote pursuant to RSA 38:11. We therefore see no reason to intrude into what is essentially a financial judgment call on the part of Hudson. With respect to the other municipalities that may experience a decline in tax revenue due to Hudson's ownership of utility assets, we find that the Legislature's enactment of RSA 72:11 explicitly addresses this issue by requiring municipalities such as Hudson to make

payments in lieu of taxes to the affected municipalities. Since the Legislature has spoken on this issue, we believe it would be inappropriate to factor municipal tax consequences into our determination of whether the instant transaction is in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the sale of Consumers New Hampshire Water Company to the Town of Hudson, is in the public interest, pursuant to the proposed Stipulation; and it is

FURTHER ORDERED, that the purchase price for the sale of Consumers New Hampshire Water Company to the Town of Hudson is fair compensation for the subject property.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of October, 1997.

FOOTNOTES

[1]Arguably, this transaction could be construed as a taking by agreement under RSA 38:8 which makes no provision for Commission approval. At hearing, however, the parties contended that because Hudson's taking has been contested by Consumers, the provisions of RSA 38:10 apply. For purposes of this order only, we will assume the parties are correct.

[2]Assuming once again that our decision is made pursuant to RSA 38:10, we must determine whether

this transaction is "in the public interest." Notwithstanding the arguable inapplicability of RSA 38:10 discussed in footnote 1, *supra*, RSA 374:30 compels us to review a transfer of Consumers' assets and to approve it upon a finding that "it will be for the public good." Accordingly, we believe it is appropriate that "public interest" and "public good" be used interchangeably herein. *See, Pennichuck Water Works, Inc., et al.*, 77 NH PUC 708, 712 (1992) ("public good" standard is analogous to the "public interest" standard as that standard has been applied by the Commission and the New Hampshire Supreme Court.)

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., DE 96-227, Order No. 22,758, 82 NH PUC

735, Oct. 20, 1997.

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[Go to End of 97504]

82 NH PUC 779

Re Keene Gas Corporation

DR 97-209
Order No. 22,779

New Hampshire Public Utilities Commission

November 3, 1997

ORDER approving a natural gas local distribution company's winter cost-of-gas adjustment filing, resulting in a charge of 8.3 cents per therm, a significant reduction from prior rates.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Cost-of-gas adjustment — Winter season — Factors affecting decrease — Significant prior- period overcollections — Significant reductions in propane supply costs — Reasonableness of supply contracts — Local distribution company. p. 780.

2. EXPENSES, § 126

[N.H.] Natural gas local distribution company — Supply costs — Recovery via winter cost-of-gas adjustment — Factors — Reasonableness of supply contracts — Propane costs and overcollections. p. 780.

APPEARANCES: For Keene Gas Corporation, John F. DiBernardo, Plant Operator, and Mr. Harry B. Sheldon, President. For the Staff of the New Hampshire Public Utilities Commission: Richard B. Deres, PUC Examiner for the Finance Department.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 1, 1997, Keene Gas Corporation (Keene), a public utility engaged in the business of distributing gas within the City of Keene, filed with the New Hampshire Public Utilities Commission (Commission) certain revisions to its tariff providing for a 1997/1998 Winter Cost of Gas Adjustment (CGA), of $0.0830 effective November 1, 1997. In support of the filing, Keene submitted the pre-filed testimony of John F. DiBernardo, Plant Operator. The proposed adjustment would represent a $0.4272 per therm decrease from the $0.5104 CGA rate approved by the Commission during the 1996/1997 mid-winter period correction.

A duly noticed public hearing was held at the Commission on October 24, 1997.

II. POSITION OF KEENE

Mr. DiBernardo described the essential elements from which the projected CGA rate was derived, the current base unit cost of gas, and the status of the customer base. 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 $403,909 for the six month period November 1, 1997 through April 30, 1998 include projected delivered propane costs of $471,978 and a prior period over-collection of $668,069. Sales for the period are projected to total 800,699 therms. When total costs are divided by sales, the result is a projected unit cost of gas sold of $0.5044 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 $0.0830 per therm.

With regard to the large over collection experienced last winter, Mr. DiBernardo indicated that it was a result of the higher CGA costs allowed by the mid-winter correction, which were followed a short time later by sudden reductions in propane supply costs late in the winter period. These reductions occurred too late in the period for Keene to come back before the Commission to make appropriate corrections.

B. *Supply Contracts*

In prior winter periods Keene often has had one or more supply contracts. It was noted that this year, and last year, Keene has only what could be termed a "supply agreement." This agreement does not specify the number of gallons of propane Keene may draw or the price at which it will be sold. When questioned regarding this winter's supply Mr. Sheldon felt that supply would not be a problem. He has received an assurance from Cornerstone Propane LP, the company which purchased Keene's retail gas operation in June of 1997, that they would be willing to help out the utility if the utility runs into supply difficulties this winter.

With regard to price, Mr. Sheldon was of the belief that the prices this year would be much lower than what was experienced during last winter.

III. POSITION OF STAFF

Staff analyzed both the testimony and financial information submitted in support of this rate adjustment as well as certain Company records from the prior period upon which this CGA filing is based. Staff recommends that the proposed 1997/1998 Winter CGA rate of $0.0830 be accepted as filed.

IV. COMMISSION ANALYSIS

[1, 2] We find that the projected costs, sales, and adjustments to the CGA filing are consistent with those approved by the Commission in past CGA's. The Commission finds that Keene's proposed CGA of $0.0830 per therm, which is a decrease from the 1996/1997 Winter CGA, is just and reasonable and in the public good and therefore approves it as filed.

Based upon the foregoing, it is hereby

ORDERED, that the 21st Revised Page 26, superseding the 20th Revised Page 26 of Keene Gas Corporation Tariff, N.H.P.U.C. No. 1 - Gas, providing for a Cost of Gas Adjustment of $0.0830 per therm for the period November 1, 1997 through April 30, 1998 is APPROVED, said rate to be effective for bills rendered on or after November 1, 1997; 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 third day of November, 1997.

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Re Northern Utilities, Inc.

DR 97-228
Order No. 22,780

New Hampshire Public Utilities Commission

November 3, 1997

ORDER suspending a natural gas local distribution company's proposed 1997/1998 demand-side management program plan, which largely continues in effect the plan last approved for the company.

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1. CONSERVATION, § 1

[N.H.] Demand-side management programs — Continuation of most existing program components — Suspension of new tariff filing — To allow for adequate investigatory period — Local gas distribution company. p. 781.

BY THE COMMISSION:

ORDER

[1] On October 24, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management Program for the period November 1, 1997 through October 31, 1998. The filing contained Northern's tariff page N.H.P.U.C. No. 8-Gas, Fifth Revised Page 36 which details the rate schedule for Northern's conservation charges.

Commission Staff (Staff) has notified the Commission that it requires time to investigate the filing and supporting materials and, therefore, has requested that the proposed tariff page be suspended. Staff has also noted that Northern's current conservation charges, implemented to collect for the 1996/97 DSM program costs, are still in effect. Staff has recommended that Northern continue its DSM programs as approved in Commission Order No. 22,516 (March 3, 1997) until the Commission's final order in this proceeding is issued and that any over/underrecoveries be reconciled at that time.

We have reviewed Staff's request and will suspend the tariff page to allow adequate time for a thorough review of the filing and supporting materials. Further, we will order Northern to continue its DSM programs as approved in Order No. 22,516 and to continue to bill the currently effective conservation charges until this docket is resolved.

Based upon the foregoing, it is hereby

ORDERED, that the following tariff page of Northern is SUSPENDED:

N.H.P.U.C. No. 8-Gas Fifth Revised Page 36;

and it is

FURTHER ORDERED, that Northern continue to offer its DSM programs and to collect the Conservation Charges as approved in Order No. 22,516 until this docket is resolved and a final order is issued.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Northern Utilities, Inc., DR 96-334, Order No. 22,516, 82 NH PUC 262, Mar. 3, 1997.

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NH.PUC*11/03/97*[97506]*82 NH PUC 781*Granite State Electric Company

[Go to End of 97506]

82 NH PUC 781

Re Granite State Electric Company

DR 97-211
Order No. 22,781

New Hampshire Public Utilities Commission

November 3, 1997

ORDER adopting procedural schedule for

addressing an electric utility's proposed 1998 conservation and load management programs.

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1. CONSERVATION, § 1

[N.H.] Annual conservation and load management program filing — Electric utility — Retention of existing programs and budget — Modifications to enhance customer eligibility — Procedural schedule — Issues to be addressed — Impact of industry restructuring and retail competition — Avoided-cost basis of tests for cost-effectiveness. p. 783.

APPEARANCES: Carlos A. Gavilondo, Esq. for Granite State Electric Company; David Marshall, Esq. for the Conservation Law Foundation; and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 1, 1997, Granite State Electric Company (Granite State) filed with the New Hampshire Public Utilities Commission (Commission) its 1998 Conservation and Load Management (C&LM) Program Proposal effective for the period January 1, 1998 through December 31, 1998. The filing proposes to maintain Granite State's overall C&LM budget at $2.01 million. This is the same level approved for the 1997 program year.

By an Order of Notice issued October 14, 1997, the Commission scheduled a prehearing conference for October 23, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. On October 21, 1997, the Conservation Law Foundation (CLF) filed a timely Motion to Intervene. No party filed an objection to CLF's Motion to Intervene. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, Granite State, CLF and Staff agreed to the proposed procedural schedule as outlined in the Order of Notice except for a conflict with the final hearing date. A revised hearing date was submitted to the Commission and the proposed procedural schedule is as follows:

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

Data Requests by Staff and Intervenors	October 29, 1997
Company Data Responses	November 4, 1997
Technical Session	November 7, 1997
Testimony by Staff and Intervenors	November 13, 1997
Data Requests by the Company	November 19, 1997
Data Responses by Staff and Intervenors	November 25, 1997
Settlement Conference	December 2, 1997
Filing of Settlement Agreement, if any	December 4, 1997
Hearing at 10:00 a.m.	December 12, 1997.

In accordance with the Order of Notice, Granite State, CLF and Staff stated their positions with regard to the filing for the record.

Granite State stated that its 1998 C&LM Program Proposal was filed on October 1, 1997 in accordance with Order No. 22,518 (March 17, 1997) which approved Granite State's 1997 C&LM Program. The proposed C&LM Program is similar to Granite State's 1997 C&LM Program in terms of the budget level and nature of the programs. Granite State has proposed new residential programs and has refined the Commercial and Industrial (C&I) programs to enhance eligibility requirements. Granite State also stated that the 1998 filing is consistent with

the Commission's Final Plan issued February 28, 1997 as it is budgeted at the latest Commission approved level and that it does not extend beyond the two year phase-out period from the implementation of retail choice.

CLF stated it supports Granite State's proposal and stressed the importance of allowing energy efficiency programs to continue at least another year since it is not clear when retail competition will begin in the electric industry. CLF wants to ensure that Granite States programs are not compromised before that time. CLF believes that Granite State's filing complies with all applicable Commission orders to date regarding energy efficiency.

Staff stated as a preliminary matter that the Commission has recently postponed Public Service Company of New Hampshire (PSNH) and the UNITIL Companies filing of their respective C&LM program proposals for 1998 until thirty days after the Commission issues its rehearing order regarding energy efficiency programs in Docket DR 96-150. Staff requested a

determination from the Commission whether the Parties and Staff should proceed with the proposed procedural schedule or whether this docket should be placed on hold until the rehearing order is issued.

Staff then stated its preliminary concerns with regard to Granite State's 1998 C&LM Program proposal. These concerns deal primarily with: the changes to the avoided costs used to evaluate the cost-effectiveness of the programs; Granite State's inclusion of three residential programs that are not cost-effective; Staff's need for documentation to support the direct costs proposed for the programs; and, how the termination of Granite State's all-requirements contract with New England Power Company (NEP) when retail access is implemented will affect the cost-effectiveness of Granite State's C&LM Programs due to a transfer of approximately $340,000 of NEP costs to Granite State.

II. COMMISSION ANALYSIS

[1] The postponements of C&LM filings by PSNH and the UNITIL Companies was based upon neither company having submitted a 1998 C&LM filing and the belief by both companies that they would be better able to file a proposal after issuance of rehearing order on energy efficiency. Unlike these companies, Granite State submitted a 1998 C&LM filing which it believes is consistent with the Final Plan. Therefore, we shall direct the Parties and Staff to proceed with the procedural schedule outlined above which we find to be reasonable.

Additionally, we will grant the Conservation Law Foundation's Motion to Intervene.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that the Conservation Law Foundation's Motion to Intervene is GRANTED.

By order of the Public Utilities Commission of New Hampshire this third day of November, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Granite State Electric Co., DR 96-322, Order No. 22,518, 82 NH PUC 266, Mar. 17, 1997.

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82 NH PUC 783

Re Group Long Distance, Inc.

DE 97-198
Order No. 22,782

New Hampshire Public Utilities Commission

November 4, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services —

Page 783

Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 784.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 784.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 784.

BY THE COMMISSION:

ORDER

On September 16, 1997, Group Long Distance, Inc. (GLD) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed GLD's petition for compliance with these standards. Staff reports that GLD has provided all the information required by Puc 1304.02. The information provided supports GLD's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of GLD as a New Hampshire CLEC.

GLD has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that GLD has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of GLD in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because GLD has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, GLD agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, GLD seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA

toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that GLD's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that 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 November 11, 1997 and to be documented by affidavit filed with this office on or before November 18, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 4, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this fourth day of November, 1997.

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NH.PUC*11/04/97*[97508]*82 NH PUC 785*Frontier Telemanagement Inc.

[Go to End of 97508]

82 NH PUC 785

Re Frontier Telemanagement Inc.

DE 97-213
Order No. 22,783

New Hampshire Public Utilities Commission

November 4, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 786.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 786.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 786.

BY THE COMMISSION:

ORDER

Page 785

On October 2, 1997, Frontier Telemanagement Inc. (FTI) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications,

and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed FTI's petition for compliance with these standards. Staff reports that FTI has provided all the information required by Puc 1304.02. The information provided supports FTI's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of FTI as a New Hampshire CLEC.

FTI has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that FTI has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of FTI in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22- g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because FTI has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, FTI agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, FTI seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that FTI's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that 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 November 11, 1997 and to be documented by affidavit filed with this office on or before November 18, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than November 25, 1997; 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 2, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 4, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this fourth day of November, 1997.

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NH.PUC*11/06/97*[97509]*82 NH PUC 787*Public Service Company of New Hampshire

[Go to End of 97509]

82 NH PUC 787

Re Public Service Company of New Hampshire

DR 97-059
Order No. 22,784
182 PUR4th 48

New Hampshire Public Utilities Commission

November 6, 1997

ORDER directing an electric utility to reduce its rates by 6.87% on a temporary basis, spread equally across all rate classes. Rate of return on equity is set at 11%, a level representative of returns being earned by electric utilities throughout the country. Commission declines to add a proposed risk premium to the representative return, finding it inappropriate to do so in the context of a temporary rate case. However, it agrees to consider proposals for an equity risk premium in the utility's forthcoming permanent rate proceeding. To provide guidance for the permanent rate proceeding, the commission notes that claims by the utility that electric restructuring decisions issued by the commission are primarily responsible for an erosion in investor confidence "strain the bounds of credulity." Furthermore, it reminds the company that the settled law is that a regulated utility has no abstract constitutional right to make a profit nor any right to the rehabilitation of financial integrity undermined by market forces. Rate base is reduced to reflect precipitous deflation caused by the accelerated amortization of an acquisition

premium and other regulatory assets. Commission rules that it has authority to establish temporary rates at current levels or, if supported by the record, to establish temporary rates lower than those currently in place. Any change in rates determined to be reasonable in the permanent rate proceeding will be reconciled back to July 1, 1997. Responding to claims that the temporary rate reduction could prevent the utility from resolving its debt problems, the commission notes that the utility paid an $85 million dividend last year.

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1. RATES, § 162

[N.H.] Factors affecting reasonableness — Public interest — Balancing of ratepayer and utility concerns. p. 796.

2. RATES, § 640

[N.H.] Practice and procedure — Standard of review — Temporary rates — Necessity of expeditious review. p. 796.

3. RATES, § 85

[N.H.] Commission jurisdiction — To establish temporary rates — To reduce rates on a temporary basis. p. 796.

4. RATES, § 36

[N.H.] Commission jurisdiction — To compel reduction in rates — Via temporary rate schedules. p. 796.

5. RETURN, § 26

[N.H.] Cost of capital — Proceeding setting temporary rates — Need for return-on-equity evaluation — Electric utility. p. 797.

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6. RETURN, § 26.4

[N.H.] Cost of equity — Proceeding setting temporary rates — Scope of review — Electric utility. p. 797.

7. RETURN, § 26.4

[N.H.] Cost of equity — Estimation methodology — Proceeding setting temporary rates — Returns of other electric utilities — Rejection of risk premium. p. 797.

8. RETURN, § 44

[N.H.] Factors affecting reasonableness — Legislative and regulatory risk — Industry restructuring and retail competition — Proposed equity risk premium — Grounds for denial — Temporary rate proceeding — Electric utility. p. 797.

9. RETURN, § 19

[N.H.] Factors affecting reasonableness — Legal standards — No constitutional right or guarantee of profits — Necessity of balancing competing interests. p. 797.

10. RETURN, § 26.1

[N.H.] Capital structure — Update to reflect rate-effective period — Electric utility. p. 797.

11. RETURN, § 87

[N.H.] Electric utility — Return on equity of 11% — Factors — Returns of other electric utilities — Temporary rates — Required reduction in rates — Rejection of restructuring-related risk premium. p. 797.

12. VALUATION, § 21

[N.H.] Ascertainment of rate base — Value for rate making — Temporary rate proceeding — Recognition of rapid decline in rate base — Amortization of regulatory assets — Electric utility. p. 799.

13. VALUATION, § 280

[N.H.] Electric utility — Adjustments to rate base — Factors — Deflation — Accelerated amortization of regulatory assets — Temporary rate proceeding. p. 799.

14. VALUATION, § 257.2

[N.H.] Amortized property — Accelerated amortization of regulatory assets — Rate base reduction — Temporary rate proceeding — Electric utility. p. 799.

15. RATES, § 321

[N.H.] Electric rate design — Proceeding setting temporary rates — Necessity of reduction in rates — Allocation of decrease — Uniform decrease across all rate classes. p. 800.

16. RATES, § 630

[N.H.] Temporary rates — Necessity of reduced rates — Timing of reduction — Reconciliation following permanent rate case — Electric utility. p. 800.

17. RATES, § 249

[N.H.] Schedules and procedure — Effective date — As to temporary rates — As to required reduction in rates — Electric utility. p. 800.

APPEARANCES: Day, Berry, and Howard by Robert Knickerbocker, Esq., and Gerald M. Eaton, Esq., and Robert A. Bersak, Esq., for Public Service Company of New Hampshire; Michael W. Holmes, Esq. of the Office of Consumer Advocate for Residential Ratepayers; Dean, Rice and Howard by Mark W. Dean, Esq., and Anne Davidson, Esq. for the New Hampshire Electric Cooperative, Inc.; F. Anne Ross, Esq., for Retail Merchants Association of New Hampshire; Robert A. Backus, Esq., and Rep. Robert R. Cushing for the Campaign for Ratepayers Rights; Dupont Group by James Monahan for Cabletron Systems, Inc.; O'Neill, Grills and O'Neill by Peter H. Grills,

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Esq. for the City of Manchester, the City of Nashua and the City of Keene; Foley, Hoag and Elliot by James K. Brown, Esq., and the New Hampshire Department of Justice by Senior Assistant Attorney General Martin P. Honigberg, Esq., for Governor Jeanne Shaheen; Jacqueline Lake Killgore, Esq., for the Public Utility Policy Institute; 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 31, 1997, Public Service Company of New Hampshire (PSNH) filed a Notice of Intent to File Rate Schedules and Request for Waiver of Tariff Filing Requirements with the New Hampshire Public Utilities Commission (Commission) pursuant to N.H. Admin. R., Puc Chapter 1600. On May 2, 1997, PSNH filed testimony and exhibits supporting an increase in base rates.[1(141)]

On May 9, 1997, PSNH filed a Motion to Suspend the proceeding pursuant to Puc 201.05 to allow a mediation process designed to resolve federal court litigation over the Commission's Final Plan in DR 96-150 to effectively move forward. By Order No. 22,605 (May 27, 1997) the Commission granted the request and stayed the proceeding until July 2, 1997. On June 23, 1997 the Office of Consumer Advocate (OCA) filed a Motion for Rehearing of Order No. 22,605 and a Motion for Immediate Rate Relief claiming that PSNH was over-earning due to extortionate

rates charged to residential ratepayers. PSNH filed an Objection to OCA's Motion for Rehearing on June 26, 1997.

On July 2, 1997, PSNH filed a motion for, *inter alia*, the continued suspension of certain proceedings, the postponement of data requests in this proceeding and the establishment of current rates as temporary rates in this proceeding until such time as a hearing was held pursuant to RSA 378:27. By Order No. 22,669 (July 23, 1997) we denied PSNH's motion to stay this proceeding any longer, scheduled a prehearing conference for August 5, 1997 and set forth a procedural schedule to govern our investigation into temporary rates. Although Order No. 22,669 stated the Commission denied PSNH's motion to stay this proceeding, we note, as has PSNH, that PSNH did not request a continued stay of this proceeding in its July 2, 1997 motion, but rather requested that current rates be treated as temporary rates from July 1, 1997 until such time as the Commission determines, after hearing, that different rates are appropriate.

On August 5, 1997, the Commission held the duly noticed prehearing conference. The only substantive issue raised at the prehearing conference concerned the authority of the Commission to lower rates as part of a temporary rate proceeding. PSNH averred that the Commission did not have jurisdiction to lower base rates during the pendency of this base rate proceeding. PSNH would not expound upon this theory but agreed to file a legal memorandum on the issue on August 14, 1997.

On August 14, 1997, PSNH filed a memorandum in support of its position that the Commission lacked the authority to set temporary rates in this proceeding. On August 27, 1997 the Retail Merchants Association of New Hampshire (RMA) filed a memorandum in support of Commission jurisdiction to establish temporary rates. On August 29, 1997 the New Hampshire Electric Cooperative, Inc. (NHEC), the Cities of Manchester, Nashua and Keene (the Cities), the OCA, and Commission Staff (Staff) filed memoranda in support of Commission jurisdiction to establish temporary rates. On September 15, 1997 the Governor filed a memorandum of law that, *inter alia*, supported Commission jurisdiction to establish temporary rates.

On September 4, 1997, PSNH filed a Motion to Amend the Procedural Schedule and a Motion to Limit the Scope of issues to be addressed in the temporary rate proceeding, to which the OCA, the Cities, and NHEC objected. On September 5, 1997, NHEC filed a formal Complaint Concerning the Retail Rates of PSNH and requested that the Commission commence a proceeding to investigate PSNH's retail rates. At the beginning of the September 16, 1997 hearing, the complaint was

consolidated with this proceeding without objection from the parties.

On September 8, 1997, we orally granted PSNH's motion to amend the temporary rate procedural schedule and denied the Motion to Limit the Scope of the temporary rate proceeding. On September 15, 1997 we orally rejected PSNH's positions regarding the Commission's jurisdiction to establish temporary rates in this proceeding.

On August 18, 1997, the Staff, Cabletron Systems, Inc. (Cabletron) and the OCA filed

testimony recommending varying levels of temporary rate reductions to be established by the Commission on a reconcilable basis during the pendency of our investigation into the appropriate rates for PSNH. On September 11, 1997, PSNH filed rebuttal testimony addressing the testimony of Staff, OCA and Cabletron and supporting no change in rates during the pendency of the proceeding.

On September 15, 1997, CRR filed a Motion to Compel PSNH to Produce and Disclose Documents Submitted by the Company to William Coleman in the Mediation Between Northeast Utilities and State of New Hampshire; CRR withdrew its motion the following day. On September 15, 1997, Cabletron filed a motion to withdraw its prefiled testimony, which was granted without objection from the parties at the beginning of the September 16, 1997 hearing.

On September 16, 18, 19, and 26, 1997, the Commission heard testimony regarding the appropriate level of temporary rates for PSNH during the pendency of the base rate investigation.

II. POSITIONS OF THE PARTIES AND STAFF

All of the parties to this proceeding, excluding PSNH, took the position that PSNH's rates should be lowered for the purposes of temporary rates. *Cf.*, Position of Staff, *infra*. The positions set forth below concern the discrete issues of the Commission's jurisdiction to set temporary rates and the major components that comprise the formula used to establish temporary rates on a cost of service or traditional rate of return basis. We relate below the positions of those parties where the party or Staff set forth its position with some specificity.

1. *Commission Jurisdiction to Establish Temporary Rates*

A. *PSNH*

On August 14, 1997, PSNH filed a memorandum of law alleging that, absent its July 2, 1997 offer to place current rates into effect as temporary rates, "the Commission would lack jurisdiction to impose *any* level of temporary rates in this proceeding." (emphasis in original) Memorandum at 4. PSNH's argument was based on the conclusion that RSA 378:27 is the only statutory authority available to the Commission to establish reconcilable rates during the pendency of a rate proceeding, and that RSA 378:27 limits the establishment of reconcilable rates to proceedings involving the rates of a public utility "brought either upon motion of the Commission or upon complaint ... ." RSA 378:27.

Asserting that its May 2, 1997 rate filing was merely a justification of its existing rates and that no complaint or request to increase rates had been made in this proceeding, PSNH argued that under the plain words of the statute, the Commission lacked jurisdiction to establish any reconcilable, or temporary, rate.

PSNH also argued that, should the Commission set reconcilable rates during the pendency of this proceeding, the earliest date for such reconciliation is July 1, 1997. PSNH based this

conclusion on language in the New Hampshire Supreme Court's decision in *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980) wherein the Court stated that the earliest date temporary rates can be effective is "the date on which the utility files its underlying request for a change in its permanent rates." *Appeal of Pennichuck Water Works*, 120 N.H. at 567. Concluding that it had not requested a "change in rates," PSNH asserted the earliest date for the reconciliation of temporary to permanent rates was the July 1, 1997 stipulation date.

In its memorandum, PSNH also left open

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the stipulated offer set forth in its July 1, 1997 Motion for Continued Suspension and its July 14, 1997 letter clarifying that position.

B. *Governor Shaheen*

The Governor asserted that PSNH stipulated in its July 1, 1997 Motion for Continued Suspension and its July 14, 1997 letter to the Commission that it would accept current rates as temporary rates as of July 1, 1997 and would accept any change in rates after a hearing on the matter of temporary rates was held pursuant to RSA 378:27. To the extent PSNH took a position contrary to that stipulation, i.e., that the Commission could not hold a hearing and lower temporary rates on a prospective basis, the Governor argued that PSNH waived any such arguments by its stipulation and was estopped from withdrawing its agreement.

The Governor also argued that PSNH had sought an increase in base rates, the Commission had commenced an investigation into PSNH's base rates, and that the OCA had made a complaint regarding PSNH's rates. Thus, the Commission had jurisdiction to set temporary rates under a plain reading of the words of RSA 378:27.

C. *Cities of Manchester, Nashua and Keene*

The Cities, as well as the Governor, took the position that PSNH had stipulated that it would accept current rates as temporary rates effective July 1, 1997 and that PSNH had accepted any change in those rates after a hearing held pursuant to RSA 378:27.

The Cities also argued that the Commission had initiated an investigation into PSNH's base rates, bringing this proceeding squarely within the plain language of RSA 378:27. The Cities also argued that the New Hampshire Supreme Court had interpreted RSA 378:27 very broadly, thereby providing the Commission with the necessary authority to lower rates on a temporary basis if it found such a result to be reasonable.

D. *NHEC*

The NHEC also took issue with PSNH's apparent refusal to abide by the terms of its July 1, 1997 and July 14, 1997 stipulations and asserted that PSNH was estopped from abandoning the terms of that agreement.

The NHEC also argued that PSNH's allegation that its May 2, 1997 filing was not a petition to increase rates because it was not filed in the form of a complaint elevated form over substance because PSNH had complied with all of the requirements of N.H. Admin. R., Puc chapter 1600 in filing testimony and exhibits supporting an increase in base rates.

E. *RMA*

The RMA argued that PSNH had stipulated to a rate change, which includes a rate reduction, after a hearing held pursuant to RSA 378:27. The RMA pointed out the apparent inconsistency in PSNH's reiteration of its stipulated offer in its August 14, 1997 memorandum while at the same time arguing that the Commission did not have jurisdiction to lower rates as part of a temporary rate proceeding.

Consistent with the positions of the other parties to the proceeding, RMA argued that PSNH had misinterpreted RSA 378:27 and the case law decided thereunder, and that a reduction in PSNH's rates pursuant to RSA 378:27 was consistent with the plain meaning of the words of the statute and applicable case law.

F. *OCA*

The OCA joined the other parties in pointing out that PSNH had mischaracterized the case law construing the bounds of the Commission's jurisdiction to alter rates under RSA 378:27 and RSA Chapter 378.

G. *Staff*

Staff's position was consistent with that of the parties, other than PSNH, with regard to PSNH's May 2, 1997 rate filing, and the Commission's jurisdiction to establish temporary rates under the plain meaning of the words of RSA 378:27.

Staff also argued that the New Hampshire

Supreme Court had ruled in *State v. New England Telephone and Telegraph Co.*, 103 N.H. 394 (1961) that RSA 378:7 gave the Commission plenary jurisdiction over utility rates and that since RSA 378:27 was merely a particularization of one of those powers, it therefore should not be construed to limit the Commission's jurisdiction.

2. *Scope of Testimony on Return on Equity*

A. *PSNH*

On September 4, 1997, PSNH filed a Motion to Limit the Scope of testimony in the temporary rate proceeding. PSNH requested that the Commission follow its "long-established precedent and set a rate of return for temporary rates based upon such returns found to be reasonable in an earlier proceeding ... ." Motion at 1. Based on this argument PSNH asserted the Commission should not consider the testimony proffered by Staff and the OCA regarding the appropriate cost of capital for PSNH. *Id.*

PSNH asserted that the "last return on common equity found to be reasonable for PSNH in a traditional rate proceeding ... " was the 15% used by the Commission to determine old PSNH's rates in its last rate proceeding before filing for bankruptcy protection. *Re Public Service Company of New Hampshire*, 72 NH PUC 237 (1987). Alternatively, PSNH proposed the 13.25% net present value figure used as the ceiling of the rate collar put in place for the seven year fixed rate period under the Rate Agreement. Motion at 4; *Re Northeast Utilities/Public Service Company of New Hampshire*, 114 PUR4th 385, 75 NH PUC 396 (1990).

While maintaining the Commission should employ its last found rate of return on equity, PSNH alternatively presented testimony that a reasonable and necessary rate of return on equity in order to attract capital was 17%-19%. PSNH presented testimony that its bonds were below investment quality and that it was entitled to a speculative return on equity.

B. *Governor Shaheen*

The Governor objected to PSNH's attempt to limit the scope of testimony in this proceeding to the 13.25% net present value ceiling return set in 1989 as part of the Rate Agreement, or the 15% return on equity set for PSNH in 1987 as it was approaching bankruptcy. The Governor took the position that neither returns reflected the current conditions of the capital markets and, therefore, were not reflective of reasonable rates of return required by RSA 378:27.

Rather, the Governor, applying the general standards for setting temporary rates, argued that the Commission should look to the 10% and 10.2% returns on equity recently granted other electric utilities in New Hampshire by the Commission.

C. *Cities of Manchester, Nashua and Keene*

The Cities objected to PSNH's request to limit testimony on a reasonable return on equity in this proceeding. The Cities stressed that RSA 378:27 requires a finding by the Commission that temporary rates "shall be sufficient to yield *not less than a reasonable return* on the cost of the property of the utility used and useful in the public service ... ." (Emphasis in original) Response at 1. Thus, the Cities argued that the Commission was required to make a determination that the

return on equity applied in this proceeding was reasonable and, therefore, was required to accept testimony on this point.

D. *NHEC*

The NHEC argued that it was unreasonable to limit the scope of the testimony in this proceeding to the last found rate of return in a traditional rate proceeding when the regulation of PSNH over the last ten years had been totally "untraditional." The NHEC also challenged PSNH's assertion that the Commission had a long standing practice of excluding testimony on the cost of capital other than the Commission's last found cost of capital for that utility. In support of this position, the NHEC referred to its testimony and that of Staff in its most recent rate proceeding as well as

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testimony in Connecticut Valley Electric Company's most recent rate proceeding which addressed the appropriate cost of capital to be applied for temporary rate purposes. Response at 2, citing Commission Dockets DR 96-213 and DR 96-170.

E. *OCA*

The OCA objected to PSNH's motion to limit testimony in this proceeding. The OCA also stressed that RSA 378:27 required a finding that temporary rates yield a "reasonable return" on the property of the utility used and useful in the public service, thereby requiring a finding by the Commission that the return granted is reasonable.

F. *Staff*

Subsequent to the filing of its testimony, Staff argued that the Commission should limit testimony on the appropriate return on equity to PSNH's last found return on equity. Rather than the ceiling of the rate collar during the Fixed Rate Period, however, Staff argued the 10.5% floor of the collar was the appropriate figure to use in computing temporary rates.

3. *Rate Base and Revenue Adjustments*

A. *PSNH*

PSNH took issue with a number of rate base adjustments made by the OCA and Staff in their prefiled testimony. PSNH also objected to the imputation of "lost revenues" by the OCA for

special contracts entered into pursuant to RSA 378:18.

PSNH objected to the *pro forma* adjustments beyond the test year to reflect the deflation of regulatory assets.

PSNH also objected to the OCA's exclusion of its approximate 3% interest in the Millstone Point Unit III (Millstone III) nuclear generating station.

B. *OCA*

The OCA made a *pro forma* adjustment to test year rate base to reflect the rapid amortization of the Acquisition Premium. The OCA adjusted PSNH's average, historical, test year, rate base by deducting the difference of the average Acquisition Premium balances for the average test year ending June 30, 1998 from the average Acquisition Premium balance in the test year.

The OCA also argued that PSNH's approximately 3% ownership interest in Millstone III should not be recovered from ratepayers through rate base until such time as the unit is returned to service. The OCA argued that Millstone III had been off line for an extended period of time and could not return to service until it received permission from the Nuclear Regulatory Commission. Thus, the OCA concluded the unit was no longer used and useful in the public service.

The OCA then contended that the Commission should impute revenues to PSNH's test year revenues lost because of special contracts it had entered into with a number of its largest customers. The OCA argued that its clients, residential ratepayers, should not be forced to subsidize these large customers.

C. *Staff*

Rather than its usual average test-year rate base, Staff used an end of year rate base to calculate PSNH's revenues with *pro forma* adjustments to December 31, 1997 to regulatory assets, the SPP Deferrals and the Acquisition Premium. Thus, Staff reflected both increases and decreases in determining the appropriate rate base to calculate PSNH's rates. Staff made this adjustment to reflect the extraordinary decrease in regulatory assets PSNH experiences as these assets are rapidly amortized. Staff argued that this adjustment was necessary to accurately set rates into the future.

Staff also reduced the Plant Held for Future Use account by $180,000 because certain assets had been held on PSNH's books for over ten years. Rate base was also reduced by $1,665,000 to reflect fuel costs that were currently being recovered through FPPAC.

Staff also removed charitable contributions from test year operating expenses.

4. *Level of Temporary Rates*

A. *PSNH*

PSNH asserted, through the testimony of John H. Forsgren, Chief Financial Officer of the Northeast Utilities Companies (NU), and Wilbur L. Ross, a financial advisor employed by Rothschild, Inc., that any reduction in rates, even on a temporary basis, might result in a PSNH bankruptcy.

Mr. Forsgren testified that PSNH had three significant financial obligations to meet in the spring of 1998: 1) a $25 million payment to the preferred stock sinking fund, 2) retiring or refinancing $170 million in first mortgage bonds; and 3) the renegotiation of two letters of credit on $229 in pollution control bonds. He testified that PSNH did not have sufficient cash on hand to meet these obligations and that it is possible, given the restructuring law enacted by the New Hampshire legislature and the restructuring order issued by the Commission in DR 96-150 pursuant to that legislation, that PSNH might be unable to retire, refinance or renegotiate these financial obligations which would result in a PSNH bankruptcy even if the Commission did not lower rates on a temporary basis. Mr. Forsgren testified that the additional action of lowering rates, even on a temporary basis, would only add to the difficulty PSNH faced in attempting to address these financial obligations, thereby increasing the likelihood of a PSNH bankruptcy.

Mr. Ross echoed Mr. Forsgren's concerns with regard to PSNH's ability to meet its financial obligations and impending bankruptcy in the Spring of 1998, concluding that the financial markets viewed the "New Hampshire regulatory climate to be among the worst in the nation ... ." Exhibit 8 at 5. Mr. Ross used his analysis of the stock price of NU when the Commission issued its decision in DR 96-150 as the basis for his conclusions concerning the financial community's perceptions of the New Hampshire regulatory environment.

Because of the risk of forcing PSNH into bankruptcy, both witnesses argued that the Commission should not lower rates on a tempo-
rary basis, even if such a reduction were justified.

B. *Governor Shaheen*

The Governor did not agree with the rebuttal testimony of Mr. Forsgren and Mr. Ross that temporary rates should remain fixed at current levels. The Governor found "incredible" that PSNH paid a $58 million dividend to its Connecticut parent on the eve of the Commission's restructuring order and then would deny ratepayers a long overdue rate decrease because of alleged inability to meet future financial obligations. She noted that PSNH has had seven years of escalating rates to plan for its financial obligations under traditional regulation, and that ratepayers should receive any rate reduction possible under Commission regulations.

C. *Cities of Manchester, Nashua and Keene*

The Cities asserted that PSNH was engaged in an irresponsible strategy of fear, designed to play upon the Commissioners' sense of responsibility, in order to maintain current rates as temporary rates. The Cities further asserted that PSNH and NU are the masters of PSNH's destiny because they have been in sole control of PSNH's cash flow over the last seven years. The Cities, citing the internal and external audits conducted in Connecticut regarding the Millstone Point nuclear outages that found that directors and officers of NU were unqualified and should be removed from their positions, asserted that any financial problems facing NU or PSNH were due to the actions of these directors and officers. Based on this analysis of the management of NU and PSNH, the Cities questioned the credibility of PSNH's witnesses who blamed all of NU's financial problems on the regulatory environment in New Hampshire. Thus, the Cities concluded, the Commission should reduce base rates by 10%.

D. *NHEC*

NHEC graphically expressed its fear that ratepayers may never see any rate reductions because of the financial condition of PSNH.

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NHEC asserted that it did not believe that PSNH, under the management of NU, could meet its financial obligations in the spring of 1998 and would be forced to file bankruptcy. Based on this conclusion, NHEC argued the Commission should not allow PSNH to retain any ratepayer monies during the pendency of this proceeding as they would be lost to PSNH's creditors. Rather, NHEC argued that the Commission should require PSNH to reduce its rates or place all potential rate reductions in escrow with the Secretary of State to protect ratepayers' interests.

E. *Cabletron*

Cabletron supported the positions taken by the Governor, the Cities and NHEC. Cabletron also argued that PSNH was not requesting compensatory rates but excessive rates to meet an alleged financial crisis. Citing RSA 378:9, Cabletron asserted that, if in fact PSNH faced a financial crisis, it should request extraordinary relief in the form of an emergency rate proceeding, not a temporary rate proceeding. Thus, in the context of this proceeding, the Commission should reduce temporary rates.

F. *RMA*

The RMA argued that PSNH's witnesses regarding its impending financial crisis were not credible and that through this testimony PSNH was attempting to move the Commission away from its central mission of balancing the interests of ratepayers and shareholders. Based on this

assertion, the RMA argued that the Commission should reduce rates on a temporary basis.

E. *OCA*

The OCA argued that the financial community's view of the Commission was irrelevant to the Commission's statutory obligation which requires a finding that rates are just and reasonable. The OCA also objected to holding current rates as temporary rates during the pendency of the proceeding because of PSNH's failure to properly manage its cash flow and financial obligations. Thus, the OCA concluded that the Commission should lower rates 17% on a temporary basis.

F. *Staff*

Although the Staff's written testimony supported a temporary rate reduction of between 7.63% and 9.91%, Staff ultimately recommended that the Commission keep current rates as temporary rates to reduce the likelihood of a PSNH bankruptcy in the spring of 1998. Staff based this recommendation on the testimony of Mr. Ross and Mr. Forsgren who asserted that PSNH might be forced to file for bankruptcy protection if the Commission were to lower rates on a temporary basis. Staff added the qualification that PSNH should be required to post security for ratepayers in the event that PSNH files for bankruptcy to ensure ratepayers do not become unsecured creditors in a PSNH bankruptcy proceeding.

III. COMMISSION ANALYSIS

At the outset we wish to thank all of the participants in this proceeding for their testimony and comments. As with any rate determination, our responsibility here is to balance the interests of the utility with that of the ratepayers. RSA 363:17-a. Our balancing task in the instant action is difficult given that, as the record amply demonstrates, the aforementioned interests are clearly at odds.

On one hand, PSNH argues that its current rates should become temporary rates for the pendency of this proceeding. PSNH witnesses have testified that even a modest temporary rate reduction might have serious adverse consequences with respect to its attempts to refinance certain bond obligations, including bankruptcy. On the other hand, customer groups argue that current rates are among the highest in the country (Tr. Day IV, at 118), that temporary rates should be as much as 17% lower than current rates (Exhibit 17), that PSNH received annual rate increases of 5.5% over the last 7 years and that "ratepayers should not become lenders of last resort." (Statement of the Governor, Tr. Day I, at 18).

[1, 2] A result which balances the afore-stated divergent positions must be just and

reasonable. *See e.g.*, RSA 374:2. In determining just and reasonable rates, "[we] must balance the consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment." *Appeal of Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). The protection of investors' interests, however, must be secondary to the Commission's primary concern of protecting the consuming public. *Id.; See also, Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708, 720 (1985). With the foregoing to guide our analysis, there are a number of issues we must address in reaching our decision on the appropriate level of temporary rates for PSNH during the pendency of this proceeding. The New Hampshire Supreme Court has explicitly held that the standard to be applied by the Commission in setting temporary rates is "less stringent" than the standard applicable to permanent rates, so that "temporary rates shall be determined expeditiously `without such investigation as might be deemed necessary to a determination of permanent rates'" *Appeal of the Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (citing *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949)). Thus, any conclusions reached herein are not meant to prejudge our ultimate conclusions as to the appropriate rates for PSNH on a permanent basis.

With this admonition in mind, it is also important to recognize that any rate level set herein on a temporary basis is reconcilable to either shareholders or ratepayers at the conclusion of this proceeding with the establishment of permanent rates. *See, State v. New England Telephone and Telegraph Co.*, 103 N.H. 394 (1961)(construing RSA 378:30 to provide for refunds to ratepayers when permanent rates are set below temporary rates).

1. *Commission Jurisdiction to Establish Temporary Rates*

[3, 4] The first issue for our consideration is the Commission's jurisdiction to establish temporary rates in this proceeding and, to the extent we conclude we have the authority to set temporary rates, whether that authority includes the right to lower rates on a temporary basis. In its memorandum of law, PSNH argued that RSA 378:27 constitutes the sole authority for the Commission to set temporary rates. Following this reasoning PSNH concluded that because this proceeding had not been brought "either upon motion of the Commission or upon complaint ... ," RSA 378:27, the Commission lacked jurisdiction to set temporary rates at any level in this proceeding. In its August 14, 1997 memorandum of law on this issue, PSNH did, however, hold open the stipulation contained in Paragraph 7 of its July 2, 1997 Motion to Stay.

On July 2, 1997 PSNH filed a motion for continued suspension of dockets DR 96-150, DR 96-424 and DR 97-014, stating that it no longer requested that this proceeding, DR 97-059, be suspended. Motion at ¶. 6. PSNH went on to "consent and stipulate" in this docket that:

> As of July 1, 1997, the level of rates presently in effect be declared to be temporary rates pursuant to RSA 378:27, and PSNH waives any right to a hearing for that purpose. Further, if and to the extent it is deemed necessary by the Commission, on or after August 5, 1997, a temporary rates hearing as set forth in RSA 378:27 may be held and different temporary rates imposed upon order of the Commission.

Motion at ¶. 7.

PSNH reiterated this position in a letter from counsel dated July 30, 1997.

We have concluded that we should accept the terms of that offer which we address at page 37 herein. We will, however, respond to PSNH's contentions, given that we find them to be erroneous.

As the City of Manchester pointed out, the New Hampshire Supreme Court has interpreted the language of RSA 378:27 to broadly include both temporary rate reductions and increases. *See, Public Service Company of New Hampshire v. State*, 102 N.H. 66, 68 (1959). Moreover, as Staff set forth in its memorandum,

RSA 378:27, 378:29 and 378:30 are merely "particularizations of the comprehensive ratemaking powers conferred upon the Commission in its early years (Laws 1911, c. 164, s. 11a; RSA 378:7) rather than latter day limitations upon those powers." *State v. New England Telephone and Telegraph Co.*, 103 N.H. 394, 395-396 (1961). The New Hampshire Supreme Court has also held that the "authority of the Commission to regulate rates is plenary save in a few specifically excepted instances." *State v. New England Telephone and Telegraph Co.*, 103 N.H. 394 397 (citations and internal quotations omitted). *See also, LUCC v. Public Service Company of New Hampshire*, 119 N.H. 332, 341 (1979); *Chasson v. Village District of Eastman*, 128 N.H. 807, 818 (1986).

Thus, we reject PSNH"s narrow reading of our statutory authority to establish reconcilable rates during the pendency of a Commission investigation into the appropriate rates of a utility. Having concluded the Commission has the authority to establish temporary rates at current levels or, if supported by the record, to establish temporary rates lower than those currently in place, we must now determine what we believe to be the appropriate level of temporary rates during the pendency of this proceeding and when and if any change in rates should take effect.

2. *Cost of Capital*

[5-11] The first issue we will address in this analysis is the appropriate or reasonable return on PSNH's rate base used and useful in the public service. RSA 378:27. With regard to the scope of the testimony and, therefore, the scope of our analysis of this issue, we believe it is not only appropriate, but necessary, to consider the return on equity testimony offered by PSNH, the OCA and Staff.

Although it is our usual and customary practice to use the last found return on equity for a utility in establishing temporary rates, we do not believe it would be appropriate to use such a standard in this proceeding. As was set forth in the memoranda of a number of parties, RSA 378:27 expressly refers to temporary rates yielding "not less than a reasonable return on the

property of the utility ... ." Moreover, "[t]he application of any ratemaking standard without reference to [a reasonable return] would be inconsistent with the [Commission's] statutory mandate." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 639 (1986). Thus, contrary to PSNH's assertions that the scope of this proceeding should not include an evaluation of return on equity, we believe that an analysis of the appropriate return on equity, although admittedly in much less depth than in the permanent rate proceeding, is not only warranted under the circumstances but is also required under the provisions of RSA 378:27.

The proceedings in which we used the last found return on equity for the purposes of temporary rates were based on the premise that the utility's last found return on equity was the result of a traditional cost of service analysis with specific Commission findings that a particular return on equity was reasonable and appropriate under the circumstances. In contrast, PSNH's last established rates were based on the Rate Agreement and its seven year Fixed Rate Period with seven 5.5% annual rate increases that had little basis in traditional, or cost of service, ratemaking. *See, Appeal of Richards*, 134 N.H. 148, 159 (1991) ("the rate element of the [Rate Agreement] was far from traditional ... ."). In fact, the rate of return element of the Rate Agreement was a form of price cap regulation, with the ceiling of the cap set on a net present value basis over the seven years of the Fixed Rate Period. The net present value element of the price cap was nontraditional even for price cap regulation.

Thus, it would be illogical and erroneous for the Commission to establish temporary rates, rates which must be established pursuant to a cost of service analysis, *Appeal of Richards*, 134 N.H. 148 (1991), on returns on equity set forth or anticipated under the Rate Agreement. We must, then, determine an appropriate return on equity for the purposes of temporary rates, keeping in mind that we are not prejudging the issue of the appropriate return on equity for permanent rates.

As is set forth above, the OCA recommended a return on equity of 10.1% derived from an average of the last two returns on

equity determined by the Commission to be reasonable for electric utilities. *Re Granite State Electric*, Order No. 22,141 (May 13, 1996)(10.0% return on equity approved by Commission); *Re Connecticut Valley Electric Company*, Order No. 22,537 (March 31, 1997)(10.2% return on equity approved by Commission). PSNH implicitly indicated a 12.6% return on equity was reasonable in its May 2, 1997 prefiled case in chief. In testimony, however, PSNH claimed that it was entitled to a 17% to 19% return on equity to reflect the peculiar level of risk caused by New Hampshire legislators and regulators.

Staff recommended three alternative rates of return on equity of 10.2%, 11.0% and 12.6%. These recommended returns reflect, respectively, the last found return on equity determined to be reasonable for an electric utility by this Commission, *Re Connecticut Valley Electric Company*, Order No. 22,537 (March 31, 1997), an average of recent representative returns on equity granted by other regulatory bodies to electric utilities throughout the country, and the

return on equity endorsed by PSNH in its May 2, 1997 case in chief.

In light of the peculiarities of this case, and the level of investigation to be applied in a temporary rate proceeding, we believe the appropriate return on equity for temporary rates is the 11% recommended by Mr. Sullivan. As Mr. Sullivan testified, an 11% return on equity is representative of returns being earned by electric utilities throughout the country. Mr. Forsgren similarly testified on behalf of PSNH that regulatory agencies throughout the country are authorizing returns on equity in the 10% to 12% range. Exhibit 3, at 4. Because this proceeding involves only reconcilable rates, we believe the average or representative return on equity for electric utilities throughout the country is the appropriate return on equity to be applied in this temporary rate proceeding. Adjustment to this return may be made after a full analysis of all the issues affecting the appropriate return on equity for this particular utility. Thus, to the extent PSNH is entitled to a premium over this average or representative return on equity, or something less than that, we will consider evidence on that subject in the context of the permanent rate proceeding. *See Re Pennichuck Water Works, Inc.*, 78 NH PUC 621 (1993).

In that light, we offer the following criticisms of PSNH's attempt to obtain a premium rate of return on equity, to provide some guidance for the permanent rate proceeding. While we can understand Mr. Ross' statements of concern about investors' confidence in NU's stock, we cannot accept his position that the decline in NU's stock price is primarily attributable to actions taken by this Commission. Mr. Ross' failure to recognize the precipitous drop in the value of the stock in 1996, well before issuance of our Restructuring Plan, as evidenced by Exhibit 10, and the significant contribution of NU's nuclear problems to that devaluation, strain the bounds of credibility. His testimony and that of PSNH's cost of capital expert, Dr. Charles Olson, reflect indifference to the interests of ratepayers and a lack of appreciation for the Commission's most basic responsibility, i.e., to balance interests of the utility and that of the ratepayers in accordance with our statutory mandate.

The New Hampshire Supreme Court has indicated, and one of our most fundamental statutes, RSA 363:17-a, makes clear, our responsibility is to balance the interests of the customer and the utility. As the Court stated in *Appeal of Public Service Co. of New Hampshire*, 130 NH 748 (1988) "[i]n setting rates, a regulatory Commission follows a process of identifying consumer and producer interests competing for recognition, with an ultimate goal of striking a fair balance or accommodation between them, to be reflected in charges to customers that may be described as just and reasonable both to the customer and to the utility." *Appeal of Public Service Co. of New Hampshire*, 130 NH 748, 750 (1988).

The Court, in *Appeal of Public Service Co. of New Hampshire*, also stated that PSNH had an erroneous assumption that "a rising probability that risk will be realized must be followed indefinitely by a rising rate of return to the investor upon whom the loss may fall." *Id.* at 755.

Justice Souter went on to state in *Appeal of Public Service Co. of New Hampshire* that,

"[s]uch logic, indeed, would provide the investors not with a reasonable rate of return but

> with plenary indemnification, for the ultimate consequence of automatically raising the return as the prospects for recovering the investment fell would be nothing less than a shifting of the entire risk from the investors to the ratepayers ... [and that] [p]roviding such an upward spiral of return would, indeed, represent a patent failure to weigh the interests of the customers in the balancing process. The company's view thus runs counter to the settled law that a regulated utility has no abstract constitutional right to make a profit ... and no right to the rehabilitation of financial integrity that market forces have hopelessly undermined. The relationship between investors and ratepayers is not static, and regulators must at least consider re-striking old balances between the competing interests as conditions change."

Id.

The Court, citing the United States Supreme Court case of *Bluefield Co. v. Public Service Commission*, 262 U.S. 679 (1923), held that "a utility has no constitutional right to returns commensurate with `highly profitable enterprises or speculative ventures.'" *Id.* The Court concluded, therefore, that "utilities and their investors are responsible for controlling risks, and while the probability of suffering the consequences of a risk may grow to the point where only a speculator would accept it, ratepayers need not support a utility's capital with premiums that a speculator would demand." *Id.* at 756.

We move now to the appropriate capital structure, in order to determine the overall cost of capital derived from a weighted average of PSNH's capital structure, to be applied in this proceeding. We cannot accept PSNH's contention that the capital structure applied to rate base must somehow exactly mirror the rate base items to which it is to be applied. The New Hampshire Supreme Court has explicitly recognized that the Commission may, for the purposes of ratemaking, adopt "a capital structure that it finds appropriate, rather than the actual capital structure of the company ... ." *Appeal of Conservation Law Foundation*, 127 N.H. 606, 636 (1986). Moreover, PSNH's insistence on "mirroring" rate base to capital structure runs contrary to the normal Commission practice of updating the cost of capital to reflect the most recent data available. As the Commission stated in PSNH's last traditional rate proceeding, the capital structure adopted by the Commission should reflect the period in which rates will be in effect and should, therefore, attempt to reflect reality as it will be during the period rates are in effect. *Re Public Service Company of New Hampshire*, 72 NH PUC 237, 253-254 (1987). Thus, the applicable capital structure is not designed to mirror the investments in rate base. Furthermore, as Mr. Traum testified, PSNH's position would be nearly impossible to implement, given the constantly changing debt structure of PSNH. Thus, we find the capital structure recommended by Staff in Exhibit 20 to be appropriate under the foregoing analysis.

3. *Rate Base*

[12-14] The next issue for our consideration is the appropriate calculation of rate base for the purposes of temporary rates. Consistent with the standard of review to be applied in temporary rate proceedings, we will preserve the status quo where it appears there is a question as to the appropriate ratemaking treatment to be applied to any discrete item.

The OCA contended that PSNH's 2.8% ownership interest in Millstone III should be excluded from rate base because it is not currently used and useful in providing service to the public. While Millstone III is not currently producing electric energy to PSNH ratepayers, we are not prepared to exclude this investment from rate base, given the limited record of the temporary rate proceeding.[2](142)

PSNH, the OCA and Staff adjusted test year revenues by annualizing the June 6, 1996 5.5% rate increase. Neither the OCA or Staff, however, used an average of PSNH's assets over that period to measure rate base. Rather, both the Staff and the OCA made *pro forma* adjustments to regulatory assets to reflect the precipitous deflation in PSNH's rate base

Page 799

caused by the accelerated amortization of the Acquisition Premium. Staff also made a *pro forma* adjustment to reflect the amortization of the Small Power Producer deferrals. Staff also used an end of year rate base any additions to plant which took place during the test year.

PSNH argued that these adjustments result in a mismatch between rate base and the revenues derived from rate base which leads to a fundamental inequity in both the OCA's and Staff's calculations of PSNH's revenue requirement. PSNH also claimed that the Commission has always used a thirteen point average of rate base and that Staff and the OCA had made the adjustment to test year rate base solely to reduce PSNH's revenue requirement.

In *Re EnergyNorth Natural Gas, Inc.*, 78 NH PUC 117 (1993) we held that the use of an historical test year with a thirteen point average rate base was "neither statutorily nor constitutionally required ... " and that "extraordinary circumstances [would] justify a modification to [this] traditional methodology." *Re EnergyNorth Natural Gas, Inc.*, 78 NH PUC 117, 120 (1993). *See also Re Pennichuck Water Works, Inc.*, 78 NH PUC 621, 625 (1993) (modifications made to traditional methodology increasing water utility's rate base to reflect large out of test year capital additions); *Re Connecticut Valley Electric Company*, Order No. 22,537 (March 31, 1997); *Re Public Service Company of New Hampshire*, 72 NH PUC 237, 240 (1987) (Millstone III included in rate base as a *pro forma* adjustment); *Accord*, N.H. Admin. R., Puc 1603.05(b).

In this case Staff made adjustments to rate base to reflect the rapid decline of rate base due to the amortization of regulatory assets. We believe this is an extraordinary circumstance not only justifying but requiring a modification to the traditional thirteen point average applied by this Commission.[3](143) A failure on our part to recognize a change of this magnitude in rate base would result in a windfall to PSNH and an inequity to ratepayers.

We also do not agree that this *pro forma* adjustment to test year rate base results in a "mismatch" of revenues to rate base. The concept of matching revenues to rate base is grounded in the alternative rationales that an increase in rate base might increase revenues and that ratepayers should support or pay for the investments that have been made by shareholders to serve them. Neither of these rationales applies to the *pro forma* adjustments at issue herein. The

adjustments were made to regulatory assets, which are nonproductive theoretical assets that exist only because a regulatory body has recognized some intangible concept and given it a value. These assets do not serve to increase revenues through increased usage; nor do they reflect an asset providing service to customers.

PSNH's assertions that the adjustments were made solely to achieve the result of a lower rate base and, therefore, lower revenues, is meritless and is generally a reflection of PSNH's witnesses' lack of familiarity with the regulatory process applied in New Hampshire.

PSNH and Staff disagreed over the inclusion of a *pro forma* adjustment in test year rate base due to deferred taxes resulting from a stipulation approved by the Commission in *Re Public Service Company of New Hampshire*, 79 NH PUC 5 (1994), commonly referred to as the "global settlement." Because there is no clear conclusion resolving this dispute, we will accept PSNH's position regarding the appropriate treatment of the deferred taxes from the global settlement and increase Mr. Sullivan's rate base figure by $19 million as proposed by PSNH.

With regard to the *pro forma* adjustment to revenues made by the OCA to reflect revenues that allegedly would have been realized but for special contracts, we are not prepared to make any such adjustments at this time based on the limited record of this proceeding. Moreover, given the pending rehearing of our Restructuring Order in DR 96-150, it would not be appropriate to rely on our order in that docket to reach a decision here.

[15-17] As a result of this analysis, we conclude that PSNH's revenues and, therefore, customers' rates, should be lowered 6.87%[4](144) on a temporary basis spread equally across all rate classes. *See*, Appendix A.

4. *Level and Timing of Temporary Rate Reduction*

Having reached this conclusion we now must determine the date on which this temporary reduction in rates should be implemented, if at all, during the pendency of this proceeding. PSNH argued that we should maintain current rates as temporary rates to provide additional indicia of economic security to the financial markets, as PSNH attempts to refinance or renegotiate significant financial obligations in the Spring of 1998. All other parties have argued that we should lower rates to provide some measure of rate relief to customers that face some of the highest electric rates in the nation as advocated by all of the other parties to this proceeding.[5](145)

Mr. Forsgren and Mr. Ross have suggested that lowering rates on a temporary basis might result in PSNH's inability to refinance $170 million in bonds coming due in the spring of 1998, to obtain Letters of Credit to support its $229 million in Pollution Control Revenue Bonds and to make a required $25 million payment to the preferred stock sinking fund. We must, however, put this testimony in the context of PSNH's May 2, 1997 financial statements filed with this Commission as part of its permanent rate case. Those statements explicitly set forth that PSNH

budgeted to retire both the $170 million debt and the $25 million payment to the preferred stock sinking fund with cash on hand from earnings this year. The financial statements also reveal that PSNH planned on paying another $48 million dollars in dividends from earnings, in addition to the $85 million dividend already declared, to its Connecticut parent, NU. Exhibit 16.

The evidence also revealed that PSNH has consistently underestimated its earnings over the past three years. In fact, although PSNH estimated earnings of $36.4 million at the beginning of 1997, it increased that amount to $62.8 million in its seventh month estimate of actual earnings for 1997. Similarly, the 1996 estimate of earnings was $68.4 million (Exhibit 4), while actual earnings were $96.9 million (Exhibit 6) and the 1995 estimate of earnings was $74 million while actual earnings were $83.2 million (Exhibit 5).

The payment of the $85 million dividend weeks before the issuance of our restructuring order in February of 1997 lends support to critics' claims that PSNH is being used as a "cash cow" to keep NU and its troubled affiliates with large investments in the idled Millstone nuclear generating stations afloat. *See* Exhibit 27. (PSNH's dividend paid to NU in 1997 far exceeds those dividends paid by NU's other subsidiaries.) We find Mr. Forsgren's testimony explaining this dividend payment, i.e., that NU did not foresee our February 1997 restructuring order, to be lacking in credibility given the fact that we issued a preliminary plan in September of 1996 and put Mr. LaCapra's advice to us on the record in January of 1997. Moreover, NU's complaint in Federal Court is replete with references to our order that suggest that the Commission acted exactly as NU and PSNH expected. It is difficult, therefore, not to see the payment of the $85 million dividend as anything but an attempt to remove cash from PSNH to improve NU's financial position at a time when its stock price had already dropped dramatically, due, in large part, to nuclear problems in Connecticut totally unrelated to New Hampshire's restructuring efforts. The $85 million payment could have served a number of other purposes that would have benefitted PSNH and New Hampshire ratepayers, not the least of which is assistance in resolving PSNH's alleged impending debt problems.

Ultimately, we believe it is in the best interest of the utility to lower its rates. While it is difficult to pinpoint the impact of elasticity, we agree with the suggestion from a number of the consumer groups that lower rates might lead to higher consumption, and, therefore, increased revenues. It is not and has never been our intent to drive PSNH to bankruptcy. We are here striving to find a way to keep PSNH financially viable and to improve its position with ratepayers as well as lenders and investors. We think it is unfortunate that PSNH itself has not attempted to be more creative in looking for ways to lower rates and to improve its standing in the financial community.

With regard to the effective date of this reduction in base rates, we will accept PSNH's July 2, 1997 offer which it reiterated in its August 14, 1997 memorandum regarding Commission jurisdiction to lower temporary rates

and set current rates as temporary rates effective July 1, 1997. We have also concluded,

however, that the temporary rate decrease of 6.87% shall take effect on all bills rendered on or after December 1, 1997. Although Puc 1203.05(a) states that any change in rates shall be implemented on a service rendered basis on or after the date of the approved rate change, we believe there are circumstances justifying a waiver of this rule. *See*, Puc 201.05.

We think it is very important, however, that all interested parties recognize that while we may be reducing rates in this proceeding, this is only part of a complicated puzzle that is still unsolved; the pending FPPAC proceeding could very well result in another increase in rates that may either reduce or totally offset the reduction which we are ordering here. That is a separate proceeding with separate issues which we have not yet addressed. In addition, we do not want to mislead ratepayers into thinking that this rate reduction is permanent at this point. We must be mindful of the fact that this is a temporary, not a permanent, rate proceeding, and that there are other issues pending that may impact on PSNH's rates.

PSNH has requested a 9% to 10% rate increase in the pending FPPAC proceeding. While there is no guarantee PSNH will prevail in its requested increase in the FPPAC rate, given the current level of deferral recoveries, the fact that Small Power Producer costs are now reflected at full cost in FPPAC rates and the fact that the current FPPAC rate reflects a credit on customers' bills which has essentially muted the last 5.5% rate increase that took effect on June 1, 1996, there is a high probability that the FPPAC rate will increase by some amount. Thus, in the interest of rate continuity, we will institute only one change in rates effective December 1, 1997, prior to the implementation of permanent rates in the summer of 1998.

If it is ultimately determined that PSNH's rates should be changed in the permanent rate proceeding customers' bills will be reconciled back to July 1, 1997 consistent with the terms of this order.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's current rates shall serve as temporary rates from July 1, 1997 to December 1, 1997 and that Public Service Company of New Hampshire shall lower its base rates on a temporary reconcilable basis 6.87% effective for all bills rendered on or after December 1, 1997; and it is

FURTHER ORDERED, that any change in base rates determined to be reasonable at the conclusion of this proceeding shall be reconciled as of July 1, 1997; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall provide this Commission with weekly reviews of its attempts to renegotiate, refinance or retire the $170 million in first mortgage bonds, the $229 million in Pollution Control Revenue Bonds and $25 million payment to the preferred stock sinking fund.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 1997.

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

APPENDIX A

DR 97-059
Public Service Company of New Hampshire
Revenue Requirement
Temporary Rates
(000's)

Rate Base (Retail)	$1,186,803
Cost of Capital	9.35%
Required New Operating Income	110,966
Adjusted Net Operating Income	145,887
Excess Net Operating Income	34,921
Tax Effect	19,198
Required Reduction	54,119
Total 1996 Retail Sales	788,001
% Retail Revenue Decrease	6.87%

FOOTNOTES

[1]Although the testimony and exhibits purported to support an increase in base rates, PSNH did not request a rate increase. Rather, PSNH chose the alternative relief of no change in base rates, or an increase

Page 802

in base rates to reflect an increase in Base Assumptions.

[2]Notwithstanding the findings of NU's internal investigation into the outage and the findings of the investigation conducted for the Connecticut Department of Public Utility Control which have been placed in evidence, we believe we should provide PSNH an opportunity to respond to these reports. We note that the OCA has not merely requested a decision regarding replacement power, an issue to be addressed in FPPAC, but the removal of the plant from rate base and consequentially the disallowance of all operation and maintenance expenses, depreciation expenses, and a return on PSNH's investment associated with Millstone III.

[3]In this case the average would consist of five rather than thirteen points to reflect the fact that PSNH closes its books on a quarterly rather than a monthly basis.

[4]The reduction of 6.47% announced at our oral deliberations was based on an incorrect adjustment related to the global settlement. Staff's rate base is $1,186,803,000 when the global settlement is correctly included.

[5]Because PSNH was unable to provide Staff or the Commission with the requested security

for ratepayers, we conclude that Staff also supports a rate decrease.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., DR 96-170, Order No. 22,537, 82 NH PUC 302, Mar. 31, 1997. [N.H.] Re Granite State Electric Co., DR 95-169, Order No. 22,141, 81 NH PUC 359, May 13, 1996. [N.H.] Re Public Service Co. of New Hampshire, DR 97-059, Order No. 22,605, 82 NH PUC 435, May 27, 1997. [N.H.] Re Public Service Co. of New Hampshire, DR 97-059, Order No. 22,669, 82 NH PUC 562, July 23, 1997.

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NH.PUC*11/17/97*[97510]*82 NH PUC 803*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97510]

82 NH PUC 803

Re New England Telephone and Telegraph Company dba Bell Atlantic

DS 97-223
Order No. 22,785

New Hampshire Public Utilities Commission

November 17, 1997

ORDER extending the review period for a local exchange telephone carrier's proposed offering of an optional intrastate toll calling plan, "Business Link."

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1. SERVICE, § 468

[N.H.] Telephone — Toll services — Proposal for optional "Business Link" intrastate toll calling plan — Extension of review period. p. 804.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — Of proposed new service offering —

Extension of review period — To allow for adequate investigatory period — Optional "Business Link" intrastate toll calling plan — Local exchange telephone carrier. p. 804.

BY THE COMMISSION:

ORDER

On October 17, 1997, New England Telephone & Telegraph Company, d/b/a/ Bell Atlantic (Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking authority to introduce Business Link, an optional intrastate toll calling plan. In support of its petition, Bell Atlantic filed a description of the new service and an analysis depicting adjusted price floors and average

Page 803

revenues per minute of toll use.

Business Link is an optional toll calling plan for New Hampshire business customers only. Subscribers to Business Link are not assessed a Service establishment charge and intrastate message telecommunication services (MTS) are flat rated at 13 cent per minute (.022 cents/second). Subscribers receive additional toll discounts based upon their monthly usage charges and earned bonus credits.

By filing this petition, Bell Atlantic seeks additional authority to limit Business Link services to New Hampshire businesses and prohibit residential customers from subscribing. Limiting optional calling plans to a specific customer class is a departure from the Commission's decision in DE 89-010,[1(146)] the Company's last rate design proceeding. In DE 89-010, the Commission found there was no difference between residential and non-residential customers in the actual cost to provide toll services. As a result, the Company is required to extend discounted optional calling plans, such as Business Link, to both customer classes.

Bell Atlantic argues that a departure from the Commission's decision in DE 89-010 is necessary because the Company needs additional marketing flexibility. Bell Atlantic contends it is at a competitive disadvantage because other major toll competitors have the flexibility to target market optional calling plans to New Hampshire businesses while the Company must provide optional calling plans to all customers. Because the Company must provide optional calling plans to all customers, the Company claims it will incur additional costs associated with modifying billing systems, order processing systems and personnel training. Bell Atlantic asserts that other toll competitors do not incur the same additional costs because those competitors do not have to make optional calling plans available to all customer classes.

[1, 2] Because this filing is a departure from the Commission's ruling in DE 89-010, Staff recommends extending the time for determination regarding the petition in order to allow time

for additional analysis. Staff also asserts that pricing a toll service differently on the basis of customer class, rather than cost causation, raises a number of policy questions. Consequently, allowing additional time to review the petition will provide Bell Atlantic the opportunity to supplement its filing in support of pricing the same toll service differentially across customer classes.

We have reviewed Staff's recommendation and will grant the extension to allow a thorough review of the petition and provide Bell Atlantic an opportunity to supplement its petition with additional arguments in support of providing toll services to residential and non-residential customers at different rates.

Based upon the foregoing, it is hereby

ORDERED, that review of the Bell Atlantic proposed tariff revisions to NHPUC telephone tariff No. 77 consisting of:

> Part A, Section 10, pages 31 & 33, Part A, Section 11, page 8, and Part M, Section 01, page 35 is extended for not more than 30 days.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of November, 1997.

FOOTNOTES

[1]76 NH PUC 150, 167.

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NH.PUC*11/17/97*[97511]*82 NH PUC 804*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97511]

82 NH PUC 804

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-227
Order No. 22,786

New Hampshire Public Utilities Commission

November 17, 1997

ORDER conditionally approving further amendments to a previously executed special rate

contract as between a local exchange

telephone carrier and Cabletron Systems, Inc., for fiber distributed data interface service.

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1. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface (FDDI) service — Further amendment to special rate contract — To add another service to one FDDI network location — Conditional approval. p. 805.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Interconnection of multiple local area networks — Further amendment to special rate contract — Conditional approval. p. 805.

3. RATES, § 553

[N.H.] Telephone rate design — Fiber distributed data interface service — Further amendment to special rate contract — Propriety of unconditional approval — Separate opinion. p. 806.

4. SERVICE, § 449

[N.H.] Telephone — Special service — Fiber distributed data interface service — Further amendment to special rate contract — Propriety of unconditional approval — Separate opinion. p. 806.

BY THE COMMISSION:

ORDER

[1, 2] On October 22, 1997, New England Telephone and Telegraph Company d/b/a Bell Atlantic (Bell Atlantic) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, an amended special contract with Cabletron Systems Inc. (Cabletron) for FDDI Service. In support of its petition, Bell Atlantic filed the signed contract and a cost analysis of the proposal.

The Special Contract filing was accompanied by a Motion for Proprietary Treatment to exempt portions of the special contract and supporting materials from public disclosure. The Motion for Proprietary Treatment will be addressed in a separate order. Pursuant to Puc 204.07(b), the Commission will protect the information from public disclosure pending review of the request for confidential treatment.

FDDI is employed to link together geographically disparate high-capacity network users, such as the interconnection of multiple Local Area Networks (LAN) at various locations. Permitting a special contract enables Bell Atlantic to obtain revenues which contribute to shared and common costs.

As directed in DR 97-035 by Order No. 22,545, Bell Atlantic has published notice of this amended special contract filing with a 14 day period for comments which ended on November 4, 1997. No comments have been received by the Commission regarding this filing. The Commission approved the original contract for FDDI service with Cabletron in DR 95-039 through order No. 21,816 (September 6, 1995). The Commission approved amended contracts to add additional Cabletron locations to the FDDI Network in DR 95-325, DR 96-187 and in DR 97-089. The amended contract currently before the Commission adds one additional service to a current location on the FDDI network. The costs and revenues for the added service are included in a Bell Atlantic Cost Study that was provided with the filing. Staff inquiries regarding the cost data have been appropriately answered by Bell Atlantic. Staff agrees that specialized central office equipment is properly amortized during the life of the contract and that outside plant which would be reusable, is correctly amortized at 63% of full cost. Maintenance Costs are properly estimated for both Central Office and Outside Plant facilities.

The cost study details demonstrate that the proposed rates for the FDDI service exceed the relevant costs, thus, Staff has recommended that the Commission approve this special contract.

We have reviewed the petition and the

Staff recommendation and find the proposed special contract to be in the public interest. However, the parties to this contract should recognize that the contract is subject to the fresh look determination made by the Commission in docket DR 96-420.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Amended Special Contract with Cabletron is approved; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by Bell Atlantic of its rights and obligations under this special contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by Bell Atlantic during the life of this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded

Cabletron Systems Inc. in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of November, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited depending on the outcome of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Thirdly, I do not find it appropriate to delay a decision on this contract while we considered the "Fresh Look" docket. The schedule in docket DR 96-420 was intended to develop the merits of whether or not we should even consider modifying any existing or prospective contracts. I would not deny the parties in this docket an opportunity to take advantage of the contracted terms while we considered these broad issues.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

November 17, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*11/17/97*[97512]*82 NH PUC 807*Hampton Water Works Company

[Go to End of 97512]

82 NH PUC 807

Re Hampton Water Works Company

DF 97-181
Order No. 22,787

New Hampshire Public Utilities Commission

November 17, 1997

ORDER authorizing a water utility to issue up to $2.7 million in general mortgage bonds and up to $800,000 in additional common stock, so as to eliminate short-term debt and finance construction programs.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Refinancing — Elimination of short-term debt — Through issuance of general mortgage bonds and common stock — Water utility. p. 807.

2. SECURITY ISSUES, § 58

[N.H.] Purposes of capitalization — Additions and betterments — Financing of construction programs — Through issuance of general mortgage bonds and common stock — Water utility. p. 807.

3. SECURITY ISSUES, § 106

[N.H.] Sale price and interest rate — Issuance of general mortgage bonds — By which to

eliminate short-term debt — Water utility. p. 807.

4. SECURITY ISSUES, § 108

[N.H.] Sale price and interest rate — Issuance of additional common stock — For purchase by sole existing stockholder — By which to finance construction programs — Water utility. p. 807.

BY THE COMMISSION:

ORDER

[1-4] Hampton Water Works Company, (Hampton Water), is a public utility that provides water to the public in the Towns of Hampton, North Hampton, and in the Jenness and Rye Beach areas of the Town of Rye, New Hampshire.

Hampton Water filed with the New Hampshire Public Utilities Commission on September 3, 1997, a petition for authority to issue and sell Two Million Seven Hundred Thousand Dollars ($2,700,000) of General Mortgage Bonds and Eight Hundred Thousand Dollars ($800,000) of Common Stock.

Hampton Water proposes to issue and sell for cash $2,700,000 principal amount of General Mortgage Bonds (Bonds), bearing an interest rate of 7.48%, maturing on December 1, 2027, to be dated as of their authentication, and sold at par to Allstate Life Insurance Company. The Bonds will be issued under an original Indenture of Mortgage to the Fidelity Bank of Philadelphia, Pennsylvania.

Hampton Water also proposes to issue and sell $800,000 in Common Stock (Common Stock). The number of shares will be determined on the book value of the Common Stock at or about the time of closing. This Common Stock will be sold for cash to Greenwich Water Systems, Inc., which is the present holder of all the outstanding shares of Common Stock of Hampton Water. Hampton Water anticipates that the various fees and expenses associated with obtaining this financing will approximate $100,000.

We find that this proposed financing is in the public interest because it will permit Hampton Water to substantially eliminate Hampton Water's outstanding short-term notes payable and to finance ongoing construction programs, primarily for increases in source of supply as mandated by the New Hampshire Department of Environmental Services.

Based on the foregoing, it is hereby

ORDERED, *NISI*, that Hampton Water Works Company is granted authorization,

pursuant to RSA 369:1, to enter into the above mentioned sales agreement with Allstate Life Insurance Company for the issuance and sale of Bonds; and with Greenwich Water Company for the issuance and sale of the Common Stock as described in the petition; and it is

FURTHER ORDERED, that all such borrowing to be in accordance with the terms and conditions set forth in the petition; and it is

FURTHER ORDERED, that public notice of this order be given by a onetime publication in newspapers having general circulation in the area served, such publication to be on or before November 24, 1997, and said publication to be documented by affidavit filed with this office no later than December 1, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to the petition be notified that they may submit their comments to the Commission or may submit a written request for a hearing in this matter no later than December 8, 1997; and it is

FURTHER ORDERED, that finalized copies and a detailed accounting of the final actual issuance costs of this financing arrangement be filed with this Commission; and it is

FURTHER ORDERED, that on January 1st and July 1st of each year, Hampton Water Works Company shall file with this Commission a detailed statement, duly sworn to by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of this financing until the whole of said proceeds shall have been fully accounted for; and it is

FURTHER ORDERED, that this order shall be effective December 17, 1997 unless a request for a hearing is filed with the Commission provided for above or unless the Commission orders otherwise prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of November, 1997.

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NH.PUC*11/18/97*[97513]*82 NH PUC 808*Public Service Company of New Hampshire

[Go to End of 97513]

82 NH PUC 808

Re Public Service Company of New Hampshire

DR 97-183
Order No. 22,788

New Hampshire Public Utilities Commission

November 18, 1997

MOTION by electric utility for confidentiality of certain customer-specific usage data and energy analyses submitted as part of the utility's annual conservation and load management program filing: granted.

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1. PROCEDURE, § 16

[N.H.] Discovery and inspection — Confidentiality — Relative to annual conservation and load management program filing — Granted as to customer-specific usage data and energy analyses cited to therein — Benefits of nondisclosure as outweighing disclosure — Electric utility. p. 808.

BY THE COMMISSION:

ORDER

[1] On August 29, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) its 1997 Conservation and Load Management (C&LM) filing. As part of the discovery process in the docket, Commission Staff requested that PSNH provide documentation (i.e., workpapers, schedules, analyses, etc.) to support selected examples of the final 1996 Lost Fixed Cost Recovery kilowatt-hour savings, rates and amounts.

On October 29, 1997, PSNH filed a Motion for Protective Order to exempt from disclosure Attachments 2, 3 and 4 of PSNH's

response which includes customer specific information including but not limited to energy analyses, recommended conservation measures, and identification and cost of measures installed.

In its motion, PSNH states that the information contains customer specific information which constitutes confidential commercial and financial information of the identified customers that is within the exemptions from disclosure set forth in RSA 91-A:5, IV (Supp.) and Rule Puc 204.06(b)(2). PSNH also stated that customer specific information such as energy analyses, recommended conservation measures and identification and cost of conservation measures installed is financially and commercially sensitive information, which, if released, would constitute an invasion of a customer's privacy and provide valuable information regarding the operations and costs of the customer to the customer's competitors per Rule Puc 204.06(c)(2). Additionally, PSNH stated that the limited benefits of disclosing the information to the public

are outweighed by the harm that will result from such disclosure. If participation in C&LM programs results in disclosure of information regarding customer operation and costs, customers will be unwilling to participate in C&LM programs, and the public will be denied the educational and other benefits of customer participation per Rule Puc 204.06(b)(3).

We find that the information PSNH seeks to protect is customer information that should be protected pursuant to Puc 204.06. Accordingly, based on PSNH's representations and under the balancing test we have applied in prior cases, *e.g.*, *Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to PSNH of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that PSNH's Motion for Protective Order is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1997.

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NH.PUC*11/18/97*[97514]*82 NH PUC 809*Northern Utilities, Inc.

[Go to End of 97514]

82 NH PUC 809

Re Northern Utilities, Inc.

DR 97-228
Order No. 22,789

New Hampshire Public Utilities Commission

November 18, 1997

ORDER adopting a procedural schedule as to a natural gas local distribution company's 1997/98 demand-side management (DSM) program filing, under which the utility plans to keep largely intact its last approved DSM program, except for the addition of certain market transformation efforts.

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1. CONSERVATION, § 1

[N.H.] Demand-side management plans — Updated filing — Proposed retention of most existing program components — Possible addition of market transformation (MT) efforts — Procedural schedule — Issues to be addressed — Program participation levels — Tests of cost-effectiveness — Ability of MT efforts to promote conservation technologies — Local gas distribution company. p. 810.

APPEARANCES: LeBoeuf, Lamb, Greene & MacRae, L.L.P. by Paul B. Dexter, Esq. for Northern Utilities, Inc. and Michelle A. Caraway for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

Page 809

I. PROCEDURAL HISTORY

On October 24, 1997, Northern Utilities, Inc. (Northern) filed with the New Hampshire Public Utilities Commission (Commission) its Demand Side Management (DSM) Program for the period November 1, 1997 through October 31, 1998. Northern proposes to continue offering its currently approved DSM programs and requests authorization to begin to participate in regional and national market transformation efforts.

By an Order of Notice issued October 29, 1997, the Commission scheduled a prehearing conference for November 10, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. No party filed for intervention. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, Northern and Staff agreed to the proposed procedural schedule as outlined in the Order of Notice and as follows:

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

Responses to Oral Data       November 17, 1997
  Requests Propounded at
  the 1st Technical Session
Data Requests by Staff and   November 20, 1997
  Intervenors
Company Data Responses        December 3, 1997
Technical Session            December 10, 1997
Testimony by Staff and       December 17, 1997
  Intervenors
Data Requests by the Company December 23, 1997
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Data Responses by Staff and Intervenors	December 30, 1997
Settlement Conference	January 6, 1998
Filing of Settlement Agreement, if any	January 9, 1998
Hearing	January 15, 1998.

Also at the prehearing conference, in accordance with the Order of Notice, Northern and Staff stated their positions with regard to the filing for the record.

Northern stated that it is seeking approval to continue the programs offered during the 1996/1997 program year for another year with updated conservation charges reflecting the new budget. Northern stated that its program was to become effective November 1, 1997, however, the Commission suspended the revised tariff page and Northern is continuing to bill its current conservation charges. The proposed budget contains a small amount of funding for market transformation efforts that Northern hopes will help to promote new conservation technologies.

[1] Staff stated that its preliminary concerns with Northern's filing relate to: the performance of the DSM programs during the 1996/1997 program year and whether achieved participation levels were used to develop the 1997/1998 DSM program; how Northern's proposed market transformation efforts will complement the rest of its DSM offerings, what portion of the DSM budget relates to these market transformation efforts and whether these market transformation efforts can be individually screened to evaluate their cost-effectiveness; and, whether Northern has accumulated and incorporated any results of monitoring and evaluation plans performed during the last two program years into the development of the proposed 1997/1998 DSM program.

II. COMMISSION ANALYSIS

We find the proposed procedural schedule to be reasonable and will, therefore, approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 1997.

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NH.PUC*11/18/97*[97515]*82 NH PUC 811*Brooks Fiber Communications Inc. dba New England Fiber Communications LLC

[Go to End of 97515]

Re Brooks Fiber Communications Inc. dba New England Fiber Communications LLC

DE 97-224
Order No. 22,790

New Hampshire Public Utilities Commission

November 18, 1997

ORDER authorizing a communications carrier to construct and maintain fiber optic feeder cables across the Nashua River in Nashua.

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1. TELEPHONES, § 2

[N.H.] Construction and equipment — Installation of fiber optic feeder cable — Crossing of public waters as a factor. p. 811.

2. CONSTRUCTION AND EQUIPMENT, § 5

[N.H.] Pole lines — Fiber optic feeder cables — Crossing of public waters as a factor — Communications carrier. p. 811.

BY THE COMMISSION:

ORDER

[1, 2] On October 23, 1997, Brooks Fiber Communications Inc. d/b/a New England Fiber Communications LLC (Brooks) filed a petition with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 371:17, to install and maintain a new fiber optic feeder cable (fiber cable) across the public waters of the Nashua River in the City of Nashua, New Hampshire. The proposed fiber cable is an integral part of the fiber network currently being constructed by Brooks in the Nashua Exchange and will serve as the feeder facility for the northern section of the city.

In support of their petition, Brooks submitted a cross-sectional plan, aerial view plan, construction details and a locus map of the proposed crossing. As all construction will be done in upland areas and will have no impact on the surrounding waters, no permit is required from the Department of Environmental Services' Wetlands Board. The proposed crossing will be one span with an overall length of 215 feet and clearance over water will exceed 28 feet. This is an

existing licensed crossing location for Bell Atlantic and Public Service Company of New Hampshire.

In order to establish reliable service to the public, Brooks must construct communications lines over and across certain public waters; those lines are an essential part of its communication system. The definition of public waters contained in RSA 371:17 includes "all ponds of more than ten acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe".

Brooks has attested that the construction of the crossing will meet or exceed the requirements of the 1997 edition of the National Electrical Safety Code as well as all other applicable safety standards. Brooks further stated that in order to establish competitive service in the area, it is important to begin this construction as soon as possible, particularly considering the impending winter weather. As a result, Brooks has requested expeditious issuance of a license that would allow for December 1997 construction. Staff has reviewed the Brooks petition and supporting documents and recommends approval.

The Commission deems this crossing to be over and across public waters and therefore subject to the requirements of RSA 371:17. The Commission, moreover, finds such a crossing necessary for Brooks to establish and provide communications service within its authorized service area, and therefore approves the license as being in the public good.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Brooks is authorized, pursuant to RSA 371:17, to install and maintain a fiber optic feeder cable over the Nashua River in Nashua, New Hampshire plant

Page 811

depicted in drawings submitted on October 23, 1997 and other documentation on file with this Commission; and it is

FURTHER ORDERED, that all reconstruction hereafter 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 Brooks 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 November 25, 1997 and to be documented by affidavit filed with this office on or before December 2, 1997; 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 9, 1997; 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 16, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 18, 1997, 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 November, 1997.

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NH.PUC*11/19/97*[97516]*82 NH PUC 812*CTC Communications Corporation

[Go to End of 97516]

82 NH PUC 812

Re CTC Communications Corporation

DE 97-203
Order No. 22,791

New Hampshire Public Utilities Commission

November 19, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 813.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 813.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 813.

BY THE COMMISSION:

ORDER

On September 30, 1997, CTC Communications Corporation (CTC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to

become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed CTC's petition for compliance with these standards. Staff reports that CTC has provided all the information required by Puc 1304.02. The information provided supports CTC's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of CTC as a New Hampshire CLEC.

CTC has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that CTC has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of CTC in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because CTC has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, CTC agreed to concur with Bell Atlantic's present and future rates

for intraLATA switched access or to charge a lower rate. If, at any point, CTC seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that CTC's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that 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 November 26, 1997 and to be documented by affidavit filed with this office on or before December 3, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than December 10, 1997; 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 17, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 19, 1997, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this nineteenth day of November, 1997.

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NH.PUC*11/21/97*[97517]*82 NH PUC 814*Consumers New Hampshire Water Company

[Go to End of 97517]

82 NH PUC 814

Re Consumers New Hampshire Water Company

DE 96-227
Order No. 22,792

New Hampshire Public Utilities Commission

November 21, 1997

ORDER accepting settlement and stipulation by which those assets and operations of a water utility that are located outside of the Town of Hudson will be purchased and acquired by a subsidiary of the Pennichuck Corporation. The transfer of utility assets within municipal boundaries to the Town of Hudson was considered and approved earlier in Order No. 22,778 (82 NH PUC 775, *supra*).

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1. CONSOLIDATION, MERGER, AND SALE, § 18

[N.H.] Factors affecting approval — Acquisition of utility by financially and technically competent entity — Reasonableness of purchase price — Compliance with standard of no net harm — Water utility — Settlement. p. 817.

2. CONSOLIDATION, MERGER, AND SALE, § 21

[N.H.] Factors affecting approval — Rate considerations — Implementation of 10% rate reduction — Reasonableness of interim rate and return schedules — Water utility — Settlement. p. 817.

3. CONSOLIDATION, MERGER, AND SALE, § 56.1

[N.H.] Terms and conditions — Service requirements — Recognition of ongoing transmission service rights — Upon acquisition of water utility — Division based on intramunicipal versus extramunicipal utility assets as a factor — Settlement. p. 817.

4. CONSOLIDATION, MERGER, AND SALE, § 42

[N.H.] Terms and conditions — Capital structure — Of acquiring entity — For purposes of interim rates — Acquisition of extramunicipal water utility assets — Settlement. p. 817.

APPEARANCES: Donahue, Tucker & Ciandella by John J. Rattigan, Esq. and Susan W. Chamberlin, Esq. for the Town of Hudson; Solloway & Hollis by Martin L. Gross, Esq. for Consumers New Hampshire Water Company; Bossie, Kelly, Hodes and Buckley by Jay L. Hodes, Esq. for the Town of Litchfield; Gallagher, Callahan & Gartrell by Denis J. Maloney, Esq. for Pennichuck Corporation; Marc A. Pinard, Esq. For the Towns of Derry and Londonderry; Thomas Young for 64 residents of Smyth Woods in Hooksett; McLane, Graf, Raulerson & Middleton by Richard Samuels, Esq. for Manchester Water Works; and E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Consistent with the provisions of RSA 38:5, the Town of Hudson (Hudson) voted to acquire such utility assets of the Consumers New Hampshire Water Company (Consumers) as Hudson would need to operate a municipal water system. Hudson notified Consumers of the vote in accordance with RSA 38:6. Consumers responded to said notice pursuant to RSA 38:7 by indicating that it was unwilling to sell its property. On July 11, 1996, pursuant to RSA 38:10, Hudson petitioned the New Hampshire Public Utilities Commission (Commission) to determine just compensation for the taking of Consumers' property and that such a taking is in the public interest. A number of interested parties intervened, including the

Towns of Windham, Litchfield, Derry and Londonderry, the New Hampshire Municipal Association, and Mr. Leonard Smith, a Hudson resident and former state legislator.

After a lengthy discovery period, the filing of testimony, and a technical session, Hudson and Consumers, which had conducted ongoing settlement discussions, presented a proposed settlement agreement to the Commission at hearings on October 16 and 17, 1997. The proposed settlement involves more than a sale of property limited to that necessary to operate a Hudson municipal water system; it involves a sale of all of Consumers' New Hampshire property to Hudson. On October 22, 1997, intervenor Town of Litchfield filed written comments on the proposed settlement.

By Order No. 22,758, issued on October 20, 1997, the Commission segregated consideration of the proposed settlement docket into two phases. Phase 1, which was the subject of Order No. 22,778 (October 30, 1997) resulted in a determination that sale of all of Consumers' property to Hudson, as proposed, comports with the requirements of RSA 38. Phase 2, which the instant order addresses, consists of consideration of the proposed subsequent sale by Hudson to Pennichuck Corporation of the following non-Hudson assets: all water utility assets outside Hudson, with the exception of the Litchfield wells; water transmission rights to the transmission main linking the Litchfield wells to the Town of Hudson; Litchfield personalty necessary for well operation and maintenance; and a portion of the old Derry Road transmission line in Litchfield which connects portions of the Hudson to property Litchfield (collectively, the Non-Hudson Properties). Phase 2 is part of the case brought by Hudson to purchase Consumers. Phase 2 does not include any formal request to grant Pennichuck authority, under RSA 374:22, to engage in business as a public utility in the non-Hudson service area. Nor does it include a request from Consumers, under RSA 374:28, to discontinue permanently its service to the area.

Order 22,758 also made Pennichuck a mandatory party to Phase 2 and established an abbreviated procedural schedule. The procedural schedule included discovery, testimony, two technical sessions, and a hearing for set November 13, 1997.

Two additional parties requested intervenor status. The Commission granted the request of Manchester Water Works, limiting the intervention to Phase 2 issues. At the duly noticed hearing on November 13, 1997, the Commission granted the request to intervene in Phase 2 made by Mr. Thomas Young on behalf of 64 ratepayers residing in Smyth Woods, Hooksett, New Hampshire.

II. POSITIONS OF THE PARTIES AND STAFF

A. Town of Hudson

Hudson argues that the Commission should approve the sale of the Non-Hudson Properties to Pennichuck because the sale results in no harm to the public interest. In fact, Hudson argues, the ratepayers will benefit by a 10% rate decrease and by the expertise contributed by Pennichuck to the running of small community water systems. Not permitting the transaction would negate these benefits. Therefore, Hudson requests the Commission authorize the sale, approve the capitalization structure proposed by Pennichuck, and set interim rates at 10% below the current rates, with a provision for rate review by the Commission after two years.

Hudson avers that the Water Supply and Transmission Agreement (Transmission Agreement) between Hudson and Pennichuck, filed as Exhibit 8, protects the Commission's interest in assuring that water transmission will not be interrupted in the future. Paragraph 15 of Exhibit 8 grants to the Commission the opportunity to arbitrate supply and transmission disputes of all types, including renewal and termination issues, between Pennichuck and Hudson. The term of the Transmission Agreement is 20 years, with no provision for early termination, an automatic renewal clause, and a minimum of three years notice of intent not to renew. Thus, Hudson claims, Pennichuck will be notified of any proposed termination by the year 2018 and will have three years to find an alternate source. The Commission will arbitrate any dispute over

the proposed termination and, Hudson noted, the Commission will review Pennichuck's alternative source choice because Pennichuck, unlike Hudson, is a regulated utility.

B. Pennichuck

Pennichuck testified that it has executed a Purchase and Sale Agreement with Hudson for the Non-Hudson Properties, subject to Commission approval of the proposed terms. The terms include the purchase price of $7,500,000, a proposed capital structure of 60% debt and 40% equity, a rate of return of 11%, and approval of the Transmission Agreement with Hudson.

Pennichuck's proposed purchase price is $7,500,000. The price was determined by an income approach, whereby Pennichuck projected revenue flow and subtracted operating estimated operating expenses, depreciation and taxes to create a projected investment value necessary to arrive at the net income required to achieve a 10% decrease in rates.

In testimony, Pennichuck indicated that its estimated operating expenses are based upon its own experience, not on actual records for the non-Hudson properties. The absence of actual records resulted in assumptions regarding costs. Consequently, Pennichuck states that its original estimate is probably low. For example, Pennichuck asserts that it now knows that some of the non-Hudson properties relied on trucked water, which is more expensive than pumped water, to alleviate shortages in the summer months.

Pennichuck explained that it plans to create a subsidiary to own and operate the Non-Hudson Properties. Creation of the subsidiary, tentatively called Pennichuck Eastern Utilities (PEU), will insure there is no rate impact on ratepayers served by Pennichuck's existing water utility, Pennichuck Water Works (PWW). PEU will be operated by employees of PWW pursuant to contracts between PEU and PWW. Those contracts will be drafted only if the purchase of Consumers is approved by vote at Hudson's Special Town Meeting in January.

The Transmission Agreement with Hudson, according to Pennichuck, allows Pennichuck to purchase water from Hudson at variable or operating costs of production and to wheel water through Hudson's distribution system to the Non-Hudson Properties. According to Pennichuck, this ensures security in water supply for the non-Hudson ratepayers. The Transmission Agreement also provides for expansion of the supply, with costs shared by Hudson and Pennichuck.

In support of its proposed capital structure for PEU, Pennichuck offered testimony to demonstrate the source of funds into PEU. Pennichuck, the parent corporation, intends to secure $7,500,000 debt financing to purchase the Non-Hudson Properties, and then to capitalize PEU with 40% equity and 60% debt. The debt arises from Pennichuck's $4,500,000 loan to PEU. Pennichuck contends that the equity arises from a transfer of $3,000,000 equity from a wholly owned real estate development subsidiary of Pennichuck, Southwood Corporation, to Pennichuck and thence to PEU. The transfer would be in the form of a declared dividend by Southwood's board of directors, funded by retained earnings and set up as a payable to Pennichuck. As a result of the transfer, PEU would acquire a return on equity, for ratemaking purposes, of 11%. As a result of the loan, PEU's return on debt, for ratemaking purposes, would be 8% or whatever Pennichuck's debt service is on the $4,500,000.

Pennichuck asserts that approval of the terms is in the best interest of New Hampshire ratepayers: Pennichuck has a proven record of successful acquisition, rehabilitation, and operation of small community water systems, the developer-built systems designed to service a particular subdivision.

C. Commission Staff

The Commission Staff (Staff) supports the sale of the Non-Hudson Properties to Pennichuck in light of Pennichuck's overall competence and experience with both core and small community

water systems and Pennichuck's proximity to the Hudson system. Staff also supports the interim rates proposed for the Non-Hudson Properties. Staff presented testimony concerning two elements of the transaction,

however: ongoing rights over Hudson's transmission system and the proposed capital structure for PEU.

Staff objected to the wording of the second sentence of Paragraph 10 in the Transmission Agreement, interpreting it to limit PEU's wheeling rights to emergency supplies for non-Hudson customers. Staff suggested that the Commission condition its approval on clarification of the sentence in order to prohibit Hudson from obstructing water transmission to the Non-Hudson Properties. In addition, Staff questioned the termination provision of the Transmission Agreement, given that Hudson, a municipality outside the jurisdiction of the Commission, will own and control the least-cost water supply options for the Non-Hudson Properties. Staff proposed that the Commission require Hudson to assure adequate transmission rights for non-Hudson customers now and in the future, although the 20 year initial term of the Transmission Agreement did alleviate some of Staff's concern.

With regard to the capital structure for PEU, Staff asserted that funding PEU's equity as proposed would amount to double debt leveraging to increase the cost to ratepayers, requiring ratepayers to provide equity funds to PEU for which PEU would earn 11% while paying only 8% debt service on the funds. Further, Staff claimed that the tax effect would result in PEU actually earning closer to 18% on equity. Using the figures contained in Pennichuck's Exhibit 9, Staff calculated earnings on equity of $897,634 compared to debt service costs of $600,000. Further, Staff pointed out that deferred land cost, debt issuance, and investment partnerships account for Southwood's assets. As a result of this analysis, Staff urged the Commission to revisit PEU's capital structure, examining the source of the funds and what the cost of equity really is, after 18 to 24 months of operation, at the same time PEU proposes to file its rate case. Staff recommended that the Commission consider at that time whether Southwood has actually sold some property in order to fund the equity, which would be established by creating an inter-company payable to fund the equity infusion.

D. Consumers, Manchester Water Works, Mr. Young

1. Consumers, supporting the testimony of Hudson and Pennichuck, requested approval of the transfer of the Non-Hudson Properties to Pennichuck.

2. Manchester Water Works indicated that, under its current Wholesale Water Agreement with Consumers and its Wholesale Agreement with the Town of Derry, its consent is necessary for assignment of either those agreements or the resale of water under those agreements. Manchester Water Works did not oppose the transfer but wished to point out that it has not received a request for its consent to date.

3. Mr. Young, representing 64 ratepaying homes in Smyth Woods, a small portion of Hooksett, did not oppose the transaction.

III. COMMISSION ANALYSIS

[1-4] After hearing testimony from four witnesses, the cross examination of those witnesses, statements from other parties, and based upon a careful review of the entire record including the exhibits and transcripts, we conclude that the proposed transaction, as conditioned on several caveats outlined below, is in the public good and is approved. We base this decision on the analysis which follows.

RSA 374:30 governs the transfer of a public utility's assets and franchise rights to another utility. The legal standard applied to this section is whether the proposed transaction is in the public good. Although the transaction proposed here is a transfer from Hudson, a prospective municipal water company, to a prospective subsidiary of Pennichuck, we find that the same standard should apply. The standard is analogous to the "public interest" standard as that standard has been applied and interpreted by the Commission and by the New Hampshire Supreme Court. *See, Waste Control systems, Inc. v. State*, 114 N.H. 21 at 22,23 (1974). In *Re Eastern Utility Associates, Inc.*, 76 NH PUC 236, 252-253 (1991), the Commission reviewed the development of the standard and determined that the appropriate standard for acquisition cases is a "no net harm" test rather than a "net

benefits" test. In *Pennichuck Water Works, Inc.*, 77 NH PUC 708, 713 (1992), the Commission again applied the "no net harm" test. The test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstanced of the case. The finding incorporates "a finding that, based upon the totality of the circumstances there is no net harm to the public as the result of the transaction." *Id.* The evidence in the instance case supports such a finding, conditioned on the slight modifications below.

As noted in Section II (C) above, Staff's testimony supported approval of this transaction with certain reservations concerning the integrity of transmission rights over Hudson property and the appropriateness of the capital structure proposed for PEU. With regard to transmission rights, we agree with Mr. Brogan's suggestion concerning Paragraph 10 of the Transmission Agreement and will condition our approval on clarification of the paragraph to prohibit Hudson from obstructing water transmission to the non-Hudson properties. Further, we will order a second sentence be added to Paragraph 15 of the Transmission Agreement, as suggested by Hudson. The latter sentence provides "(D)isagreements between the parties over the terms of renewal or termination shall be submitted to the New Hampshire Public Utilities Commission, or its successor, for resolution." Additionally, in order to fulfill our duty to keep informed of major changes affecting utilities and ratepayers in New Hampshire, we will order PEU to notify the Commission immediately upon receipt of any notice of termination from Hudson, whether or not

the termination is disputed. We will also order PEU to notify the Commission of any proposed termination by PEU or by agreement between PEU and Hudson. We are satisfied that these provisions will ensure Commission review and continued water supply to the non-Hudson properties.

We are persuaded by Staff's testimony that the capital structure of PEU as proposed by Pennichuck should be approved for the duration of the proposed interim rates. At the time of PEU's full rate case, which Pennichuck testified it will file 18 to 24 months after its authorized operation, we will consider whether it is appropriate to continue the rate structure, and will reserve the right to evaluate the source of the equity funds which determine the cost of capital at that time.

We find that Pennichuck has sufficient management, technical and financial expertise to assume ownership of the Non-Hudson Properties. We further find that the proposed subsidiary of Pennichuck, PEU, will draw on that expertise to operate the Non-Hudson Properties. The proposed rates for PEU's customers are not based upon actual records for the Non-Hudson Properties because those records are unavailable. Nonetheless, we find that the proposed 10% rate reduction on current rates is just and reasonable on an interim basis for PEU until its rate case is filed. While we approve this transaction with its proposed 11% rate of return, our decision applies to PEU's interim rates only and does not create precedent for PWW's pending rate case or for any other rate case.

Based upon the foregoing, it is hereby

ORDERED, that the transfer of Non-Hudson Properties from Hudson to Pennichuck as outlined above, immediately subsequent to any transfer of the non-Hudson properties from Consumers to Hudson, is for the public good and in the public interest and is therefore Approved.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Consumers New Hampshire Water Co., DE 96-227, Order No. 22,758, 82 NH PUC 735, Oct. 20, 1997. [N.H.] Re Consumers New Hampshire Water Co., DE 96-227, Order No. 22,778, 82 NH PUC 775, Oct. 30, 1997.

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NH.PUC*11/26/97*[97518]*82 NH PUC 819*Implementation of the Federal Communications Commission's Order on Universal Service Pursuant to the Telecommunications Act of 1996

[Go to End of 97518]

82 NH PUC 819

Re Implementation of the Federal Communications Commission's Order on Universal Service Pursuant to the Telecommunications Act of 1996

DE 97-179
Order No. 22,793

New Hampshire Public Utilities Commission

November 26, 1997

ORDER designating 14 local exchange telephone carriers within the state as "eligible telecommunications carriers" within the meaning of a Federal Communications Commission order addressing universal service requirements under the federally enacted Telecommunications Act of 1996. Such designation allows the cited carriers to receive federal funding for purposes of providing universal service.

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1. SERVICE, § 433

[N.H.] Telephone — Requirements for universal service — Under the Telecommunications Act of 1996 — Pursuant to Federal Communications Commission orders — Designation of "eligible telecommunications carriers" — Designation of respective service areas — Voice grade and toll control issues as still pending. p. 821.

2. RATES, § 534

[N.H.] Telephone rate design — Special factors — Telecommunications Act of 1996 — Federal Communications Commission orders — As to universal service — Designation of "eligible telecommunications carriers" — For receiving federally provided universal service funding. p. 821.

3. TELEPHONES, § 1

[N.H.] Requirements for universal service — Under the Telecommunications Act of 1996 — Pursuant to Federal Communications Commission orders — Necessity of designation of "eligible telecommunications carriers" — Designation of respective service areas — Voice grade and toll control issues as still pending — Eligibility to receive federal universal service funding. p. 821.

APPEARANCES: Victor D. Del Vecchio, Esq. on behalf of Bell Atlantic; Devine, Millimet & Branch by Anu R. Mullikin, Esq. on behalf of Dunbarton Telephone Company, Inc., Granite State Telephone, Inc., Merrimack County Telephone Co. Inc., Contoocook Valley Telephone Co. Inc., Hollis Telephone Company, Wilton Telephone Company, Bretton Woods Telephone Company, Northland Telephone Company of Maine, Inc.,and Dixville Telephone Company; James A. Sanborn on behalf of Union Telephone Company; John C. Lightbody, Esq. on behalf of Kearsarge Telephone Company, Chichester Telephone Company, and Meriden Telephone Company; Swidler & Berlin by Michael R. Romano for Sprint Spectrum, LP.; the Office of the Consumer Advocate by James A. Anderson, Esq. on behalf of residential ratepayers, and E. Barclay Jackson, Esq. on behalf the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On May 8, 1997, the Federal Communications Commission (FCC) issued Order No. 97-157 (Universal Service Order) in CC Docket 96-45, establishing the requirements for receiving federal universal service funding which subsidizes service to low income consumers. Pur-

suant to the Universal Service Order, by December 31, 1997, the New Hampshire Public Utilities Commission (Commission) must formally designate Eligible Telecommunications Carriers (ETCs). ETCs are carriers eligible under 47 U.S.C.§214(e) of the Communications Act of 1934 as amended by §102 of the Telecommunications Act of 1996 (TAct) and under 47 C.F.R. §54, to receive federal universal service funding.

Between August 29, 1997 and September 17, 1997, the Commission received petitions for ETC designation from the following carriers: Merrimack County Telephone Company, Contoocook Valley Telephone Company, Dunbarton Telephone Company, Bretton Woods Telephone Company, Hollis Telephone Company, Wilton Telephone Company, Northland Telephone Company of Maine, Inc., Granite State Telephone Company, Inc., (collectively, the Independents), and Union Telephone Company (Union). As part of their petitions for ETC designation, Union and the Independents included petitions for recognition that they qualify as rural telephone companies pursuant to the definition contained in Section §3(a)(2)(47) of the TAct which amended 47 U.S.C. 153 of the Communications Act of 1934, and further detailed at

47 C.F.R. §51.5.

On September 23, 1997, the Commission issued an Order of Notice consolidating the petitions into one docket, setting a prehearing conference for October 8, 1997, and making the following additional companies mandatory parties to the docket: Bell Atlantic, Dixville Telephone Company, Meriden Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company. By letter dated October 2, 1997, Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) filed a Motion to Intervene.

At the duly noticed prehearing conference, the Parties and Staff, in response to the Commission's direction, proposed an accelerated procedural schedule which would permit timely completion. There being no objection to the intervention of Sprint PCS, the Commission granted the requested intervention. Following the prehearing conference, the parties and Staff participated in technical discussions during which they agreed to stipulate to a resolution of the issues raised in this proceeding.

At a hearing on November 5, 1997, Staff witness Thomas S. Lyle presented the Stipulation for the Commission's consideration.

II. POSITION OF THE PARTIES AND STAFF

By Stipulation, the Parties and Staff agreed on a series of facts which, they contend, constitute evidence that the each of the signatory carriers qualify as an ETC. The facts agreed to are stated below.

1. Each of the signatory carriers is a telecommunications carrier as defined by §3(a)(2)(49) of the TAct, and an incumbent local exchange carrier (ILEC), as defined by 47 U.S.C. §251(h)(1), for its designated service area.

2. Each of the signatory carriers directly or indirectly provides the following services, as those services are described in 47 C.R.R. §54.101(a), to all customers in its service area on a non-discriminatory basis, using either its own facilities or a combination of its facilities and resale of another carrier's services in accordance with 47 C.F.R. §54.201(d):

(1) Voice grade access to the public switched network;

(2) Local usage, i.e., an amount of minutes of use of exchange service provided free of charge to end users in accordance with the carrier's tariff;

(3) Dual tone multi-frequency signaling or its functional equivalent (a.k.a. "Touch Tone" service);

(4) Single party service or its functional equivalent;

(5) Access to emergency services for customers who dial 911;

(6) Access to operator services;

(7) Access to interexchange service;

(8) Access to directory assistance; and

(9) Toll limitation for qualifying low-income consumers, consistent with available technology.

3. With regard to item 2(1) above, 47 C.F.R. §54.101(a)(1) states that voice grade access shall occur within the frequency range between 500 Hertz and 4000 Hertz, whereas voice grade access occurs within the wireline telephone industry at the standard frequency range between approximately 300 Hertz and 3000 Hertz. The FCC is currently considering changing its definition of voice grade access to more closely match the industry standard. Should the FCC not change its definition of voice grade access, in order to maintain ETC status each signatory carrier will provide such access in the broader frequency range within a reasonable period of time unless a waiver is granted or compliance with the definition is stayed or vacated.

4. With regard to item 2(9) above, each of the signatory carriers can provide toll denial services which prevent use of the access line to place outgoing toll calls, in accordance with 47 C.F.R. §54.400(a)(2). Because of technical limitations, currently none of the signatory carriers can provide toll control services in accordance with 47 C.F.R. §54,(a)(3).[1(147)] A petition is currently pending before the FCC for reconsideration or clarification as to whether toll limitation service must include toll control. Should the FCC decide that toll control service is mandatory, the signatory carriers agree to provide toll control, assuming technical capability, within one year of the release of the FCC's decision, provided the requirement is not waived, stayed, or vacated.

5. Each signatory carrier agrees to file tariffs with the Commission for a low-income Lifeline service, as defined in 47 C.F.R. §54.401, in a form substantially similar to an illustrative tariff attached to the Stipulation, effective January 1, 1998.

6. Each signatory carrier agrees to advertise within its designated service area the availability of and prices for each of the services it currently provides relevant to ETC status. Each carrier agrees to advertise the availability of Lifeline service by including a description of the service and the eligibility requirements in the introductory pages of the carrier's telephone directories for its service area, effective with future printings. Each carrier agrees to publish a descriptive pamphlet, developed with the Commission Staff and approved by the Commission, which will contain an application form for both Lifeline and Link-Up.[2(148)] As further publicity for the Lifeline and Link-Up programs, the Parties and Staff stipulated that the Commission should issue a press release informing the public of the availability of those services for qualifying low-income customers.

III. COMMISSION ANALYSIS

[1-3] We appreciate the efforts of the Parties and Staff to complete this docket in an expedited fashion. The public interest is best served by meeting the requirements laid out by the FCC in order to preserve New Hampshire consumers' opportunity to benefit from federal

universal service funds. Towards this end, we issued Order No. 22,748 (October 7, 1997) establishing a Lifeline program for low-income customers. Today we satisfy another requirement of the Universal Service Order by designating ETCs.

Under the Universal Service Order, as of January 1, 1998, only ETCs will be eligible to receive support from the federal universal support mechanisms. Although we note the two elements for which reconsiderations are pending before the FCC, i.e., voice grade and toll control, we will nonetheless approve the interim resolution of those issues as provided in the Stipulation. We also note that the Stipulation does not include a statement that the signatory carriers provide the Link-Up program to qualifying low-income consumers, as is required by 47 C.F.R §54.411. We find that each of the signatory carriers already provides Link-Up in its respective service area and, therefore, the FCC requirement is being met.

We find that the elements necessary for qualification as an ETC have been met by each of the signatory carriers and that the public interest, convenience and necessity are best served by designating each as an ETC under 47 U.S.C. §214(e) and in compliance with 47 C.F.R. §54.201.

The Universal Service Order delegated to

the states the responsibility of designating carriers that meet the requirements of 47 U.S.C. §214(e)(2) for "eligible telecommunications carriers for a service area designated by the State Commission." The FCC determined that neither the states nor the FCC itself is authorized to adopt criteria for ETCs beyond those set forth in §214(e)(1). Universal Service Order ¶135. Responsibility for defining service areas is delegated to the states, but the FCC indicated its preference that states not "adopt as service areas the study areas[3(149)] of large ILECs." Universal Service Order ¶185. Given that collectively the signatory carriers serve the entire State of New Hampshire and that it is necessary to promptly define service areas in order to effectuate ETC status, on an interim basis we will define each signatory's service area, for purposes of universal service support, as its current respective service area in New Hampshire. Carriers seeking ETC designation in the future shall identify a proposed service area in their application to the Commission, at which time we will consider the appropriateness of the proposed service area, together with our consideration of the carrier's compliance with the ETC criteria.

The Independents and Union requested that we find that they are rural telephone companies as defined at 47 C.F.R. §51.5. Designation as a rural telephone company by a state commission is not required by the TAct. Nonetheless, we find that all of the signatory carriers, with the exception of Bell Atlantic, meet the above-mentioned definition of rural telephone companies for the purposes of universal service.

Based upon the foregoing, it is hereby

ORDERED, that Sprint Spectrum, L.P.'s Motion to Intervene is GRANTED; and it is

FURTHER ORDERED, that Merrimack County Telephone Company, Contoocook Valley Telephone Company, Dunbarton Telephone Company, Bretton Woods Telephone Company,

Hollis Telephone Company, Wilton Telephone Company, Northland Telephone Company of Maine, Inc., Granite State Telephone Company, Inc., Union Telephone Company, Bell Atlantic, Dixville Telephone Company, Meriden Telephone Company, Chichester Telephone Company, and Kearsarge Telephone Company are designated as ETCs; and it is

FURTHER ORDERED, that the service areas for which each designated ETC is eligible to receive federal universal service support is its respective current service area in New Hampshire; and it is

FURTHER ORDERED, that each designated ETC, with the exception of Bell Atlantic, is a rural telephone company as defined by 47 U.S.C. §153(47) for purposes of universal service.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of November, 1997.

FOOTNOTES

[1]Toll denial means a complete block of all outgoing toll calls. Toll control means a cap on monthly toll billings, after which outgoing toll calls are blocked.

[2]Lifeline is a low-income assistance program that provides discounted monthly local exchange service to eligible customers. Link-Up is a low-income assistance program that provides discounted installation charges for new service to eligible customers.

[3]A "carrier's study area" is the geographic area designated by the FCC for cost study purposes in determining the cost of access. For Bell Atlantic, the carrier study area is the entire State of New Hampshire.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Implementation of the Telecommunications Act of 1996, DR 97-214, Order No. 22,748, 82 NH PUC 716, Oct. 7, 1997.

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NH.PUC*12/01/97*[97519]*82 NH PUC 823*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97519]

DR 97-180, DS 97-223
Order No. 22,794

New Hampshire Public Utilities Commission

December 1, 1997

ORDER approving a local exchange telephone carrier's proposed offering of an optional intrastate toll calling plan, "Business Link."

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1. SERVICE, § 468

[N.H.] Telephone — Toll services — Approval of optional "Business Link" intrastate toll calling plan — For high-volume nonresidential customers — As appropriate marketing tool in era of increasing competition and intraLATA presubscription. p. 827.

2. RATES, § 584

[N.H.] Telephone rate design — Toll services — Message telecommunications service — Institution of flat rates — As part of optional "Business Link" intrastate toll calling plan — Pricing as exceeding incremental costs — Local exchange telephone carrier. p. 827.

3. RATES, § 544

[N.H.] Telephone rate design — Business versus residential services — Institution of optional "Business Link" intrastate toll calling plan — Availability to high-volume business customers only — As necessary in competitive marketplace — Local exchange telephone carrier. p. 827.

4. MONOPOLY AND COMPETITION, § 94

[N.H.] Telephone — Toll services — Effect of increasing numbers of toll carriers — Impact of intraLATA presubscription — Necessity of development of special service offerings for high-volume business subscribers — Institution of optional "Business Link" intrastate toll calling plan — Local exchange telephone carrier. p. 827.

5. DISCRIMINATION, § 158

[N.H.] Rates — Telephone service — Business versus residential customers — Effect of increasingly competitive toll markets — Elimination of prohibition on differential pricing among classes — Reasonableness of special service offerings for high-volume business subscribers

alone — Institution of optional "Business Link" intrastate toll calling plan — Local exchange telephone carrier. p. 827.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On October 17, 1997, New England Telephone & Telegraph Company, now d/b/a Bell Atlantic (Bell Atlantic), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking authority to introduce Business Link. Business Link is an intrastate optional toll calling plan. After reviewing the petition and supporting documentation, the Commission, by Order No. 22,785 (November 17, 1997), extended the period of time in which to complete its review.

On November 20, 1997, Atlantic Connections, Ltd. (ACL) filed a Motion to Intervene, pursuant to N.H. Admin. Rule Puc 203.02. ACL avers that approval of Business Link at the proposed rates will adversely affect its ability to compete for high volume business customers. Commission Staff (Staff), by memorandum dated November 26, 1997, opposed ACL's Motion, arguing that Business Link rates are above their incremental cost and that because Business Link is a service that can be resold, resellers such as ACL can continue to compete for high volume customers.

II. POSITIONS OF BELL ATLANTIC AND STAFF

A. *Bell Atlantic*

Business Link is an optional calling plan for business customers only. Subscribers to Business Link will be assessed no service establishment charge; message telecommunication services (MTS) will be flat rated at 13 cents per minute. Subscribers will receive additional discounts based upon their monthly usage charges and earned bonus credits.

Business Link, as proposed, consists of five tiers of charges, defined by the amount of monthly usage. Tier 0 includes business subscribers with monthly usage charges between $0 and $99.99. Tier 0 subscribers receive no discount; their intrastate toll rate is 13 cents per minute of use (MOU). Tier 1 business subscribers, with monthly usage charges between $100.00 and $500.00, receive a 20% discount off their monthly usage bill. The adjusted intrastate toll rate for Tier 1 subscribers is 10.4 cents per MOU. Tier 2 subscribers, with MOU between $500.01 and

$950.00, receive a 30% discount. The adjusted intrastate toll rate for Tier 2 subscribers is 9.1 cents per MOU. Tier 3 subscribers, with monthly usage charges between $950.01 and $1,500.00, receive a 40% discount. The adjusted intrastate toll rate for Tier 3 subscribers is 7.8 cents per MOU. Tier 4 subscribers, with more than $1500.01 in monthly usage charges, receive a 55% discount. The adjusted intrastate toll rate for Tier 4 subscribers is 5.85 cents per MOU.

Qualified monthly usage includes all calls made within the State of New Hampshire when the call is billed to a single billing telephone number. Calls include all MTS calls, customer dialed calling card calls, 800 and 800 Valuflex calls.

In order to retain business customers, Bell Atlantic proposes to introduce deferred bonus credits for Business Link subscribers. Each bonus credit amounts to five cents for every dollar of discounted usage. Bonus credits may be redeemed no earlier than 12 months from the month the credit is earned. Bonus credits may be applied to the customer's usage bill or to a non-telephone company service such as admission to a Bell Atlantic sponsored trade show.

A Business Link customer who signs a 36 month service agreement will receive an additional bonus credit per dollar, for a total of two credits per dollar of discounted usage. Additional bonus credits are contingent upon the customer maintaining usage volumes of at least 80% of historical volumes. Should a customer's usage fall below the threshold historical usage level for two consecutive months, all bonus credits are automatically forfeited.

Business Link service agreements are automatically renewed, unless the customer instructs Bell Atlantic to terminate the agreement. Customers may terminate participation in the Business Link plan at any time without incurring a penalty. Unredeemed bonus credits, however, are forfeited at the time the service is terminated. Bonus credits cannot be transferred to another Bell Atlantic service or sold.

While Business Package and Business Package Plus services would no longer be offered, services installed prior to the effective date of the Business Link tariff would be furnished to existing Business Package and Business Package Plus customers, limited to those customers' present locations. Thus, the services will no longer be available to new customers or to existing customers at new locations.

As filed, Business Link is limited to New Hampshire businesses; residential customers are prohibited from subscribing. Limiting optional toll calling plans to a specific customer class departs from the Commission's decision in DR 89-010, *Re NET*, 76 NH PUC 150 (1992). In DR 89-010, Bell Atlantic's last rate design case, the Commission concluded there is no difference in the actual cost to provide residential versus non-residential toll services. As a result, Bell Atlantic has been required to extend optional calling plans to both customer classes.

Bell Atlantic argues that this holding in DR 89-010 should not apply to Business Link because Bell Atlantic needs additional marketing flexibility in the newly competitive telecommunications market. Bell Atlantic contends it is at a competitive disadvantage because other major toll competitors have the flexibility to "target market" optional calling plans to New

Hampshire businesses while Bell Atlantic is forced to provide optional calling plans to all customers. Because it must provide optional calling plans to all customers, Bell Atlantic claims it will incur additional costs associated with modifying billing systems, order processing systems and personnel training to accommodate residential customers.

Pursuant to DE 90-002, *Re Generic Investigation Into IntraLATA Toll Competition Toll Rates*, 78 NH PUC 365 (1992), Bell Atlantic has had the authority to adjust the retail rates of existing services and introduce new services provided it can demonstrate that the average revenue per minute of use (ARPM) generated from such services is equal to or greater than the relevant price floor. Accordingly, Bell Atlantic provided analyses in support of its petition.

Bell Atlantic's ARPM calculations are based upon two projections: 1) the number of business customers expected to migrate to Business Link from other Bell Atlantic toll services; and 2) the percent of customers forecasted to redeem bonus credits under the Business Link plan. The Bell Atlantic analysis does not, however, anticipate stimulation in toll usage by business customers subscribing to Business Link. The ARPM calculations assume that the level of toll traffic will not change after the introduction of Business Link. Further, Bell Atlantic's projections in toll demand do not anticipate any migration to Business Link from a non-Bell Atlantic toll service.

Bell Atlantic submitted two analyses on price floor calculations. One analysis demonstrates that Business Link services produce ARPM results exceeding adjusted price floors for MTS A, MTS B, MTS C, MTS D, 800 A, 800 B and 800 Valuflex services, the segments of service approved in DE 90-002. A second analysis demonstrates that ARPM results exceed the price floor for each tier of the Business Link service. Price floor calculations are based upon the methodology established in DE 90-002. 78 NH PUC at 402. Adjustments to the price floor calculations have been made by Bell Atlantic to reflect reductions in access rates since the conclusion of DE 90-002.

B. *Commission Staff*

Based on its review of the petition and supporting documentation, Staff recommends approval of the request to introduce Business Link, grandfathering existing Business Package and Business Package Plus calling plans and limiting Business Link services to non-residential customers.

In Staff's opinion, Bell Atlantic's ARPM analyses demonstrate that Business Link service rates are set at levels which yield ARPM results above the price floor required for each service pursuant to the Commission's order in DE 90-002. This analysis shows that the proposed rates exceed the incremental costs of providing Business Link services and, therefore, the services are not subsidized by non-competitive Bell Atlantic services.

Staff notes that although Bell Atlantic did not project any stimulation in usage, because the discounts are based on monthly usage charges, any increases in aggregate toll usage will not negatively impact the price floor test of Business Link.

According to Staff, the conditions related to the pricing of toll services that were imposed on Bell Atlantic as a result of the Commission's Order in DE 90-002 have expired. Nevertheless,

Staff believes the methodologies relied upon in that docket to establish ARPM and price floor calculations remain valid.

In Staff's opinion, Bell Atlantic's request to grandfather existing optional calling plans known as Business Package and Business Package Plus is appropriate. Business Link rates and discounts are designed to be lower than the ARPM of both Business Package and Business Package Plus. Customers, therefore, have an incentive to migrate to the Business Link plan. As customers migrate, it becomes impractical to continue the support services associated with Business Package and Business Package Plus.

Although Bell Atlantic's request to limit Business Link to business customers and prohibit residential customers from subscribing is a departure from the Commission's past ruling on toll services, Staff supports the limitation. It is Staff's opinion that conditions in the IntraLATA

Page 825

toll market have changed since the conclusion of DR 89-010. Changes include increases in the number of IntraLATA toll carriers operating in New Hampshire, IntraLATA presubscription (ILP) and access rate reductions. The nature of the changes suggests that a departure from the Commission's past ruling would further promote competition and result in lower retail toll rates.

The increased number of toll providers has resulted in greater customer choice. With additional choices, customers now have more of an incentive to compare the rates of various toll providers, than they did before DR 89-010. Furthermore, many of the new toll competitors target market their services to the business community. With approval of Business Link, Bell Atlantic may now have a better opportunity to respond to these competitive pressures.

The intrastate toll market is also beginning to change as a result of ILP. Introduced on June 2, 1997, ILP allows customers to select a competitive toll carrier without having to dial a special access code. As a result of ILP and greater choice, customers have gained additional bargaining power over IntraLATA toll providers. Enhanced customer bargaining power has persuaded toll providers to respond to customer demands by lowering toll rates and launching market campaigns designed to create product differentiations. The responses by toll competitors is evidenced by the introduction of numerous calling plans by MCI, Sprint and AT&T which attempt to segment the market into different customer classes and sub-groups. Once a market is segmented, toll providers offer toll packages (e.g. MCI Vision, MCI Execunet, Sprint Clarity) designed to address particular customer needs that are different than those offered by other toll providers.

Reductions in access rates have also contributed to changes in the toll market. The rates toll providers pay Bell Atlantic to access the telecommunications network have decreased from 16 cents per MOU to approximately 6.9 cents per MOU since October 1993. Further reductions in access rates are anticipated by January 1998. Lower access rates paid by toll carriers provide Bell Atlantic's toll competitors the opportunity to lower retail rates in response to changes in the market.

The changes highlighted above indicate that the intrastate toll market is becoming

increasingly more competitive. Thus, Staff believes approval of the petition will provide Bell Atlantic the opportunity to quickly respond to further changes in market conditions and retain customers by target marketing the business community with a distinct service. Approval of Business Link may also have the unintended effect of promoting additional competitive responses from Bell Atlantic's competitors. Price sensitive business customers are likely to compare rates among the various toll providers and seek additional price concessions from all toll providers.

The Commission stated in DR 89-010, Order No. 20,082 that Bell Atlantic must submit a cost study in order to price similar services such as intrastate toll differentially across customer classes. 76 NH PUC at 167. In Staff's opinion, a cost study is no longer necessary in this particular situation and recommends that the requirement be withdrawn. Conducting a cost study would cause unnecessary delay, prevent Bell Atlantic from responding to competitive pressures in the business market and postpone immediate rate reductions indefinitely. Moreover, the standard by which the Commission now considers the prudency of tariff revisions for Bell Atlantic is the price floor test. As discussed above, Business Link rates yield ARPM results that are in excess of the relevant price floors. Therefore, it is Staff's opinion that Business Link meets the conditions of the aforementioned standard and is in the public interest.

Staff notes, however, that departure from the principle of pricing telecommunication services on the basis of cost should be used with discretion. The movement away from the cost of service principle in this particular case is more indicative of changes in the competitive conditions of the intrastate toll market and should not be construed as a rejection of the principle of establishing rates on costs.

Staff notes that this filing is part of a comprehensive effort Bell Atlantic, as a result of Staff investigations, to reduce total intrastate revenue by $26 million. If approved, this filing

would represent $5.3 million of the total reduction.

III. COMMISSION ANALYSIS

[1-5] We find the proposed changes to the tariff are just, reasonable and in the public interest. The analyses provided by Bell Atlantic demonstrate that Business Link service rates are appropriately set at levels which yield ARPM results above the price floors for each segmented intrastate toll service. Therefore, the service rates exceed the incremental costs of providing Business Link services. Because Business Link rates exceed incremental costs, we will not require Bell Atlantic to submit a cost study in support of pricing toll services differentially across customer classes.

As the intrastate toll market becomes more competitive, we find that our prohibition in DR 89-010 against differential pricing among classes is no longer appropriate. Thus, we will depart

from our previous ruling in DR 89-010 pertaining to the requirement of extending discounted calling plans to both residential and non- residential customers. Our decision is based on the premise that granting additional marketing flexibility will provide Bell Atlantic adequate opportunities to respond to changes in the intrastate toll market. The decision should not be interpreted as a rejection of cost-based principles used to develop rates for other telecommunications services.

Though Staff has urged us to deny ACL's Motion to Intervene, the arguments put forth relate more to the merits of ACL's assertions than whether it has demonstrated a basis to intervene. We will grant ACL's Motion to Intervene and treat its Motion as a form of objection to our approval of Business Link. ACL need not make a further filing during the *nisi* period, though it is free to supplement its objection if it so chooses. As is our standard practice, any affected party may file comments during the *nisi* period without formally seeking intervention.

Based upon the foregoing, it is hereby

ORDERED NISI, that the Bell Atlantic proposed tariff revisions to NHPUC telephone tariff No. 77 consisting of:

> Part A, Section 10 , pages 31 & 33, Part A, Section 11 , page 8, and Part M, Section 01 , page 35 are approved.

FURTHER ORDERED, that existing optional calling plans known as Business Package and Business Package Plus are grandfathered for existing customers at their present locations; and it is

FURTHER ORDERED, that the ACL's request to intervene is GRANTED, and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1604.03 or Puc 1605.03, 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 5, 1997 and to be documented by affidavit filed with this office on or before December 16, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments on this matter before the Commission no later than December 10, 1997; and it is

FURTHER ORDERED, that any party interested in responding to such comments shall do so no later than December 12, 1997; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective December 16, 1997, 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 December 16, 1997, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this first day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bell Atlantic, DS 97-223, Order No. 22,785, 82 NH PUC 803, Nov. 17, 1997.

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NH.PUC*12/01/97*[97520]*82 NH PUC 828*Concord Electric Company

[Go to End of 97520]

82 NH PUC 828

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 97-195
Order No. 22,795

New Hampshire Public Utilities Commission

December 1, 1997

ORDER suspending proposed tariff filings of two affiliated electric utilities under which they could recover administrative costs associated with implementation of a pilot program for competitive electric services.

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1. EXPENSES, § 120

[N.H.] Electric utilities — Administrative costs — Associated with implementing a pilot program for retail competition — Recovery via proposed special charge — Suspension of — To allow for adequate investigatory period. p. 828.

2. RATES, § 248

[N.H.] Schedules and procedure — Suspension — To allow for adequate investigatory period — Of proposed special charge — By which to recover administrative costs of pilot

program for retail competition — Electric utilities. p. 828.

BY THE COMMISSION:

ORDER

[1, 2] On September 22, 1997, Concord Electric Company and Exeter & Hampton Electric Company (Unitil Companies) filed with the Commission a Petition to Recover Administrative Costs Associated with the Pilot Program. The Unitil Companies also submitted tariff pages that would implement the respective requests. The filing raises, *inter alia*, issues concerning the recovery of pilot expenses that had previously been written off.

The Unitil Companies and Commission Staff have exchanged correspondence and are not in accord on the issue of recovery. As a result of conversations with Staff, moreover, the Unitil Companies have not taken steps to collect charges pursuant to the tariffs.

Inasmuch as there is a question as to the propriety of collecting the charges in light of our decisions in Order Nos. 22,033 (February 28, 1996) and 22,119 (April 29, 1996) in Docket No. DR 95-250, we shall, pursuant to RSA 378:6, suspend the tariffs in question and, pursuant to RSA 365:5, direct staff to conduct an investigation. Finally, we shall set a date for a prehearing conference to establish a procedural schedule and hear the positions of the parties.

Based upon the foregoing, it is hereby

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 January 5, 1998 at 10:00 A.M., at which any one or more of the issues set forth in N.H. Admin Rule Puc 203.05(c) shall be considered; and it is

FURTHER ORDERED, the prehearing conference shall be tape recorded unless a party, at least 5 days in advance of the prehearing conference, requests a transcript, in which case the commission shall order a stenographic record, pursuant to N.H. Admin. Rule Puc 203.05(d): and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, Unitil Companies notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than December 5, 1997, in a newspaper with statewide circulation or of general circulation in that portion of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before January 5, 1998; 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 Companies and the Office of the Consumer Advocate on or before December 30, 1997, 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 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before January 5, 1998; and it is

FURTHER ORDERED, that the following proposed tariff pages are suspended pending further review and decision:

NHPUC No. 12 - Electricity, Concord Electric Company Twelfth Revised Page 20 Superseding Eleventh Revised Page 20 Ninth Revised Page 20A Superseding Eighth Revised Paged 20A Fourth Revised Page 20B Superseding Third Revised Page 20B Original Page 26H Original Page 26I

NHPUC No. 17 - Electricity, Exeter & Hampton Electric Company Twelfth Revised Page 20 Superseding Eleventh Revised Page 20 Ninth Revised Page 20A Superseding Eighth Revised Paged 20A Fourth Revised Page 20B Superseding Third Revised Page 20B Original Page 26H Original Page 26I

By order of the Public Utilities Commission of New Hampshire this first day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,033, 81 NH PUC 130, 167 PUR4th 193, Feb. 28, 1996. [N.H.] Re Retail Competition Pilot Program, DR 95-250, Order No. 22,119, 81 NH PUC 319, Apr. 29, 1996.

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NH.PUC*12/02/97*[97521]*82 NH PUC 829*Sunnybrook Hydro #1

[Go to End of 97521]

82 NH PUC 829

Re Sunnybrook Hydro #1

DE 97-158

Order No. 22,796

New Hampshire Public Utilities Commission

December 2, 1997

ORDER resolving a dispute between a hydroelectric small power production facility and the Town of Northumberland as to the level of payments in lieu of taxes that the facility must remit to the town. Commission concludes that the facility must pay at a rate of 2.5% of gross revenues for the next three years but that the town may thereafter petition to increase the rate to 3%.

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1. EXPENSES, § 109

[N.H.] Taxes — Payment in lieu of taxes — Owed by small hydro power producer to municipality — Basis for level of payment — Contract versus statute — Payment of 2.5% of gross revenues — Applicability of schedule for next three years. p. 830.

2. EXPENSES, § 134

[N.H.] Municipal costs — Taxes — Payment in lieu of taxes — Owed by small hydro power producer to municipality — Basis for level of payment — Contract versus statute — Payment of 2.5% of gross revenues — Applicability of schedule for next three years —

Page 829

Opportunity to increase rate thereafter — Statutory cap of 5%. p. 830.

3. TAXES, § 4

[N.H.] Municipally required payments in lieu of taxes — Basis for level of payment — Contract versus statute — Acceptance of provisions of oral agreement — For payments by small hydro power producer to municipality — Payment of 2.5% of gross revenues — Applicability of schedule for next three years — Opportunity to increase rate thereafter — Statutory cap of 5%. p. 830.

BY THE COMMISSION:

ORDER

I. PROCEDURAL BACKGROUND

On July 6, 1997, Christopher R. Hawkins filed with the Commission, pursuant to RSA 362-A:6, a request that the Commission determine the level of the payment in lieu of taxes to be made by Mr. Hawkins to the Town of Northumberland for Sunnybrook Hydro #1, a hydroelectric small power production facility (SPP) owned by Mr. Hawkins. On August 11, 1997, the Commission notified Mr. Hawkins and the Town that a docket had been opened and advised the parties of options available for alternative dispute resolution. On August 28, 1997, Mr. Hawkins filed a letter requesting that a prehearing conference be scheduled to hear the issues. On September 24, 1997, the Commission informed the parties that, in the interest of using resources most efficiently, the dispute between the parties would be adjudicated on the basis of the parties' written submissions. The Commission received Mr. Hawkins' submission on October 9, 1997 and the Town's was received on October 14, 1997.

II. POSITIONS OF THE PARTIES

Mr. Hawkins contends that an agreement was entered into between the previous owner of Sunnybrook Hydro #1, Bruce P. Sloat, and the Town of Northumberland, which provided that an annual payment in lieu of taxes in an amount equal to 2 1/2 % of gross revenues would be in effect for 20 years. Mr. Hawkins states specifically that the agreement was entered into between Mr. Sloat and the Town Board of Selectmen and its Town Manager, Ronald Gilbert in 1982. In addition, Mr. Hawkins points to seventeen years of payments at the 2 1/2% level as evidence of the agreement. Finally, Mr. Hawkins asserts that RSA 362-A:6 "calls for an agreement between the parties at a fixed rate for a period of twenty years."

The Town of Northumberland reports that Sunnybrook Hydro #1 went on line sometime in 1981 and "[p]resumably at that time, some agreement was entered into between the then owner, Mr. Bruce Sloat, and the Town of Northumberland." The Town also acknowledges that it has assessed a payment at the 2 1/2% level since that time but it states that it is not aware of an agreement guaranteeing that rate for a specific period. In the absence of a written agreement, the Town contends that it is not restricted to the 2 1/2% level and therefore it seeks to increase the level to 3%, which is consistent with what it intends to assess two other facilities.

III. COMMISSION ANALYSIS

[1-3] The parties concur that an agreement was made, however, it appears to have been an oral agreement. Consequently, no written agreement was submitted which sets forth the essential terms of the agreement, namely the level of the payment and its duration. This case presents the typical problems of proof related to oral agreements; the problems are compounded by the fact that while the parties are nominally the same, i.e., the Town and Sunnybrook Hydro, the individuals have changed.

There is a paucity of evidence available and, under a contractual analysis, it would be instructive to hear from Mr. Gilbert. However, Mr. Hawkins has not presented any statement

regarding the former Town Manager's recollection. Although Mr. Hawkins has supplied a letter from Mr. Sloat, the letter does not speak to an agreement between himself and the Town. The letter only reflects Mr. Sloat's understanding that the rate would stay in effect for 20 years pursuant to RSA 362-A.

There is also confusion over the meaning and application of the statutory 20 year exemption. Mr. Hawkins asserts that the parties agreed that the 2 1/2% payment would be in effect for 20 years. Mr. Sloat, however, appears to have believed that the rate would stay in effect for 20 years by operation of the statute and does not mention an agreement in that regard. The language in the statute, which has since been deleted, formerly read: "An exemption under this section shall be allowed for a period of 20 years." The statute addressed only the length of the exemption, not the level of the payment. Thus, reliance on the law by both Mr. Sloat and Mr. Hawkins is misplaced. Mr. Sloat's reliance on the statute also undermines Mr. Hawkins' belief that Mr. Sloat and the Town had independently agreed that the level of the exemption would be unchanged for 20 years.

Nevertheless, it is clear there was an agreement between the parties and in fact RSA 362-A:6 states that: "If the owner of [an SPP] elects to be exempt from taxation under this section, he shall enter into an agreement with the city or town in which the facility is located to make a payment in lieu of taxes." Apparently, the parties entered into an oral agreement and it can safely be concluded from the facts that the agreed upon rate was 2 1/2%; however, the facts do not lead to a conclusion about the parties intent regarding duration.

A review of the evidence and arguments regarding the substance of the agreement between the parties, combined with an examination of the statute, leads to the conclusion that Mr. Hawkins is not entitled as a matter of contract law or by statute to make only the 2 1/2% payment. As a result, the situation exists where the parties fail to agree on the percentage of gross revenues to be paid in lieu of taxes, which by statute necessitates a Commission determination of the amount payable by Mr. Hawkins.

RSA 362-A:6 provides that the Commission, when the parties cannot agree, shall determine the amount of the payment in lieu of taxes but does not set any standards other than imposing a payment level limit of 5%. Accordingly, the Commission has broad discretion to determine the level and duration of the payment in lieu of taxes.

In this instance, Mr. Hawkins seeks to have the payment remain at 2 1/2% for three more years while the Town seeks to raise the payment to 3%. The difference in the payments, based on historical performance, would be an amount less than $20 on an annual basis. In light of the small amount at stake and the fact that the parties and the Commission have already expended time and resources in excess of that amount, it appears that this must be an issue of significant principle for the parties. As a resolution, we find it reasonable that the Town assess Mr. Hawkins

at the 2 1/2% level for three additional years. At the end of that period, assuming an agreement is not reached by the parties, the Town may submit a request for an increase, at which time the Commission will consider an increase up to and including the maximum allowable level.

Based upon the foregoing, it is hereby

ORDERED, that the amount payable in lieu of taxes by Sunnybrook Hydro #1 to the Town of Northumberland for 1997, 1998 and 1999 will be equivalent to 2.5% of the gross revenues of Sunnybrook Hydro #1.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1997.

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NH.PUC*12/03/97*[97522]*82 NH PUC 832*Public Service Company of New Hampshire

[Go to End of 97522]

82 NH PUC 832

Re Public Service Company of New Hampshire

DR 97-014
Order No. 22,797

New Hampshire Public Utilities Commission

December 3, 1997

ORDER adopting 0.266 cents as an electric utility's fuel and purchased power adjustment clause rate and $2.28 per kilowatt-month as its short-term capacity rate for purchases of power from small power producers.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 10

[N.H.] Direct energy costs — Fuel and purchased power adjustment clause rate — Compliance filing — Electric utility. p. 832.

2. COGENERATION, § 27

[N.H.] Rates — For purchases of power from small power producers — Avoided-cost basis — Capacity costs — Charge on per kilowatt-month basis — Electric utility. p. 832.

BY THE COMMISSION:

ORDER

[1, 2] On March 14, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition for an adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period June 1, 1997 through November 30, 1997, along with supporting testimony and exhibits. By Order No. 22,604 dated May 27, 1997, the Commission granted a request by PSNH to stay consideration of the issues in this proceeding and leave the existing FPPAC rate in place to accommodate the parties to a Federal Court mediation process involving issues raised in docket DR 96-150, the Statewide Electric Utility Restructuring Plan.

On July 2, 1997 PSNH, with the support of a majority of parties to the mediation process, requested that we continue the stay and FPPAC rate placed in effect by Order No. 22,604 until August 5, 1997. On July 21, 1997, we issued Order No. 22,665 continuing the FPPAC rate and approving the stay and scheduled another hearing for August 4, 1997. After the August 4, 1997 hearing, we decided to resume the FPPAC proceeding.

On September 16, 1997 PSNH filed a petition for an adjustment of rates pursuant to the Fuel and Purchased Power Adjustment Clause (FPPAC) for the period December 1, 1997 through May 31, 1998, along with supporting testimony and exhibits. Hearings were held from November 14 through November 19, 1997.

Subsequent to our public deliberations on December 1, 1997, we determined that additional information was required in order to compute the FPPAC rate. We accordingly directed PSNH to meet with Staff and the other parties to the proceeding to determine the financial ramifications of our deliberations on the FPPAC rate.

Based upon our review of the record in this proceeding, it is hereby

ORDERED, that an FPPAC rate of $0.00266 shall be effective December 1, 1997 through May 31, 1998, and that PSNH shall file compliance tariffs in accordance with this order no later than December 17, 1997; and it is

FURTHER ORDERED, that PSNH's proposed short-term avoided cost rates for energy produced by small power producers are approved as shown in Exhibit 14A Revised and that the short-term capacity rate shall be $2.28 per kW-month; and it is

FURTHER ORDERED, that a report shall be issued which more fully delineates the positions of the parties and Staff and our determinations herein.

By order of the New Hampshire Public Utilities Commission this third day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,604, 82 NH PUC 432, May 27, 1997. [N.H.] Re Public Service Co. of New Hampshire, DR 97-014, Order No. 22,665, 82 NH PUC 554, July 21, 1997.

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[Go to End of 97523]

82 NH PUC 833

Re Freedom Ring, L.L.C.

DR 96-420
Order No. 22,798

New Hampshire Public Utilities Commission

December 8, 1997

ORDER granting a request by a competitive local telephone carrier that incumbent local exchange carriers be required to give all of their special contract customers an opportunity to take a "fresh look" at such contracts and terminate them should viable alternatives exist, given the introduction of competition within local exchange markets. Commission finds that the existence of so many long-term special service contracts, especially for Centrex services, denies consumers the ability to take advantage of a truly competitive local market. Accordingly, it grants a time for reassessment, but it limits the fresh look opportunity to those long-term contract customers having at least two years remaining on a contract. Moreover, the customer has only a 180-day window during which to take its fresh look, and no contract may be altered unless the customer can demonstrate that it has received a viable alternative service offering from a certified competitive local carrier.

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1. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Implementation of local exchange competition — Effect on existing contractual arrangements — For services such as Centrex — Necessity of opportunity for "fresh look" at such contracts. p. 841.

2. SERVICE, § 463

[N.H.] Telephone — Private branch exchange (PBX) — As distinguished from Centrex — PBX as possible substitute for Centrex — PBX as not true functional equivalent of Centrex — Implications for local exchange competition — Effect on existing contractual arrangements — Necessity of opportunity for "fresh look" at such contracts. p. 841.

3. RATES, § 566

[N.H.] Telephone rate design — Private branch exchange (PBX) service — As distinguished from Centrex service — PBX as possible substitute for but not true functional equivalent of Centrex — Implications for local exchange competition — Effect on existing contractual arrangements — Necessity of opportunity for "fresh look" at such contracts. p. 841.

4. RATES, § 534

[N.H.] Telephone rate design — Special factors — Implementation of local exchange competition — Effect on existing contractual arrangements — For special services such as Centrex — Necessity of opportunity for "fresh look" at such contracts. p. 841.

5. RATES, § 215

[N.H.] Contractual arrangements — Change or termination — Factors — Regulatory developments — Telecommunications Act of 1996 — Requirements for local exchange competition — Effect on existing contractual arrangements — For special services such as

Page 833

Centrex — Necessity of opportunity for "fresh look" at such contracts. p. 841.

6. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Requirements for local exchange competition — Factors inhibiting attainment of fully competitive market — For special services such as Centrex — Existence of long-term contractual arrangements — Private branch exchange as not perfect alternative to Centrex — Necessity of opportunity for "fresh look" at such contracts. p. 841.

7. CONTRACTS, § 7

[N.H.] Commission jurisdiction — As to change or termination — Authority to order a

"fresh look" at existing contractual arrangements — Factors — *Mobile-Sierra* doctrine — Transition to competition — Local exchange telephone services. p. 841.

8. RATES, § 217

[N.H.] Commission jurisdiction — Contractual arrangements — Change or termination of — Authority to order a "fresh look" at existing contractual arrangements — Factors — *Mobile-Sierra* doctrine — Transition to competition — Local exchange telephone services. p. 841.

9. CONSTITUTIONAL LAW, § 24

[N.H.] Contract rights — Alleged impairment of — By commission mandate for a "fresh look" at existing contractual arrangements — Finding of no impairment or taking — Factors — Commission's police powers to protect the public interest — Federally required transition to competition — Local exchange telephone services. p. 842.

10. CONTRACTS, § 18

[N.H.] Change or termination — By virtue of commission mandate for a "fresh look" at existing contractual arrangements — As not tantamount to an unconstitutional impairment or taking of contract rights — Factors — Commission's police powers to protect the public interest — Federally required transition to competition — Local exchange telephone services. p. 842.

11. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Implementation of local exchange competition — Effect on existing contractual arrangements — For services such as Centrex — Necessity of opportunity for "fresh look" at such contracts — Limits on fresh look — Minimum of two years remaining of long-term contract — Viability of alternative service offerings and service providers — 180-day window of opportunity. p. 843.

12. SERVICE, § 433

[N.H.] Telephone — Service arrangements via special contract — As for Centrex — Impact of local exchange competition — Necessity of opportunity for "fresh look" at such contracts — Limits on fresh look — Minimum of two years remaining of long-term contract — Viability of alternative service offerings and service providers — 180-day window of opportunity. p. 843.

13. RATES, § 534

[N.H.] Telephone rate design — Special factors — Implementation of local exchange competition — Effect on existing contractual arrangements — For special services such as Centrex — Necessity of opportunity for "fresh look" at such contracts — Limits on fresh look — Minimum of two years remaining of long-term contract — Viability of alternative service offerings and service providers — 180-day window of opportunity. p. 843.

14. TELEPHONES, § 11

[N.H.] Connecting carriers — Interconnection agreements and contracts — Effect of local exchange competition — Necessity of opportunity for "fresh look" at such contracts — Limits on fresh look — Minimum of two years remaining of long-term contract — Viability of

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alternative service offerings and service providers — 180-day window of opportunity. p. 843.

15. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone — Implementation of local exchange competition — Effect on existing contractual arrangements — No need for "fresh look" at such contracts — Factors — Sanctity of private contract agreements versus facilitation of competition — Dissenting opinion. p. 844.

16. SERVICE, § 433

[N.H.] Telephone — Service arrangements via special contract — Impact of local exchange competition — No need for "fresh look" at such contracts — Factors — Sanctity of private contract agreements versus facilitation of competition — Dissenting opinion. p. 844.

17. RATES, § 534

[N.H.] Telephone rate design — Special factors — Implementation of local exchange competition — Effect on existing contractual arrangements — No need for "fresh look" at such contracts — Factors — Sanctity of private contract agreements versus facilitation of competition — Dissenting opinion. p. 844.

18. TELEPHONES, § 11

[N.H.] Connecting carriers — Interconnection agreements and contracts — Effect of local exchange competition — No need for "fresh look" at such contracts — Factors — Sanctity of private contract agreements versus facilitation of competition — Dissenting opinion. p. 844.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Freedom Ring, L.L.C. (Freedom Ring) filed, on November 13, 1996, a Petition Requesting a Fresh Look Opportunity with the New Hampshire Public Utilities Commission (Commission). Freedom Ring made this filing as a supplemental request in Docket No. DE 96-165, the proceeding in which the Commission granted Freedom Ring authority to operate as a Competitive Local Exchange Carrier (CLEC). The Commission severed the petition from DE 96-165 and assigned it to this docket.

On April 1, 1997, by Order No. 22,539 (Order), the Commission granted intervenor status to MCI Telecommunications Corporation (MCI), New England Telephone and Telegraph Company, now d/b/a Bell Atlantic (Bell Atlantic), and Bretton Woods Telephone Company. The Order also approved a procedural schedule which allowed for submission of Briefs after a period of discovery.

After discovery exchanges, Freedom Ring filed an Opening Brief on July 30, 1997. Bell Atlantic and the Staff of the Commission (Staff) filed Briefs on August 28, 1997. MCI and the Office of the Consumer Advocate filed comments on August 28, 1997. Freedom Ring filed a Reply Brief on September 12, 1997.

II. POSITIONS OF THE PARTIES AND STAFF

A. *Freedom Ring*

1. Fresh Look Description

Freedom Ring requests the Commission grant certain incumbent local exchange carrier (ILEC) customers, those with long term local service contracts having more than one year of the contract's term remaining, a one year window of opportunity to determine if they wish to terminate the contract, without penalty, in order to take advantage of a competitive alternative. Freedom Ring argues that a full year window of opportunity is necessary in order to insure that more than one competitor is available to customers. Freedom Ring requests that the one year period commence on the date the first interconnection agreement is operational in a particular ILEC's service area. Although

Freedom Ring's request for this relief is based upon allegations pertaining to Bell Atlantic, it is not limited to Bell Atlantic contracts.

2. Federal Mandate for Competition

Freedom Ring contends that an opportunity to benefit from competition is mandated by both the New Hampshire legislature and the federal Telecommunications Act of 1996 (1996 Act). Failure to grant these Bell Atlantic customers an opportunity to opt out of their long-term contracts will deny New Hampshire residents and businesses the opportunity to benefit from competition, i.e. to have choice among telecommunications providers. Freedom Ring argues that such a failure would perpetuate a monopoly, contrary to Congress' intent.

3. Bell Atlantic Special Contracts Thwart Competition

In support of its request, Freedom Ring argues that Bell Atlantic has removed a substantial portion of the telecommunications market from local competition via tariffed payment plans and special contracts entered into in a monopoly environment. Freedom Ring identifies the following tariffed Bell Atlantic services with terms of greater than one year: Customized Netsaver Plan, Superpath 1.544 Mpbs Digital Service, Digipath Digital Service II, Network Reconfiguration Service, Frame Relay Service, Nova Centrex Service, Centrex I, Centrex II, and Custom Centrex (collectively, Superseded Analog Centrex Services); and Intellipath Digital Centrex Service. Bell Atlantic provides Centrex to 811 customers; according to Freedom Ring the vast majority of the customers (94%) are bound to seven year contracts required by the Bell Atlantic Centrex tariff. In addition to the long-term tariffed services which, Freedom Ring argues, effectively lock up the market, Bell Atlantic provides telecommunications services via 24 long-term special contracts, approved pursuant to RSA 378:18, which have in excess of one year to run, two-thirds of which are for Centrex service.

4. Centrex is not Competitive

Centrex service is not currently competitive, according to Freedom Ring; Centrex is essentially a monopoly local service. Centrex is different from Private Branch Exchange (PBX) and, therefore, is not a competitive substitute for it. In fact, Freedom Ring points out, Bell Atlantic extols the difference in advertisements for Centrex. PBX is equipment, not a service, and no CLEC currently has switching capability to provide Centrex service; PBX requires up-front capital investment and future investment for equipment upgrades. Freedom Ring provides two recent decisions by other state commissions which reject the argument that PBX is the functional equivalent of Centrex and that Centrex is competitive. Memorandum Opinion, Findings and Order, *In the Matter of the Tariff Filing of US West Communications Inc. For Authority to Remove its Centrex Plus Service to the Obsolete Section of the Exchange Service Price Schedule and Discontinuing the Offering to New Customers*, Docket No. 70000-TT-96-279, at 17 (Wyo P.S.C., September 6, 1996) and Order Denying Petition, *In the Matter of the Request of US West Communications Inc. To Grandparent CENTRON Services with Future Discontinuance of CENTRON, CENTREX, and Group Use Exchange Services*, Docket No. P-421/EM-96-471, at 11 (Minn. P.U.C. February 20, 1997).

Freedom Ring argues that the Commission's approval of Centrex special contracts does not mean that Centrex is fully competitive with PBX. Freedom Ring asserts that such special

contracts were necessary because they allowed Bell Atlantic to offer services to customers who, due to their size, needed arrangements that differed from the Centrex tariff. Freedom Ring further argues that the Commission's approval of protective treatment of Centrex special contracts does not constitute recognition of Centrex as competitive but, rather, a recognition that future customers for Bell Atlantic Centrex service would use the information as negotiating leverage against Bell Atlantic.

5. Resale will not Open Centrex to Competition

Resale of Bell Atlantic Centrex is not a reasonable competitive opportunity to acquire access to the Centrex market, according to Freedom Ring. Paying the contract line rate for the remaining term of years, even while receiving a wholesale discount on non-contract usage associated with the lines pursuant to Bell Atlantic's Statement of Generally Available Terms and Conditions (SGAT), will not attract customers. As an additional reason for declining resale as a method of opening the Centrex market to competition, Freedom Ring refers to Bell Atlantic's failure to accurately and timely complete customer conversions and billing for CLECs in New York. Freedom Ring points out that the ensuing inconvenience and aggravation was attributed by customers to the CLECs, not the ILEC. Freedom Ring asserts that the likely harm to its reputation outweighs the modest profits available from pure resale of Centrex. Furthermore, Freedom Ring asserts, resale to a customer who has chosen to assume the heavy cost of Bell Atlantic's termination penalties is unlikely. The termination penalties are purely punitive, Freedom Ring claims, aimed at protecting Bell Atlantic's monopoly position; they are not based on costs. In support, Freedom Ring points out that Bell Atlantic seeks the identical termination penalties regardless of whether capital investment has been made. The termination penalty cannot represent actual capital investment in one scenario and payment for services rendered in the other. These heavy termination charges should be viewed as an impediment to competition.

6. The Commission has Authority to Grant Fresh Look

The Commission's authority to order a Fresh Look for existing contracts stems from RSA 378:7, according to Freedom Ring, by allowing the Commission to review utility rates at any time to ensure protection of the public interest. Passage of the 1996 Act has fundamentally changed the public interest, making those contracts approved prior to passage of the 1996 Act open to the Commission's RSA 378:7 authority. Freedom Ring draws an analogy to Commission Order No. 18,753 (July 10, 1987) in Docket DR 86-236, which approved Bell Atlantic's Nova Centrex Tariff. In that order the Commission determined that the new (lower) rates for Nova Centrex were for essentially the same service formerly called Custom Centrex. Therefore, rejecting the view that previously approved contracts were immune from Commission authority, the Commission held that Custom Centrex customers would be permitted to switch to the new rates.

In addition to statutory authority, Freedom Ring argues that the so-called *Mobile-Sierra* doctrine permits a regulatory agency to set aside a contractually based tariff, even after it is filed by the contracting parties and approved as reasonable, if the agency finds that the rate is contrary to the public interest. Freedom Ring asserts that, because Centrex is closed to competition as a result of the contracts, the contracts are against the public interest and the Commission has authority to order Fresh Look under the *Mobile-Sierra* doctrine. In fact, Freedom Ring argues, the Commission's failure to grant Fresh Look would violate Section 253(a) of the 1996 Act.

Granting Fresh Look would not violate either the federal or the New Hampshire Constitutions, precisely because of the strong public interest articulated in the 1996 Act. Fresh Look does not violate the Contract Clause because public utilities' contracts are made subject to states' constitutional police power authority to modify the contracts in the public interest, argues Freedom Ring, citing *Midland Realty Company v. Kansas City Power & Light Company*, 300 U.S. 109 (1937). Furthermore, Fresh Look does not violate the Takings Clause of the 5th Amendment, Freedom Ring contends, because Fresh Look will not jeopardize the financial integrity of Bell Atlantic, as is necessary to create the functional equivalent of a taking. *Duquesne Light Company v. Barash*, 488 U.S. 299 (1989).

B. *Bell Atlantic*

Bell Atlantic opposes Freedom Ring's

petition for Fresh Look. Bell Atlantic argues that the Fresh Look opportunity requested by Freedom Ring is an unconstitutional taking of property, it fails to provide Bell Atlantic with termination penalties, and its scope goes far beyond the New Hampshire legislative intent of RSA 378:22. Bell Atlantic also argues that Centrex is a competitive service for which Fresh Look is inappropriate, and that the Commission is prohibited from imposing a Fresh Look by the federal and state Contract Clauses.

1. Fresh Look is Unfair to Bell Atlantic and Latecomer Competitors

Bell Atlantic opposes the Fresh Look opportunity proposed by Freedom Ring because it does not provide for payment of termination charges to Bell Atlantic. In opening the access market to competition via a fresh look opportunity, Bell Atlantic points out, the FCC provided for payment of termination charges equal to the difference between the amount the customer had already paid under its contract and the amount that would have been paid for the service during that period under tariff rates, plus interest at the prime rate. *Expanded Interconnection Docket*, 8 FCC Rcd 7341, 1993 WL 336570 (FCC). The Florida Public Service Commission and the Illinois Commerce Corporation did the same when ordering a fresh look period.

Pointing out that the New Hampshire legislature issued a clearer, more urgent, mandate promoting competition in the electric industry than the mandate issued regarding competition in local telecommunications markets, Bell Atlantic argues that, in order to be consistent, the Commission's continued approval of long-term special contracts for electricity requires the Commission's continued approval of long-term telecommunications contracts.

Freedom Ring's request constitutes an unconstitutional taking of private property, violating both the federal and New Hampshire Constitutions by removing contractual expectations. In particular, Bell Atlantic avers that it made substantial capital investment in New Hampshire. Without provision for recovery of those investment costs, Part 1, Article 12 of the New Hampshire Constitution and the 5th Amendment of the U.S. Constitution are violated, according to Bell Atlantic.

Bell Atlantic asserts that Fresh Look would be anti-competitive and discriminatory to later entrants into a market where Fresh Look was once permitted. Fresh Look would constitute a specially regulated opportunity for the benefit of a single provider, irrespective of competitive forces.

2. Centrex is Competitive

Bell Atlantic also argues that disruption of contractual relations is not warranted in this case because competitive alternatives were available at the time the Centrex contracts were executed. In support of its contention, Bell Atlantic cites language used by the Commission in numerous orders approving special contracts. For instance, by Order No. 22,190 in DE 86-124, issued June 11, 1996, the Commission approved a special contract with the State of New Hampshire for Centrex and toll, based in part on allowing Bell Atlantic to respond to competitive pressures, "specifically the availability of competitive substitutes for Centrex in the form of private branch exchanges (PBX)." In addition, Bell Atlantic cites to the Commission's grant of protective treatment to Bell Atlantic Centrex special contracts pursuant to *Re NET*, 80 NH PUC 437 (1995). Concluding that Centrex is competitive, Bell Atlantic argues that the state's fundamental preference for free enterprise embodied in Part 2, Article 83 of the New Hampshire Constitution should result in the least disruption possible for services under contract.

Bell Atlantic also claims that the customers who entered into long-term Centrex contracts knew, or should have known at the time, that emerging competition could make their contracts less desirable. Therefore, no relief is necessary. The relief offered by Fresh Look, according to Bell Atlantic, should only be available to benefit newly competitive markets in which customers did not have foreknowledge of competition. Fresh Look is inappropriate for contracts duly negotiated by customers with

knowledge of and access to meaningful alternatives.

3. Resale opportunities open the Centrex market

Bell Atlantic contends that long-term contracts do not lock up the Centrex market. Section 251(c)(4) permits competitors to resell service to an existing Bell Atlantic customer by either assuming the customer's contract, in which case no termination charges would be triggered, or by convincing the customer to pay termination charges before beginning the reselling process. Bell Atlantic points out that the competitor would obtain a wholesale discount when purchasing Centrex for resale.

4. The Commission has no authority to grant Fresh Look

Bell Atlantic argues that the authority granted to the Commission to modify rates, RSA 378:7, does not extend to the modification of the terms of existing contracts once the contracts are approved. The authority granted in RSA 378:7, Bell Atlantic argues, applies to tariffed rates and is limited to situations in which the rates are found to be unjust, unreasonable, or in violation of law, none of which has been demonstrated by Freedom Ring. Because of the limited authority granted by RSA 378:18, Bell Atlantic contends special contracts cannot be modified by the Commission. No statutory authority exists for the Commission to modify a special contract before approving or rejecting the contract; therefore, no statutory authority exists for the Commission to modify a special contract after approving it. While recognizing the *Mobile-Sierra* doctrine, Bell Atlantic contends that the doctrine strictly limits agencies' power to rewrite contracts to situations where the contract is found to be against the public interest.

Buttressing its argument that the Commission does not have authority to order Fresh Look, Bell Atlantic argues that granting Fresh Look will violate the Contract Clause of the United States Constitution, Article I, §10, and the equivalent clause in the New Hampshire Constitution which prohibits retrospective lawmaking.

Bell Atlantic asserts that the alteration of existing Centrex contracts would be the same as the alteration of contracts considered in *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234 (1978). In *Allied*, the Court rejected a "severe, permanent and immediate" change to annual funding requirements to the company's pension funds. The Court found the change would affect the company's continued vitality and that no demonstration was made by the moving party that the change was necessary to meet an important general social problem. Bell Atlantic contends that it will suffer a similarly severe impairment by being deprived recovery of investment and expenses undertaken.

Bell Atlantic further argues that Freedom Ring has not demonstrated an important general social problem requiring exercise of the state's police power under that exception to the Contract Clause. Freedom Ring's purpose is not genuinely public, Bell Atlantic states; it merely serves a private interest. If it were genuinely public, Bell Atlantic argues, the Commission must still deny Freedom Ring's request because it is unnecessarily harsh, as discussed in 3 above.

C. *Staff*

1. Evolution to Competition

Arguing that providing telecommunications customers a Fresh Look at long-term local contracts would be in the best interest of New Hampshire by permitting attainment of the opportunity for competitive choice mandated by the 1996 Act, the Staff asserts that the Commission has authority to grant Fresh Look but supports a different version than that proposed by Freedom Ring. Staff presents a historical perspective of the telecommunications industry, in which the monopoly environment which served well for more than half a century has evolved through court and legislative action to a pro-competition environment. Staff points to the New Hampshire legislature's passage of RSA 374:22-g in 1995, granting the Commission authority to approve competitive provision of

telecommunications services within Bell Atlantic's franchise territory. The 1996 Act went further, according to Staff, mandating an end to monopoly structure in the industry in order to provide opportunity for accelerated private sector deployment of advanced technologies.

2. Competition is Insufficient to Preclude Fresh Look

Without advancing additional arguments, Staff agrees with Freedom Ring's analysis that the level of competition faced by Bell Atlantic's Centrex service is not enough to preclude Fresh Look.

3. The Commission has Authority to Grant Fresh Look

The Commission has authority to grant Fresh Look even without express statutory authority under RSA 378:7, Staff argues, citing 64 Am Jur 2d, Public Utilities, because of the nature of public utilities as agencies of the state. The state, through a public commission, has ongoing implied or express authority to modify contracts made by public utilities in the interest of the public welfare. The Commission, therefore, has valid authority to disapprove existing contracts of regulated entities, just as the New York Public Service Commission did in *National Fuel Gas Distribution Corporation v. Public Service Commission*, 197 App. Div 2d 357, 487 NYS 2d 150 (1985).

Staff argues first that granting a Fresh Look opportunity does not violate the Constitution's Contract Clause because Fresh Look is not a substantial impairment of contractual rights; Bell Atlantic's customer's contract is not affected by the Commission's action and Bell Atlantic itself, as a regulated entity, has no reasonable expectation of using contracts entered into in the monopoly environment, to fend off competition.

Even if Fresh Look did amount to a substantial impairment of contract, Staff argues that the

Commission has authority to act under the widely recognized police power exception to the Contract Clause. Staff notes the similar conclusion reached by the Public Utilities Commission of Ohio (PUCO) order denying rehearing of *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (November 1996). In that case the PUCO found that "adoption of this fresh look opportunity which applies to only a subset of ILEC contracts for a limited period of time the first time a new entrant enters the local exchange market is a valid exercise of the state's police power which has been delegated to the Commission." Using the police power to grant Fresh Look is appropriate, Staff contends, because fostering competition in telecommunications is a significant and legitimate state purpose, geared toward remedying a broad general social or economic problem, as required by case law interpreting the police power exception to the Contract Clause.

The PUCO articulated the legitimate state purpose in granting Fresh Look in its July 1997 order approving Fresh Look Notification: that of spurring the development of a competitive market in Ohio, providing an incentive for new entrants to invest in a market which would otherwise be very difficult to enter given that the ILECs hold 100% of the market share and many of the most lucrative customers are locked into long-term contracts, and giving end-users the opportunity to take advantage of competitive choices at the very beginning of competition — a cornerstone of the 1996 Act. Staff argues that the same public purpose exists in New Hampshire and authorizes the Commission to act.

To demonstrate the validity of the public benefit obtained from some form of Fresh Look, Staff presents economic arguments to show that New Hampshire will not achieve the goals of the 1996 Act. Staff also argues that economic theory validates the legitimacy of the public purpose exercise of the police power exception to grant Fresh Look. In addition, Fresh Look will permit New Hampshire an opportunity to experience the benefits of competitive parity, enabling rival firms to apply enough pressure on each other to prevent collusion and to allocate resources efficiently, thereby causing prices to reflect costs, according to Staff.

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4. Staff's Proposal for Fresh Look

Staff proposes a narrow Fresh Look opportunity, mirroring that approved by the PUCO, limited to contracts with more than two years remaining in the term and to a period of 180 days after verification that the first interconnection arrangement is operational in the ILEC's service territory. In order to implement a Fresh Look opportunity, a customer would be required to pay Bell Atlantic termination charges amounting to the difference between the amount already paid as a result of the long-term contract and the amount the customer would have had to pay in a contract entered into for the term actually used, plus interest on the difference, at the prime rate.

III. COMMISSION ANALYSIS

[1-6] The mandate for local exchange competition, which the New Hampshire Legislature presaged in July 1995 and the Telecommunications Act of 1996 pronounced in February 1996, have required that we reconsider and reform the telecommunications industry consistent with those decisions. In the instant docket, we are called upon to examine whether customers under long-term contracts with Bell Atlantic should be given an opportunity to re-examine those contracts in a competitive environment.[1(150)]

Long-term contracts entered into when a monopoly is in place can have the effect of locking up a market for an extended period of time and in some cases can prevent consumers from obtaining the benefits of a competitive local exchange environment. In the instant proceeding, we find that the Centrex market is not and will not be fully competitive for many years as the result of numerous long-term contracts executed in a monopoly environment.

We are persuaded by the facts put forth in data responses from Bell Atlantic attached to Freedom Ring's Opening Brief, and the arguments made by Freedom Ring, that PBX is not the functional equivalent of Centrex. We recognize that in a number of orders approving special contracts we have stated that PBX is a "competitive substitute" for Centrex. We remain convinced that although PBX can substitute for Centrex in certain circumstances, nonetheless, it is not a perfect substitute. Likewise, we granted protection of Bell Atlantic Centrex special contract information for several reasons, including the availability of PBX and Bell Atlantic's need to prevent future customers from obtaining a bargaining advantage. However, our decisions to protect certain special contract information do not constitute a holding that Centrex service faces full competition. In fact, we have yet to hold that any local telecommunications service is fully competitive. Moreover, the existence of numerous long-term contracts significantly impairs the development of a fully competitive market.

With regard to Freedom Ring's argument that Bell Atlantic locked customers into long-term arrangements in anticipation of competition, we find that Bell Atlantic's intent in making long-term contracts is irrelevant to our deliberations. Our decision is intended to provide an opportunity for competition to flourish, not to punish Bell Atlantic for past actions which may have anti-competitive consequences in the present. We can remedy this situation by ordering a limited Fresh Look opportunity, crafted to ensure that when and if a customer decides to accept the opportunity, Bell Atlantic is not deprived of the reasonably anticipated benefit of its bargain.

[7, 8] We believe we have authority to order such a limited Fresh Look opportunity, as convincingly argued in the Briefs filed by Freedom Ring and Staff. Our authority stems from RSA 378:7, our general legislative grant of ratemaking authority. Such ratemaking authority extends beyond the time a contract is signed and approved, as has been determined by courts and commissions applying the *Mobile-Sierra* doctrine. As we stated in our order in *Town of Derry*, 77 NH PUC 4 (1992), the *Mobile-Sierra* doctrine provides that a contractually based tariff which has been filed by the contracting parties and approved by a regulatory agency, may be set aside if the agency later finds that the rate is contrary to the public interest. The *Mobile-Sierra* doctrine, which emerged from the holdings in two cases[2(151)] involving gas utilities which sought to increase unilaterally the rates in fixed-rate contracts already on file with the Federal Power Commission, constructed a "public interest" standard by which a reviewing body

can determine whether a party to a contract can be relieved of its obligation. The *Mobile-Sierra* doctrine has been said to

> represent(s) the U. S. Supreme Court's attempt to strike a balance between private contractual rights and an agency's regulatory power to modify contracts when necessary to protect the public interest.

Northeast Utilities Service Company v. Federal Energy Regulatory Commission, 55 F.3d 686, Util. L. Rep. p. 14,041 (1st Cir. 1995) (*Northeast II*). Discussing the public interest standard on *Mobile-Sierra*, the Court explained that the doctrine was formulated in the context of a low-rate case. According to the Court in *Northeast II*, the Federal Power Commission's sole concern was

> whether the rate is so low as to adversely affect the public interest — as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory.

Northeast II at p. 691. However, that definition "was not and could not be an across-the-board definition of what constitutes the public interest in other types of cases." *Northeast II* at p. 692. The *Northeast II* Court thus rejected a restrictive interpretation of the *Mobile-Sierra* doctrine, one which would limit the public interest to a "law of the case" application, i.e., only to low-rate cases. Instead, the court found that the *Mobile-Sierra* doctrine allows FERC to modify the terms of a private contract when the interests of third parties are threatened. The *Northeast II* Court referred approvingly to a discussion of the sweep of the *Mobile-Sierra* doctrine in *Mississippi Indus. v. FERC*, 808 F.2d 1525 (D.C. Cir.), *cert. denied* 484 U.S. 985 (1987). There, the Court concluded that "contracts remain fully subject to the paramount power of the Commission to modify them when necessary in the public interest." *Id.* at 1553.

We are satisfied that the *Mobile-Sierra* doctrine applies to this case and that, according due weight to the certainty of the contracting process, the public interest would be harmed by the continuation of these long-term contracts if a party to any of the contracts wishes to take advantage of a competitive telecommunications opportunity.

[9, 10] We find that exercise of our authority by granting Fresh Look will not violate the Contract Clause of either the federal or the state constitutions. Given our finding that the Centrex market is not fully competitive, we are not convinced by Bell Atlantic's arguments that a substantial impairment of contract has occurred. As in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983), where the Court found no substantial impairment of contract, Bell Atlantic operates in a heavily regulated industry where expectations are subject to state restriction. Nor are we convinced that the Contract Clause prohibits exercise of the police

power exception to the Contract Clause in order to meet the important national purpose of the 1996 Act. The 1996 Act is critical to our analysis. Contrary to the situation in the electric industry, the telecommunications industry is subject to a Congressionally imposed mandate. Accordingly, even without express authority under RSA 378:7, we have authority to grant a Fresh Look, under the police power exception, to advance the important public policy expressed in the 1996 Act to advance competition.

The police power exception dictates that "the Contract Clause prohibition of any state law impairing the obligations of contracts must be accommodated to the State's inherent police power to safeguard the vital interests of its people." *Id.* at 410. The police power exception allows impairment of contracts when the state has a significant and legitimate public purpose and where the adjustment of parties' rights and responsibilities is appropriate to the public purpose and based upon reasonable conditions. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). This exception was relied upon by the PUCO, which stated when denying rehearing on the issue:

> ... (A)doption of this fresh look opportunity which applies to only a subset of ILEC contacts for a limited period of time the first time

> a new entrant enters the local exchange market is a valid exercise of the state's police power which has been delegated to the Commission.

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues, Case No. 95-845-TP-COI, Entry on Rehearing, November 7, 1996.

[11-14] The limited Fresh Look opportunity we will grant is the one recommended by Staff and based upon the Fresh Look granted by PUCO. The opportunity applies only to those long-term contracts with more than two years remaining at the date the Commission verifies the first interconnection arrangement is operational within a specified geographic market, for Bell Atlantic local exchange services which were not, at the time they were entered into, subject to effective competition. The two years remaining in the term of a long-term contract shall be exclusive of automatic or optional renewal terms which may be part of the contract. Long-term contracts containing local termination liability which is not severable from non-local services are included in the Fresh Look opportunity. IntraLATA toll contracts are excluded from the Fresh Look opportunity because the toll market is open to competition and has been for some time.

We emphasize that the Fresh Look opportunity is limited to those Bell Atlantic customers actually attempting to take advantage of a competitive alternative. While a Bell Atlantic customer may eventually renegotiate its contract with Bell Atlantic, our approval of a Fresh Look does not permit a customer to open negotiations unless it first has obtained a bona fide competitive alternative offer.

The Fresh Look opportunity will last for 180 days. We believe this provides adequate time for a customer who is a signatory to a long-term contract to complete an evaluation of the pluses and minuses of taking advantage of Fresh Look and to decide whether to take service from a competitor. The customer must balance whatever positive attributes a competitor offers in terms of rates and services against the costs, discussed below, of terminating its contract with Bell Atlantic.

We reject Freedom Ring's argument that a full year window of Fresh Look opportunity is necessary. Similarly we reject Bell Atlantic's argument that no window of opportunity should be granted in order to preclude discrimination against latecomers to New Hampshire. Granting a reasonable period of time for customers to understand and act upon a Fresh Look opportunity will provide relief from an anti-competitive situation in a manner appropriately and narrowly crafted so as not to offend constitutional principles. Although Fresh Look itself will not insure a fully competitive local market, we believe it is another necessary step to facilitate the development of a fully competitive local market. We will not presume to define the time within which that will be accomplished; nor will we shrink from fostering an environment within which it can be accomplished. Providing a 180 day Fresh Look opportunity may motivate competitors to intensify efforts to operate in New Hampshire sooner.

The 180 day Fresh Look opportunity will begin on the date that the Commission verifies, by separate order, that a competitor is operational within a given geographic area, identified to the Commission by NXX prefixes. We adopt the standard propounded by the PUCO for an "operational" competitor. An operational competitor has the following attributes: (1) certification as a CLEC, (2) an approved final price schedule on file with the Commission, (3) an executed, approved interconnection agreement or the ability to purchase out of another CLEC's schedule for providing basic local exchange services, and (4) completion by the new entrant of its first commercial call.

We wish to make clear that the fact that a carrier is operational for purposes of qualifying for Fresh Look does not necessarily mean that Bell Atlantic has met the conditions set forth in Section 271(c) of the 1996 Act. Fresh Look and the so-called competitive checklist are independent determinations with different requirements that must be satisfied by Bell Atlantic.

The Fresh Look opportunity is triggered only when all of the criteria listed have occurred. We will direct Staff to develop an appropriate notification form by which a

competitor will notify the Commission of its operational status for verification. Staff shall verify that a competitor is operational expeditiously. We will also order Bell Atlantic to identify and file with the Commission the name and address of a contact person to whom all Fresh Look inquiries should be addressed.

At the time the first Fresh Look opportunity opens, Bell Atlantic must notify all its contract customers throughout New Hampshire via a Commission approved bill insert. The bill insert shall contain the requirements by which a contract qualifies for the Fresh Look opportunity, as

well as the fact that termination charges, different than those contained in the contract, will apply. In addition, because the Commission has an interest in seeing that competition develops to the maximum extent, in order to advise customers when a Fresh Look opportunity arises, we will issue press releases to media outlets and post information concerning Fresh Look on our Website. Competitors marketing to long-term contract customers shall disclose fully the termination formula outlined below. Finally, from the date of this order until we verify that a competitor is operational within a given geographic area, we will require Bell Atlantic to notify customers with whom it negotiates a contract for local exchange services that the Fresh Look opportunity will be available.

A customer choosing to terminate its long-term contract with Bell Atlantic will be subject to termination charges in an amount equal to the price the customer would have paid for service if the customer had taken a term offering for the length of time the contract has actually run, minus the amount the customer has actually paid. Taking for example a customer whose five year long-term contract has already been in effect for three years, the contracting parties shall establish the price that would have been charged for the service based upon a hypothetical three year contract. Bell Atlantic would then subtract the amount the customer had already paid and compute interest on the difference. The goal is to put Bell Atlantic in the position it would have been had it entered into the shorter contract. We direct staff to meet with any interested parties and to propose by January 15, 1998 a specific methodology to accomplish this calculation.

If, as a result of these negotiations, the customer remains with Bell Atlantic under a newly negotiated special contract, it must be submitted to the Commission for approval pursuant to RSA 378:18-b. Further, as in Ohio, the Commission will oversee the termination charge process and review disputes if so requested.

Based upon the foregoing, it is hereby

ORDERED, that the limited Fresh Look Opportunity described herein is GRANTED; and it is

FURTHER ORDERED, that Bell Atlantic shall provide the Commission the name, address, and telephone number of the person or persons to whom Fresh Look inquiries should be directed; and it is

FURTHER ORDERED, that Staff shall develop an appropriate notification form for use by a competitor seeking to open a particular market to Fresh Look; and it is

FURTHER ORDERED, that Staff and any other party propose by January 15, 1998 a methodology for calculating termination charges.

By order of the Public Utilities Commission of New Hampshire this eighth day of December, 1997.

DISSENTING OPINION OF COMMISSIONER ELLSWORTH

[15-18] I respectfully dissent. While I agree that the *Mobile-Sierra* doctrine applies, I come to a different result when balancing the competing interests of the sanctity of private contract

versus the public interest of encouraging competition. The customers of these special contracts and long-term contracts pursuant to tariff requirements knew or should have known that competition in the telecommunications industry was imminent. They presumably weighed the risks of entering into long-term contracts against the benefit of immediate lower rates. I do not agree that these same parties should now be given an opportunity to revoke the contract merely because competition now provides an alternate provider of the service and an opportunity to get a better deal. Our society's

traditional emphasis on the stability of contracts weighs more heavily with me than does the current momentum to compel competitive entry as soon as possible. The harm which the majority protects by approving Fresh Look, seems to me to less injurious to the public interest than the damage inflicted on stability of contract.

Therefore, in my opinion, only parties to contracts signed after the date this order issues should be given a Fresh Look opportunity; parties who signed contracts prior to that date should not be given a Fresh Look opportunity. By this means, Bell Atlantic would know that any party entering into a long-term contract will be given an opportunity to withdraw from that contract at the time the Fresh Look opportunity begins.

I also cannot join my colleagues in the treatment of newly negotiated Bell contracts. By this order, a customer who terminates a Bell contract in favor of a competitive one will not be required to bring that contract before the Commission for approval, but a customer who terminates a Bell contract for the express purpose of renegotiating with Bell Atlantic must obtain our approval.

The playing field will not be level. Contracts will be treated differently depending on the provider of service. My remedy in the spirit of competition would be to allow all contracts, no matter who provides them, to become effective without PUC review. However, my reading of RSA 378:18-b persuades me that all contracts with any ILECs or CLECs must be treated the same, and must receive that review. I would so order.

Bruce B. Ellsworth
Commissioner

December 8, 1997

FOOTNOTES

[1]Though Freedom Ring now asks that our decision in this docket apply to all ILECs, Freedom Ring's initial petition focused on Bell Atlantic. As a result, our Order of Notice

identified only Bell Atlantic and its customers as potentially being subject to a Fresh Look opportunity. We thus limit our decision to Bell Atlantic and its customers.

[2]The *Mobile-Sierra* doctrine is based on the United States Supreme Court's holdings in two cases: *United Gas Pipe Line Company v. Mobile Gas Service Corporation and Federal Power Commission*, 350 U.S. 332 and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956).

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Freedom Ring L.L.C., DR 96-420, Order No. 22,539, 82 NH PUC 307, Apr. 1, 1997. [N.H.] Re New England Teleph. & Teleg. Co., DR 86-236, Order No. 18,753, 72 NH PUC 293, July 10, 1987. [N.H.] Re New England Teleph. & Teleg. Co., DR 96-124, Order No. 22,190, 81 NH PUC 448, June 11, 1996.

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NH.PUC*12/08/97*[97524]*82 NH PUC 845*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97524]

82 NH PUC 845

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-180, DS 97-223
Order No. 22,799

New Hampshire Public Utilities Commission

December 8, 1997

ORDER granting protective treatment of certain customer usage data and demand projections upon which a local exchange telephone carrier relied in developing its special "Business Link" service offering, an optional intrastate toll calling plan for high-volume business customers.

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1. SERVICE, § 468

[N.H.] Telephone — Toll service — Optional "Business Link" intrastate toll calling plan —

— Protective treatment of customer usage and demand data relied upon therein — Local exchange carrier. p. 846.

2. PROCEDURE, § 16

[N.H.] Discovery and inspection — Protective treatment — As to certain customer usage data and demand projections — As used in designing a "Business Link" optional intrastate toll calling plan — Competitively sensitive nature of information as a factor — Benefits of nondisclosure as outweighing those of disclosure — Local exchange carrier. p. 846.

BY THE COMMISSION:

ORDER

On October 17, 1997, New England Telephone and Telegraph Company, d/b/a Bell Atlantic (Bell Atlantic), filed with the New Hampshire Public Utilities Commission (Commission), pursuant to Puc 203.04, a Motion for Confidential Treatment of certain information (Information) in support of its proposed Business Link Plan. The Business Link Plan is an optional calling plan for New Hampshire business customers which provides an opportunity for volume discounts and earned bonus credits on MTS calling. On November 21, 1997, Bell Atlantic filed with the Commission a Supplemental Motion for Protective Order.

Bell Atlantic filed the Information in both redacted and full unredacted forms. Consistent with recent Commission orders, Bell Atlantic did not redact either the relevant rates and charges or the term of years provided.

In its motion, Bell Atlantic states that the Information contains competitively-sensitive revenue analyses, usage levels for various toll services, and demand projections for those services. Bell Atlantic asserts that this Information falls within the exemptions from disclosure set forth in RSA 91-A:5, IV, as further defined in Puc 204.06. In particular, Bell Atlantic asserts facts describing how release of the Information would provide competitors with an unfair competitive advantage in developing marketing strategies. The benefits of non-disclosure, as measured by the described competitive harm inflicted on Bell Atlantic and the general body of ratepayers as a result of disclosure, outweighs the benefit of disclosure, according to Bell Atlantic, thus satisfying the requirements of Puc 204.06(b).

Bell Atlantic's motion also presents facts demonstrating that the Information meets the requirements of Puc 204.06(c), that is, information which is confidential, research development, financial, or commercial information. Bell Atlantic's motion includes evidence showing that the

Information is not general public knowledge or published elsewhere and that measures have been taken to prevent dissemination in the ordinary course of business, thus satisfying the requirement of Puc 204.06(c). Specifically, a Bell Atlantic Senior Specialist in Product Management attests that the Information is compiled from internal data bases that are not publicly available and which are protected from dissemination either by Bell Atlantic employees or by non-Bell Atlantic employees.

[1, 2] The Commission evaluated the Information, subject to interim confidentiality pending review of the motion, when reviewing the proposed Business Link Plan. By Order No. 22,794 (December 1, 1997) we approved Business Link on a *nisi* basis. Based on the company's representations, under the balancing test we have applied in prior cases, *e.g., Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995), we find that the benefits to Bell Atlantic of non-disclosure in this case outweigh the benefits to the public of disclosure.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Motion for Proprietary Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities

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Commission of New Hampshire this eighth day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Bell Atlantic, DR 97-180, Order No. 22,794, 82 NH PUC 823, Dec. 1, 1997.

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NH.PUC*12/08/97*[97525]*82 NH PUC 847*Vitts Corporation

[Go to End of 97525]

82 NH PUC 847

Re Vitts Corporation

DE 97-229
Order No. 22,800

New Hampshire Public Utilities Commission

December 8, 1997

ORDER adopting procedural schedule for considering a communications carrier's request that New England Telephone and Telegraph Company dba Bell Atlantic be required to provide dark fiber as an unbundled network element.

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1. RATES, § 553

[N.H.] Telephone rate design — Dark fiber — Proposal for treatment as unbundled network element — Procedural schedule for considering — Competitive local exchange carrier. p. 847.

2. SERVICE, § 449

[N.H.] Telephone — Special service — Dark fiber — Proposal for treatment as unbundled network element — Procedural schedule for considering — Competitive local exchange carrier. p. 847.

BY THE COMMISSION:

ORDER

[1, 2] Filing jointly on October 30, 1997, Vitts Corporation (Vitts) and New England Telephone and Telegraph Company d/b/a Bell Atlantic (Bell Atlantic) requested that the New Hampshire Public Utilities Commission (Commission) arbitrate a disputed request for an unbundled network element, pursuant to Paragraph 9.6.1 of the parties' Interconnection Agreement.

At the duly noticed Prehearing Conference on December 3, 1997, Vitts, Bell Atlantic, the Office of the Consumer Advocate (OCA), and the Commission Staff (Staff) agreed upon a procedural schedule, set out below, and provided the Commission with a statement of initial position regarding the dispute. There were no other intervenors.

Vitts claims that the requested network component, Dark Fiber, falls within the definition of an unbundled network element (UNE), pursuant to the Telecommunications Act of 1996 (TAct),

as a facility used in the provision of telecommunications services. Therefore, Vitts asserts that Bell Atlantic is bound to provide Dark Fiber as a UNE. Bell Atlantic claims that Dark Fiber is not a network element but, if the Commission finds that Dark Fiber is a network element, that it is not subject to unbundling. Bell Atlantic further claims that technical difficulty makes unbundling Dark Fiber unreasonable and that, if the Commission requires Bell Atlantic to provide Dark Fiber as a UNE, then the Commission should set a just and reasonable price. Neither the OCA nor Staff stated a position for the record, although Staff indicated that other New England states have rendered disparate rulings on the issue.

The following procedural schedule was agreed upon by Staff and the parties, including a provision whereby the parties shall submit proposed contract amendment language, consistent with the Commission's final order, to the Commission for approval.

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

Testimony by Vitts and Bell Atlantic	January 9, 1998
Testimony by Staff and OCA	January 15, 1998
Data Requests	January 23, 1998
Data Responses	January 30, 1998
Rebuttal Testimony - optional	February 6, 1998
Hearing	February 12, 1998 (10 a.m.)
Commission Order	February 27, 1998
Submission of Proposed Contract Amendment Language	Within 7 days
Ruling if possible on Proposed Contract Language	Within 7 additional days

Recognizing that the arbitration requested is governed by the Interconnection Agreement between Vitts and Bell Atlantic and is subject to the time constraints contained in Section 252 of the TAct, we find that the above schedule is reasonable. We agree to review proposed amendment language for the Interconnection Agreement.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule outlined above is APPROVED.

By order of the Public Utilities Commission of New Hampshire this eighth day of December, 1997.

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82 NH PUC 848

Re West Swanzey Water Company, Inc.

DF 97-012
Order No. 22,801

New Hampshire Public Utilities Commission

December 9, 1997

ORDER authorizing a water utility to issue up to $40,000 in long-term debt so as to finance certain service extensions.

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1. SECURITY ISSUES, § 58

[N.H.] Purposes of capitalization — Additions and betterments — Financing of extension projects — Through issuance of long- term debt — Water utility. p. 848.

2. SECURITY ISSUES, § 107

[N.H.] Sale price and interest rate — Issuance of long-term debt — 20-year notes — By which to finance extension projects — Water utility. p. 848.

BY THE COMMISSION:

ORDER

[1, 2] West Swanzey Water Company, Inc., (West Swanzey), a New Hampshire Corporation providing water service to 45 customers and with its principal place of business in West Swanzey, New Hampshire, filed on January 31, 1997 with the New Hampshire Public Utilities Commission (Commission), a petition for approval of financing in the total amount of $40,000 of long-term debt. The note will be issued to the Granite Bank, with a term of 240 months, payable in monthly installments, at a rate of one and one half (1.50) percent above the current prime of 8.50% making the rate on this transaction 10.00% for the first ten years. For the remaining ten years the rate will fluctuate annually at one percent above prime. West Swanzey represents that

this financing of $40,000 will be used to install a 2800' extension of 8" water main in West Swanzey, New Hampshire to service 24 units of low and middle income housing to be built by the Keene Housing Authority. Staff has reviewed the filing and recommends approval.

The purpose of the financing is consistent with West Swanzey's franchise to serve the public. Moreover, the rate and terms of the financing are reasonable. Accordingly, we find that financing of this debt is in the public good.

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Based upon the foregoing, it is hereby

ORDERED, that West Swanzey shall provide a statement from the Treasurer duly sworn, each June 30 and December 30 as to the disposition of the proceeds until fully disbursed; and it is

FURTHER ORDERED, that West Swanzey's petition for financing is approved, pursuant to RSA 369:3 for the purpose set forth herein.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1997.

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NH.PUC*12/09/97*[97527]*82 NH PUC 849*Wildwood Water Company

[Go to End of 97527]

82 NH PUC 849

Re Wildwood Water Company

DR 97-121
Order No. 22,802

New Hampshire Public Utilities Commission

December 9, 1997

ORDER adopting procedural schedule with respect to a water utility's petition for a 67.31% rate increase.

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1. RATES, § 595

[N.H.] Water rate design — Proposed rate increase — Of over 65% — Expedited procedural schedule — Agreement to forgo temporary rates — Issues to be addressed — Plant additions — System operations — Water treatment expense. p. 849.

BY THE COMMISSION:

ORDER

[1] On July 18, 1997, Wildwood Water Company (Wildwood), a public utility serving customers in Albany, New Hampshire, and having a principal place of business in Conway, New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) a petition for a rate increase. Wildwood proposes an overall annual revenue increase of $8,930 or 67.31 percent to be applied to its 42 customers.

By Order No. 22,680, (August 8, 1997) the Commission suspended the proposed rates. By Order of Notice issued November 6, 1997, the Commission scheduled a prehearing conference for November 19, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record.

New Hampshire State Representative Richard T. Cooney of Salem, New Hampshire, made a motion for intervention which was granted at the prehearing conference. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

At the prehearing conference, Wildwood and Staff agreed to the proposed procedural schedule as outlined in the Order of Notice and as follows:

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

Data Requests by Staff and  December 3, 1997
  Intervenors

Company Data Responses     December 12, 1997

Testimony by Staff and     December 31, 1997
  Intervenors

Settlement Conference       January 13, 1998

Filing of Settlement
  Agreement, if any         January 20, 1998

Hearing on the Merits      January 27, 1998.
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Also at the prehearing conference, in accordance with the Order of Notice, Wildwood and Staff stated their positions with regard to the filing for the record.

Wildwood stated that it agreed to an expedited procedural schedule on the issue of permanent rates rather than pursuing temporary rates during the pendency of this matter, as requested in its initial filing.

Staff stated that the primary concern with the filing was to address issues of necessary plant additions to allow Wildwood to comply with the federal Safe Drinking Water Act, as well as operation and maintenance expenses.

We find the proposed procedural schedule to be reasonable and will, therefore, approve it for the duration of the proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule delineated above is APPROVED; and it is

FURTHER ORDERED, that Representative Richard T. Cooney is granted intervenor status.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Wildwood Water Co., DR 97-121, Order No. 22,680, 82 NH PUC 592, Aug. 8, 1997.

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[Go to End of 97528]

82 NH PUC 850

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-180
Order No. 22,803

New Hampshire Public Utilities Commission

December 15, 1997

ORDER authorizing a local exchange telephone carrier to reduce its switched access rates (those charges assessed toll service providers for access to the carrier's local telecommunications network).

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1. RATES, § 588

[N.H.] Telephone rate design — Toll service — Originating and terminating charges — For switched access — Applicable to toll providers — Reductions in per-minute switched access rates — Factors — Competition — Pricing above incremental costs — Local exchange carrier. p. 851.

2. RATES, § 140

[N.H.] Factors affecting reasonableness — Competition — As warranting reductions in switched access rates — Local exchange telephone carrier. p. 851.

BY THE COMMISSION:

ORDER

On October 31, 1997, New England Telephone & Telegraph Co., now d/b/a Bell Atlantic (Company), filed a notification detailing a proposal to reduce rates for residence, business and carrier access customers, establish expanded local calling areas on a "home and contiguous" basis throughout the State and implement a plan establishing network and Internet access for schools and libraries. The proposal is part of a comprehensive effort by the Company, as a result of Staff investigations, to reduce total intrastate revenue by $26 million. As a part of their proposal, the Company filed on November 14, 1997 a petition to reduce switched access per minute rates, i.e., the rates toll providers pay Bell Atlantic to access its telecommunications network. The total intrastate revenue reduction related to this portion of the proposal, if approved, amounts to $715,000 annually.

Staff has reviewed the filing and the tariff revisions. The filing proposes to reduce the carrier common line charge for switched originating and terminating access service from 2.9657 cents per access minute to 2.6494 cents per access minute. The total switched originating and terminating access charge, with approval of this filing, is 6.279 cents per access minute.[1](152)

Based on its review of the filing, Staff

recommends approval of this petition. Although the filing does not include cost study details, Staff is confident the modest reductions do not pose a risk of establishing rates below costs. Therefore, it is Staff's opinion the proposed rates are in excess of incremental costs and that approval will further stimulate the development of an increasingly competitive intrastate toll market.

[1, 2] After reviewing the petition and Staff's recommendations, we find the proposed changes to the tariff are just, reasonable and in the public interest. We recognize that the filing does not include cost study details. However, based upon information set forth in Bell Atlantic's 1993 cost of service study, we are also confident the proposed rates exceed the incremental cost of providing access services. Furthermore, approval will help stimulate the development of competition in the intrastate toll market as switched access rates drop to the interstate level. As a result of these reductions, the costs incurred by competitive toll providers to access the Bell Atlantic network are reduced. We anticipate toll providers will pass these cost reductions on to toll customers.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed tariff revisions consisting of; NHPUC 79, Access Service, section 30, page 6 are approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1604.03 or Puc 1605.03, 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 22, 1997 and to be documented by affidavit filed with this office on or before December 29, 1997; 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 5, 1998; 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 12, 1998; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 15, 1998, 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 15, 1998 in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 1997.

FOOTNOTES

[1]Including local transport and switching services.

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[Go to End of 97529]

82 NH PUC 851

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-180
Order No. 22,804

New Hampshire Public Utilities Commission

December 15, 1997

ORDER authorizing a local exchange telephone carrier to reduce its message telecommunications service (MTS) rates. While the MTS day rate will decrease, there will be no change in evening, night, or weekend MTS rates assessed on a minute-of-use basis.

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1. RATES, § 584

[N.H.] Telephone rate design — Toll service — Message telecommunications service — Reductions in associated day-period charges and credits — Retention of existing evening, night, and weekend rates — Factors — Competition — Pricing above incremental costs —

Page 851

Local exchange carrier. p. 852.

2. RATES, § 140

[N.H.] Factors affecting reasonableness — Competition — As warranting reductions in message telecommunications service day- period rates — Local exchange telephone carrier. p. 852.

BY THE COMMISSION:

ORDER

[1, 2] On October 31, 1997, New England Telephone & Telegraph Co., now d/b/a Bell Atlantic (Company), filed a notification detailing a proposal to reduce rates for residence, business and carrier access customers, establish basic local calling areas on a "home and contiguous" basis throughout the State and implement a plan establishing network and Internet access for schools and libraries. The proposal is part of a comprehensive effort by the Company, as a result of Staff investigations, to reduce total intrastate revenue by $26 million. As part of this proposal, the Company filed on November 14, 1997 a petition to reduce Message Telecommunication Services (MTS) message rates, MTS per minute of use day rates (intrastate toll), MTS day credits, Switched 56 Kbps per minute and per message rates and Switched 56 Kbps day credits. The total reduction in intrastate revenue of this portion of the proposal, if approved, amounts to $3.05 million annually.

Staff has reviewed the filing and tariff revisions. The filing proposes to reduce MTS message rates from 2 cents per message to 1 cent per message. Message rates recover the cost to establish a transmission link between the calling and called parties. Proposed reductions in MTS day rates amount to 1.8 cents per minute of use (MOU). The proposed MTS day rate is 21 cents per MOU. Evening, night and weekend MTS rates remain unchanged. The Company proposes to reduce the MTS day time credit for usage in excess of 241 minutes per month. Customers with monthly usage volume between 241 and 4,800 minutes receive a day time credit of 8.0 cents per MOU, a reduction of 1.8 cents per MOU from the existing MTS day credit of 9.8 cents per MOU. Customers with monthly usage volume in excess of 4,801 minutes receive a day time credit of 11 cents per MOU, a reduction of 1.8 cents from the existing credit of 12.8 cents per MOU. Proposed reductions in per minute, per message and day credits for Switched 56 Kbps services mirror the reductions in the aforementioned MTS services. Switched 56 Kbps service is a digital, end to end public switched toll service that provides full duplex, synchronous data information transport over a specially equipped measured access line.

Based on its review, Staff recommends approval of this petition. Although the filing does not include cost study details, Staff recognizes that MTS services provide significant contributions to joint and common costs of the Company. Thus, the modest proposed reductions do not pose a risk of establishing rates below costs. Therefore, it is Staff's opinion that the proposed rates will provide the Company additional opportunities to respond to the increasingly competitive toll marketplace while simultaneously reducing overall revenues.

Staff notes that reductions in MTS and Switchway day period credits do not result in increases to customer bills. Although a reduction in "credits" appears, at face value, to result in a net increase, the credit reduction of 1.8 cents per MOU is equal to the reduction of 1.8 cents per MOU for MTS day rates. Thus, high volume customers not subscribing to an optional calling plan pay the same "net" rate with approval of this petition as they would under existing tariffs.

After reviewing the petition and Staff's recommendation, we find the proposed changes to the

tariff are just, reasonable and in the public interest. We recognize that the filing does not include cost study details. However, in recognition that MTS services provide significant contributions to the joint and common costs of the Company, we are confident the proposed rates

exceed the incremental cost of providing MTS services.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that proposed tariff revisions consisting of; NHPUC No. 77

Part M, Section 1, sixth revision of pg 31 Part M, Section 3, second revision of pg 13 Part M, Section 3, first revision of pg 14 are approved;

and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1604.03 or Puc 1605.03, 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 22, 1997 and to be documented by affidavit filed with this office on or before December 29, 1997; 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 5, 1998; 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 12, 1998; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 15, 1998, 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 15, 1998, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 1997.

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NH.PUC*12/15/97*[97530]*82 NH PUC 853*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97530]

82 NH PUC 853

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-180
Order No. 22,805

New Hampshire Public Utilities Commission

December 15, 1997

ORDER authorizing a local exchange telephone carrier to reduce its measured local service rates for business subscribers, inclusive of service establishment and installation charges.

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1. RATES, § 539

[N.H.] Telephone rate design — Measured local service — Business subscribers — Reductions in associated rates — Inclusive of service establishment charges — Factors — Competition — Pricing above incremental costs — Local exchange carrier. p. 853.

2. RATES, § 140

[N.H.] Factors affecting reasonableness — Competition — As warranting reductions in business measured local service rates — Local exchange telephone carrier. p. 853.

BY THE COMMISSION:

ORDER

[1, 2] On October 31, 1997, New England Telephone & Telegraph Co., now d/b/a Bell Atlantic (Company), filed a notification detailing a proposal to reduce rates for residence, business and carrier access customers, establish expanded local calling areas on a "home and contiguous" basis throughout the State and implement a plan establishing network and

Internet access for schools and libraries. The proposal is part of a comprehensive effort by the Company, as a result of Staff investigations, to reduce total intrastate revenue by $26 million. As a part of their proposal, the Company filed on November 14, 1997 a petition to reduce Business Measured Service rates, Service & Establishment charges and Public Access Smart-pay line service (PASL) rates. The total intrastate revenue reduction related to this portion of the

proposal, if approved, amounts to $3.19 million annually.

Staff has reviewed the filing and the tariff revisions. The filing proposes a number of rate reductions. The first proposal is a reduction of the rate for business measured service 4E for rate groups 12 through 21 to $20.84 per month, the rate paid by subscribers who are currently in rate groups 1 through 11. Measured service is designed for business customers who make a few or moderate number of calls within their local calling areas. Because subscribers make few calls within their local calling area, subscribers who select measured service pay less per month than subscribers who select unlimited local calling service. The second proposal is a reduction of the business measured service 4E trunk usage rates for rate groups 12 through 21 to $1.24 per month, the rate paid by subscribers who are currently in rate groups 1 through 11.[1(153)] Trunk usage is a sub-component of business measured service 4E rate charges and represents the residual amount of charges after accounting for network access and conduit space. The third proposal is a reduction of service and equipment (S&E) charges to install network access lines for residence and business customers by $10 and $15, respectively. The proposed rates are $39 and $60 per line, respectively. Fourth, the proposed rate for Public access smart-pay line (PASL) for rate groups 12 through 21 is reduced to $29.79 per month, the rate paid by subscribers who are currently in rate groups 1 through 11. PASL lines are purchased by payphone providers in order to access the telecommunications network from a customer provided payphone.

Based on its review of the filing, Staff recommends approval of this petition. Although the filing does not include cost study details, Staff is confident the reductions do not pose a risk of establishing rates below costs. Therefore, it is Staff's opinion the proposed rates are in excess of incremental costs and that the revenues from the services still provide modest monetary contributions to the joint and common costs of the Company.

After reviewing the petition and Staff's recommendations, we find the proposed changes to the tariff are just, reasonable and in the public interest. We recognize that the filing does not include cost study details. However, we are confident the proposed rates exceed the incremental cost of providing the aforementioned services.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that the proposed tariff revisions to NHPUC No. 77, Part M, section 1, pages 16, 18 and 28 are approved; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules, Puc 1604.03 or Puc 1605.03, 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 22, 1997 and to be documented by affidavit filed with this office on or before December 29, 1997; 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 5, 1998; 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 12, 1998; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 15, 1998, 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 15, 1998, in accordance with N.H. Admin. Rules, Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 1997.

FOOTNOTES

[1]With approval of this filing, the concept of rate groups for business measured service 4E subscribers will be eliminated. All subscribers regardless of location will pay the same rates. The existing tariff consisted of three rate groups.

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NH.PUC*12/16/97*[97531]*82 NH PUC 855*New England Telephone and Telegraph Company dba Bell Atlantic

[Go to End of 97531]

82 NH PUC 855

Re New England Telephone and Telegraph Company dba Bell Atlantic

DR 97-242
Order No. 22,806

New Hampshire Public Utilities Commission

December 16, 1997

ORDER approving a local exchange telephone carrier's proposed special Centrex service contract with a bank, St. Mary's Bank.

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1. SERVICE, § 463

[N.H.] Telephone — Centrex service — Provided via special contract arrangements — Between local telephone carrier and bank — Provisions for both analog and integrated services

digital network lines — Reasonableness vis-a-vis competitive pressures. p. 855.

2. RATES, § 566

[N.H.] Telephone rate design — Centrex service — Special rate contract — Between local carrier and bank — Pricing for both analog and integrated services digital network lines. p. 855.

BY THE COMMISSION:

ORDER

[1, 2] On November 26, 1997, New England Telephone and Telegraph Company (Bell Atlantic) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Special Contract (Contract) with St. Mary's Bank (St. Mary's) for Centrex Services. In support of its petition, Bell Atlantic filed a contract overview and a cost study associated with the Special Contract.

The filing also included a Motion for Confidentiality to exempt certain data in the cost study and various information in the Contract from public disclosure. The Motion for Confidentiality will be addressed in a separate order. The Commission, pursuant to NH Admin. Rules Puc 204.07(b), will protect the information from public disclosure pending review of the request for confidential treatment.

As directed in DR 97-035 by Order No. 22,545, Bell Atlantic has published notice of this special contract filing with a 14 day period for comments which ended on December 10, 1997. No comments have been received by the Commission regarding this filing.

The proposed Centrex Service provides a mix of analog and Integrated Services Digital Network (ISDN) lines to several St. Mary's locations in New Hampshire. Provisions in the Contract provide for additional services to be added on a price-per-line basis. Termination of the Contract by St. Mary's, prior to the end of the term, requires them to pay the present value of any outstanding payments for the remainder of the contract period. DR 96-420 may alter this requirement as addressed below.

The Centrex Service provided by this Special Contract is a competitive alternative to Private Branch Exchange (PBX) Service and approval of this contract allows Bell Atlantic to respond to the competitive market. The cost data demonstrates that the proposed rates for Centrex Service exceed the relevant costs, thus, Staff has recommended that the Commission approve this Special Contract.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the majority opinion of "Fresh Look" Order No. 22,798 (December 8, 1997) in DR 96-420 provides an opportunity for early

termination of this Contract. This could occur during a 180 day period after a competitor is operational within the contract service area.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic's Special Contract with St. Mary's is APPROVED; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by Bell Atlantic of its rights and obligations under this Special Contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by Bell Atlantic during the life of this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded St. Mary's in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Freedom Ring, L.L.C., DR 96-420, Order No. 22,798, 82 NH PUC 833, Dec. 8, 1997.
[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*12/16/97*[97532]*82 NH PUC 856*Quintelco Inc.

[Go to End of 97532]

82 NH PUC 856

Re Quintelco Inc.

DE 97-166
Order No. 22,807

New Hampshire Public Utilities Commission

December 16, 1997

ORDER authorizing a telecommunications carrier to begin offering both switched and nonswitched local exchange service as a competitive local carrier.

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1. CERTIFICATES, § 123

[N.H.] Telecommunications — Switched and nonswitched local exchange services — Competitive local carrier — Service within area formerly reserved for dominant incumbent carrier — Factors affecting certification — Meeting of financial, technical, and managerial criteria. p. 857.

2. MONOPOLY AND COMPETITION, § 83

[N.H.] Telephone services — Local exchange competition — Offering of both switched and nonswitched service — Arrangements between incumbent local exchange telephone carrier and competing local carrier. p. 857.

3. RATES, § 592

[N.H.] Telephone rate design — IntraLATA toll service — Charges for switched access — Competing local exchange carrier — Mirroring of incumbent carrier's rates. p. 857.

BY THE COMMISSION:

ORDER

On August 12, 1997, Quintelco Inc. (QI) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed QI's petition for compliance with these standards. Staff reports that QI has provided all the information required by Puc 1304.02. The information provided supports QI's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of QI as a New Hampshire CLEC.

QI has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

[1-3] We find that QI has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of QI in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because QI has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, QI agreed to concur with Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, QI seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. We will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they reciprocally pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that QI's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, *inter alia* to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that 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 23, 1997 and to be documented by affidavit filed with this office on or before December 30, 1997; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing on this matter before the Commission no later than January 6, 1998; 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 13, 1998; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 15, 1998, 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, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this sixteenth day of December, 1997.

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NH.PUC*12/22/97*[97533]*82 NH PUC 858*Merrimack County Telephone Company

[Go to End of 97533]

82 NH PUC 858

Re Merrimack County Telephone Company

DF 97-231
Order No. 22,808

New Hampshire Public Utilities Commission

December 22, 1997

ORDER authorizing a local exchange telephone carrier to issue a promissory note in an amount up to $6 million to the Rural Telephone Finance Cooperative so as to allow the carrier to refinance other debt owed the Rural Utilities Service and the Rural Telephone Bank.

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1. SECURITY ISSUES, § 80

[N.H.] Purposes of capitalization — Refinancing of debt — To shorten term of indebtedness — Issuance of promissory note — Transactions with rural financial service entities — Local exchange telephone carrier. p. 859.

2. SECURITY ISSUES, § 108

[N.H.] Kinds and sale price — Stock — Transfer of Class B stock — Prohibition on booking of gain — Factors — Estimated value versus actual cost — Refinancing transaction — Local

exchange telephone carrier. p. 859.

BY THE COMMISSION:

ORDER

On October 31, 1997, Merrimack County Telephone Company (MCT or the Company), filed with the New Hampshire Public Utilities Commission (Commission) a petition seeking the Commission's approval and authority under RSA 369:1-4 to refinance all of its Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) debt through the issuance of its promissory note or notes in the aggregate principal amount of not more than $6,000,000 to the Rural Telephone Finance Cooperative (RTFC) and to mortgage its properties.

MCT proposes to enter into a loan agreement with the RTFC providing for the issuance, subject to the Commission's approval, of a promissory note of notes in the aggregate principal amount of $6,000,000 having a term of ten (10) years.

The Company proposes to use a 50/50 blend of fixed and variable rates on the total outstanding RTFC debt. The initial rates guaranteed by the RTFC until January 30, 1998 include a 7.65% fixed rate and a 6.65% variable rate. The proceeds from the financing will be used (a) to repay in full all of the outstanding indebtedness of the Company to the United States of America, acting by and through the Rural Utilities Service, and the Rural Telephone Bank; and (b) to purchase a subordinated capital certificate in the amount of not more than $300,000 from the RTFC.

The Company's proposed transition to RTFC as its primary lender will enable MCT to shorten the term of its indebtedness to ten (10) years, which MCT claims is more closely aligned with the useful life of the underlying assets. The proposed transaction will also enable MCT to move from RUS/RTB fixed interest rates to a 50/50 blend of a fixed rate and variable rate with RTFC. The blended debt allows MCT to keep its cost of capital reasonable and provides the ability to repay debt as conditions allow.

As part of the refinancing transaction, MCT's Class B stock investment will be converted to Class C stock, which is eligible to earn dividends, unlike Class B stock. The Company is proposing to apply the dividends as an offset to interest expense for rate making purposes. Based upon the guaranteed rates and Class C stock dividends, the interest expense is approximately equal to the current interest expense.

MCT's annual interest and principal payments will increase as a result of overall reduction in the term of debt. With the shorter debt term, the Company anticipates interest savings of approximately $535,000 and a $1,400,000

offset to interest expense for rate making purposes with the utilization of Class C stock dividends over the term of the new debt.

The Company submitted actual and pro forma balance sheets and an income statement together with estimated expenses of financing, a statement of capitalization ratio, RTFC Conditional Commitment Letter and copies of the proposed loan documents.

[1, 2] The Commission has reviewed MCT's petition, and all exhibits submitted therewith, and recommends approval with one exception. MCT proposes to book a gain on the transfer of the RTB Class B stock. The gain is based upon an estimated value related to a stream of dividends used to establish the value of the Class C stocks. The booking of a gain is inappropriate because the value of the stock should be based upon its actual cost to MCT. The Company cannot book a gain which may never be realized. It is appropriate to offset the annual cost of the new debt by the dividends that will be realized from the conversion of the RTB stock that MCT was required to purchase with the debt that is being retired. We find that the issuance of a promissory note or notes of MCT in the principal amount of not more than $6,000,000 to the RTFC upon the terms represented in the proposed loan documents is consistent with the public good.

Based upon the foregoing, it is hereby

ORDERED, that MCT is authorized to issue a promissory note or notes in the aggregate principal amount of not more than $6,000,000 to the RTFC; and it is

FURTHER ORDERED, that the promissory note or notes will bear interest at variable rates, or fixed rates over such period as MCT may elect in accordance with standard RTFC loan policies; 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 MCT may not book a gain on the transfer of the RTB Class B stock; and it is

FURTHER ORDERED, that the mortgaging of MCT's Property to secure the repayment of such promissory note is approved.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 1997.

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NH.PUC*12/23/97*[97534]*82 NH PUC 859*Contoocook Valley Telephone Company Inc.

[Go to End of 97534]

82 NH PUC 859

Re Contoocook Valley Telephone Company Inc.

DR 97-247
Order No. 22,809

New Hampshire Public Utilities Commission

December 23, 1997

ORDER conditionally approving a local exchange telephone carrier's proposed special rate contract with the Maharishi School of Vedic Sciences for the provision of high-speed digital data transmission service.

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1. SERVICE, § 449

[N.H.] Telephone — Special services — High-speed digital data transmission service — Provided to school via special contract — Conditional approval — Local exchange carrier. p. 860.

2. RATES, § 553

[N.H.] Telephone rate design — High-speed digital data transmission service — Provided to school via special contract — Conditional approval — Local exchange carrier. p. 860.

3. SERVICE, § 449

[N.H.] Telephone — Special services — High-speed digital data transmission service — Provided to school via special contract — Propriety of unconditional approval — Separate opinion. p. 860.

4. RATES, § 553

[N.H.] Telephone rate design — High-

speed digital data transmission service — Provided to school via special contract — Propriety of unconditional approval — Separate opinion. p. 860.

BY THE COMMISSION:

ORDER

[1, 2] On November 25, 1997, Contoocook Valley Telephone Co. Inc. (CVT) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a Special Contract (Contract) with the Maharishi School of Vedic Sciences (Maharishi School) for a single switched 56KB digital service. In support of its petition, CVT filed a signed contract and a cost/revenue analysis.

As directed in DR 97-035 by Order No. 22,545 (April 2, 1997), CVT has published notice of this special contract filing with a 14-day period for comments which ended on December 18, 1997. No comments have been received by the Commission regarding this filing.

CVT does not currently have a tariff for switched 56KB service and has no immediate plans to file such a tariff. The approval of this special contract would allow CVT to meet the request of the Maharishi School and would initiate a trial of a potential new service offering for the public.

The cost/revenue data provided by CVT demonstrates that the proposed rates for installing and operating the 56KB service exceed the relevant costs, thus, Staff has recommended that the Commission approve this special contract.

Staff acknowledges CVT's request to expedite this contract and advised CVT one day after the filing was made that additional cost information and a public notice were required. With the 14-day notice period ending on December 18, 1997, this contract is being approved as expeditiously as due process allows.

We have reviewed the petition and the Staff recommendation and find the proposed Special Contract to be in the public interest. However, the parties to this Contract should recognize that the "Fresh Look" provision of Order No. 22,798 (December 8, 1997) in DR 96-420 provides an opportunity for early termination of similar contracts entered into by Bell Atlantic. While CVT contracts are presently not subject to a "fresh look," the parties are forewarned that the precedent for early termination exists. As established in DR 96-420, termination could occur during a 180-day period after a competitor is operational within the relevant contract service area.

Based upon the foregoing, it is hereby

ORDERED, that CVT's Special Contract with the Maharishi School is APPROVED; and it is

FURTHER ORDERED, that the Commission retains authority to approve any assignment by CVT of its rights and obligations under this Special Contract; and it is

FURTHER ORDERED, that during any rate case or rate redesign filed by CVT during the life of this Special Contract, the Commission will consider whether any changes should be made to the revenue requirements or cost studies as a result of the rates afforded the Maharishi School in this Special Contract.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 1997.

SEPARATE OPINION OF
COMMISSIONER BRUCE B. ELLSWORTH

[3, 4] I concur with the decision of the majority that this Special Contract is in the public interest and should be approved.

I cannot agree, however, that the terms and conditions of this contract may be revisited pursuant to the provisions of docket DR 96-420, the so-called "Fresh Look" docket.

For the following reasons, I would unconditionally approve the contract.

First, this contract was presumably entered into between a willing buyer and a willing seller. The buyer had every opportunity to anticipate the benefits and liabilities of a competitive

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market and had an opportunity to position itself to take advantage of any opportunities that may arise in a competitive environment. Even if I were aware of all the issues that were discussed in reaching the proposed contract terms, I would not impose my judgement over theirs by making findings that presumably provided future competitive opportunities which they did not seek themselves.

Second, I am concerned that our future actions in another proceeding violates the principle of rate stability. Customers who enter into long term relationships with their suppliers, whether that supplier is a utility or not, deserve the certainty that the contract will not be changed and that rates will not be threatened. Conversely, suppliers should have certainty that any investments made on behalf of those customers can realistically be recovered in the contracted rates over the contracted period.

Finally, since the contract prices developed by the parties are above the cost of providing the requested service, and since there is no threat that other customers would be subsidizing these rates, I am satisfied that the contract needs no further review.

I concur with the majority in all other aspects of this order.

Bruce B. Ellsworth
Commissioner

December 23, 1997

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Freedom Ring, L.L.C., DR 96-420, Order No. 22,798, 82 NH PUC 833, Dec. 8, 1997.
[N.H.] Re New England Teleph. & Teleg. Co. dba NYNEX, DR 97-035, Order No. 22,545, 82 NH PUC 319, Apr. 2, 1997.

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NH.PUC*12/24/97*[97535]*82 NH PUC 861*Connecticut Valley Electric Company, Inc.

[Go to End of 97535]

82 NH PUC 861

Re Connecticut Valley Electric Company, Inc.

DR 97-238
Order No. 22,810

New Hampshire Public Utilities Commission

December 24, 1997

ORDER suspending, and scheduling a prehearing conference to address, an electric utility's 1998 conservation and load management program/budget filing.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management programs — Electric utility — Annual filing — Proposed 1998 budget and programs — Suspension — Necessity of prehearing conference — Issues to be addressed — Recovery of lost fixed costs — Phase-out of monitoring and evaluation activities — Prior overcollections. p. 861.

BY THE COMMISSION:

ORDER

[1] On November 14, 1997, Connecticut Valley Electric Company (CVEC) filed with the Commission a petition for approval of its 1998 Conservation and Load Management (C&LM) Programs Proposal for C&LM Percentage Adjustment Effective January 1, 1998. Included in the filing are the supporting testimonies of K. Dean Pierce, Manager of Market Planning and C.J. Frankiewicz, Financial Analysis Coordinator of Central Vermont Public Service Corporation, CVEC's parent company.

The filing raises, *inter alia*, issues related to (1) the review of calculations for lost fixed cost recovery (LFCR) relative to kilowatt hour savings and amounts, including the suggested

accelerated recovery schedule; (2) the company's phase out of monitoring and evaluation activities during 1997; (3) the review of calculations for incentive amounts; (4) over collection of 1997 approved C&LMPA rates; (5) compliance with the Commission's Final Plan in DR 96-150 issued February 28, 1997, including specifically the provision in the Final Plan providing for capping in 1997 and phasing out in 1998 and 1999 all energy efficient activities; and (6) calculation of the overall C&LM percentage adjustment.

Pursuant to RSA 378:6, we hereby suspend the tariffs in question and, pursuant to RSA 365:5, direct staff to conduct an investigation. In addition, we shall set a date for a prehearing conference to establish a procedural schedule and hear the positions of the parties.

Based upon the foregoing, it is hereby

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 January 13, 1998 at 10:00 am, at which any one or more of the issues set forth in N.H. Admin Rule Puc 203.05(c) shall be considered; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rule 201.05, the Commission waives, in part, the fourteen day notification requirement of N.H. Admin. Rules Puc 203.01(a); and it is

FURTHER ORDERED, the prehearing conference shall be tape recorded unless a party, at least 5 days in advance of the prehearing conference, requests a transcript, in which case the commission shall order a stenographic record, pursuant to N.H. Admin. Rule Puc 203.05(d): and it is

FURTHER ORDERED, that immediately following the prehearing conference, CVEC, the Staff of the Commission and any Intervenors hold a First Technical Session to review the Petition and allow CVEC to provide any updates or amendments to its filing; and it is

FURTHER ORDERED, that the following procedural schedule shall be adopted unless revised by the Commission at the prehearing conference:

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

Responses to Oral Data Requests Propounded at the 1st Technical Session	January 20, 1998
Data Requests by Staff and Intervenors	January 26, 1998
Company Data Responses	February 2, 1998
Technical Session	February 9, 1998

Testimony by Staff and Intervenors	February 16, 1998
Data Requests by the Company	February 23, 1998
Data Responses by Staff and Intervenors	March 2, 1998
Settlement Conference	March 9, 1998
Filing of Settlement Agreement, if any	March 18, 1998
Hearing	March 24, 1998;

Unless otherwise ordered following the prehearing conference, the above scheduled shall be adopted; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.01, CVEC notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than December 31, 1997, in a newspaper with statewide circulation or of general circulation in that portion of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before January 13, 1998; 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 CVEC and the Office of the Consumer Advocate on or before January 8, 1998, 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 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party

objecting to a Petition to Intervene make said Objection on or before January 13, 1998; and it is

FURTHER ORDERED, that the following proposed tariff pages are suspended pending further review and decision:

NHPUC No. 5 - Electricity, Connecticut Valley Electric Company, Inc.

4th Revised Page 54 Superseding 3rd Page 54 3rd Revised Page 56 Cancels 2nd Page 56 3rd Revised Page 58 Cancels 2nd Page 58 3rd Revised Page 61 Cancels 2nd Page 61 3rd Revised Page 63 Cancels 2nd Page 63 3rd Revised Page 65 Cancels 2nd Page 65.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of December, 1997.

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NH.PUC*12/31/97*[97536]*82 NH PUC 863*Pittsfield Aqueduct Company, Inc.

[Go to End of 97536]

82 NH PUC 863

Re Pittsfield Aqueduct Company, Inc.

DF 95-016
Order No. 22,811

New Hampshire Public Utilities Commission

December 31, 1997

ORDER approving stipulation under which a water utility is authorized a 101.6% step rate increase coincident with commercial operation of a new water treatment and filtration plant. However, the increase in fire protection rates is limited to 40%.

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1. RATES, § 597

[N.H.] Water rate design — Special factors — Commercial startup of new treatment and filtration plant — Step rate increase of over 100% — Stipulation. p. 865.

2. RATES, § 619

[N.H.] Water rate design — Public fire protection service — Necessity of rate increase — Factors — Commercial startup of new filtration plant — Increase limited to 40% versus 101.6% general step increase — Stipulation. p. 865.

3. EXPENSES, § 144

[N.H.] Water utility — New treatment plant — Pursuit of lower-cost financing — Step rate increase — Stipulation. p. 865.

4. EXPENSES, § 89

[N.H.] Rate case expense — As to step rate increase — Recovery via quarterly surcharge — Two-year period of recovery — Water utility — Stipulation. p. 865.

APPEARANCES: Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. for Pittsfield Aqueduct Company; Frederick Welch, Town Administrator for the Town of Pittsfield; 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 27, 1995, Pittsfield Aqueduct Company (PAC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to borrow an amount not exceeding $1,400,000 and a petition for a step increase in rates. The petitions related to PAC's need to undertake a capital project in order to comply with the Safe Drinking Water Act (SDWA).

An Order of Notice was issued on February 21, 1995 scheduling a prehearing conference for April 25, 1995. 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. On April 14, 1995, PAC filed testimony and supporting exhibits in accordance with the aforementioned Order of Notice. The prehearing conference was held as scheduled. There were no objections to the requests for intervention, but Staff and PAC were unable to reach concurrence with regard to a procedural schedule.

On May 2, 1995, the Commission issued Order No. 21,639 which approved the procedural schedule proposed by Staff. The Order also granted the requests for intervention filed by the Town of Pittsfield and consolidated those interventions as requested by PAC.

On September 23, 1996, following a hearing on September 13, the Commission issued Order No. 22,327 which provided for approval of a Stipulation Agreement between Staff and PAC. The Town of Pittsfield was not a signatory but did not object. The Stipulation recommended Commission approval for the construction of a water treatment facility at Berry Pond, financing of up to $1.2 million, a step increase in rates once the facility was in service, and a number of other requirements of PAC.

On September 22, 1997, PAC filed exhibits which would provide for an increase in its annual revenues of 94.2% resulting from the construction of the treatment facility. On October 10, 1997, the Company filed revised exhibits providing for a revenue increase of 95.9%.

On November 7, 1997, an Order of Notice was issued providing for a hearing on PAC's step adjustment for December 10, 1997.

II. STIPULATION

PAC and the Staff presented a Stipulation Agreement at the hearing which provides for a 101.6% increase in revenues for PAC. Staff witness Mark A. Naylor presented the stipulation and explained the components of the rate increase. PAC's rate base is increased by $995,263, and, using the weighted cost of debt
obtained for the project of 10.51%, a return of $104,602 is derived. Adding depreciation and amortization expense of $34,336, property taxes of $26,166, and operation and maintenance expenses of $52,848, yields the total increase in revenue of $217,952, or 101.6% over current revenue. It was noted that the effective date for the increased rates resulting from this Stipulation was October 29, 1997, the day that the treatment plant went on-line and began treating water for distribution to PAC's customers.

Staff witness Douglas Brogan explained that Staff had visited the site of the new treatment plant and had a number of concerns with respect to punch list items which remained to be resolved with the contractor. However, in a memo submitted to the Commission on December 30, 1997, Mr. Brogan noted that the various parties involved reached preliminary agreement on resolution of these items. Mr. Brogan's memo notes that the proposed agreement, if carried out, appears to place responsibility for corrective action on the appropriate parties, and to protect customers from paying twice for deficient work. The memo recommends approval of the step increase subject to the possibility of a slight future rate reduction should the corrective work not be completed satisfactorily.

David Russell of Russell Consulting in Newburyport, Massachusetts explained the cost of service study conducted on behalf of PAC, and specifically the allocation of the additional revenues generated by the step increase. He explained that, although the study did not indicate that an increase in fire protection rates to the Town was necessary, the Stipulation provided for an increase in those rates of about 40% over current levels to avoid putting the entire increase on water customers. This amounts to approximately 30% of total revenue allocated to fire protection rates. He pointed to standards generally used in smaller companies which indicate that fire protection revenues are typically in a range of 30% of total revenues in water companies, and that such a revenue level in a company of PAC's size is not unreasonable.

Mr. Welch, representing the Town of Pittsfield, voiced no objection to the overall revenue increase, but questioned the need for an increase in fire protection rates when the cost of service study indicated that fire protection rates at present were covering the cost of fire protection service. He asked the Commission to not raise fire protection rates to the Town of Pittsfield.

III. COMMISSION ANALYSIS

[1-4] We have reviewed the issues presented by the Stipulation between PAC and the Staff, and we will approve it as presented. PAC has proposed that a lesser increase be applied to fire protection rates than to general water customers, and when considering the larger context and the rates already charged to customers, as well as the benefits that are being brought to the Town through additional property tax revenue by the building of this treatment plant, we will also approve PAC's request for the implementation of the revenue increase. The Town has argued for no increase to fire protection revenues, noting that the cost of service study indicated that current fire protection revenues were adequate to cover the costs of providing such service. Mr. Russell in testimony indicated that, if the entire increase were applied only to residential customers, it would result in an annual increase of approximately 200% to those metered customers, as oppposed to the 155% increase as filed. By applying the proposed 40% increase to fire protection rates, the annual increase to metered customers is held to approximately 155%. He indicated that the proposed increase of 40% to the fire protection rates resulted in 30% of the total Company revenue coming from such rates, a standard often used in the industry and adopted by the Public Utilities Commission in the State of Maine several years ago. Mr. Russell further testified that the increase in fire protection rates is mitigated by a very sizable increase in property tax revenues as a result of the construction of the treatment plant. Therefore, we accept the rate design proposal as presented by PAC.

We note that we would like to see PAC continue to pursue lower cost financing for the treatment plant than it currently has, as well as grants to offset some of its costs. We will direct PAC to do so, and to keep the Commission informed as to the efforts it expends in these regards. In addition, we will direct PAC to pass along any savings it might receive as a result of such efforts.

We have also reviewed Staff's recommendation with respect to recovery of PAC's rate case expenses in this proceeding. It is our understanding that the expenses proposed for recovery as a surcharge are only those expenses that were necessary to bring this step adjustment to a conclusion, as case expenses relating to the financing of the treatment plant are being recovered as part of rate base. We approve the requested surcharge of $3.60 per quarter per customer, for eight quarters, said surcharge to end as soon as PAC recovers the total of $17,723.49.

Finally, we note that in testimony offered at the hearing PAC has apparently taken no steps recently to further educate customers about the sizable increase in rates that results from this stipulation. We direct the Company to include an explanation of this increase in the first set of bills issued subsequent to the issuance of this order.

Based upon the foregoing, it is hereby

ORDERED, that Pittsfield Aqueduct Company is authorized to increase its rates as per the Stipulation presented at the hearing December 10, 1997 in order to recover additional revenues of $217,952; and it is

FURTHER ORDERED, that PAC recover said revenues in the manner as detailed at the hearing, with total fire protection revenues not exceeding 30% of total revenues; and it is

FURTHER ORDERED, that PAC explore all avenues to reduce its costs by obtaining financing at lower interest rates, and to seek grants which may be available, all with the intention of reducing the rate increase made necessary by the treatment plant; and it is

FURTHER ORDERED, that PAC report monthly on the status of punch list items until they are complete; and it is

FURTHER ORDERED, that the surcharge of $3.60 per quarter per customer, for eight quarters, in order to recover rate case expenses,

is approved.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Pittsfield Aqueduct Co., Inc., DF 95-016, Order No. 21,639, 80 NH PUC 248, May 2, 1995. [N.H.] Re Pittsfield Aqueduct Co., Inc., DF 95-016, Order No. 22,329, 81 NH PUC 709, Sept. 23, 1996.

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NH.PUC*12/31/97*[97537]*82 NH PUC 866*Hampton Water Works Company

[Go to End of 97537]

82 NH PUC 866

Re Hampton Water Works Company

DE 97-226
Order No. 22,812

New Hampshire Public Utilities Commission

December 31, 1997

ORDER declining to limit the scope of issues to be addressed in a proceeding considering a water utility's request for commission action to override certain conditions placed on the utility by the Town of North Hampton before the utility can commence construction of new well facilities therein. The parties are directed to pursue alternative dispute resolution in the meantime.

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1. WATER, § 12

[N.H.] Water utility — Construction and equipment — Siting of new wells — Conditional approval by municipality as a factor — Petition by utility for commission override of conditions — Jurisdictional issues. p. 867.

2. CERTIFICATES, § 68.1

[N.H.] Local consent — By municipality — Attachment of conditions — As to construction of water utility facilities — Petition by utility for commission override of conditions — Jurisdictional issues. p. 867.

3. ZONING

[N.H.] Municipal ordinances — Jurisdictional issues — As to enforcement or waiver — Unquestionable commission authority to grant exemptions therefrom — Circumstances. p. 867.

4. ORDINANCES, § 4

[N.H.] Jurisdictional issues — As to interpretation or enforcement — Municipally enacted zoning ordinances — Commission authority to grant exemptions therefrom — Circumstances. p. 867.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

Hampton Water Works Company (Hampton) seeks to place supply wells on property in the Town of North Hampton, New Hampshire (North Hampton). Hampton has worked through the planning board process with North Hampton and has received conditional approval for the wells. Hampton, however, believes the conditions are inappropriate for a number of reasons and, on October 22, 1997, filed with the New Hampshire Public Utilities Commission (Commission) a Petition For Override Pursuant to RSA 674:30 and Order Permitting Location of Utility

Facilities in North Hampton, New Hampshire (Petition).

In response, North Hampton filed, on November 13, 1997, an answer to the Petition and a Motion to Dismiss, to which Hampton objected on November 20, 1997. In addition, the Town of Stratham (Stratham), on December

3, 1997, petitioned the Commission for limited intervenor status. Hampton opposed Stratham's request in a December 12, 1997 response.

II. POSITIONS OF THB PARTIES

North Hampton's pleading, though styled a Motion to Dismiss, is more in the nature of a motion to limit the scope of the proceeding. North Hampton argued that the Commission's jurisdiction is limited at this stage to a narrow set of considerations, and much of what Hampton may argue in the hearings on the Petition are beyond the Commission's jurisdiction. According to North Hampton, the Commission should only consider whether Hampton should obtain an exemption from local zoning standards pursuant to RSA 374:30,III. The Commission should not consider: 1) whether the North Hampton Planning Board has authority to impose the conditions it did in the Hampton approval; 2) whether state statutes preempt local zoning ordinances; or, 3) how the North Hampton zoning ordinances should properly be interpreted. These issues, according to North Hampton, are within the province of the Superior Court where a parallel action is now pending. Should the Commission find the Board had authority to impose its own zoning standards, then the Commission would also consider whether the conditions imposed are reasonable.

Hampton responded that it was premature at this stage to limit the arguments and evidence to be advanced. Hampton anticipated that the Commission would have to evaluate the questions of exemption in the context of the zoning ordinance itself, which by its nature would require some interpretation of the ordinances.

Regarding the Stratham filing, Stratham notes that it recently approved construction of supply wells for Hampton after a lengthy process before town authorities and the Commission. Stratham argues that the public interest the Commission must apply will include the public interest of those persons situated outside the boundaries of North Hampton who are affected by Hampton's proposal. Stratham similarly participated in the proceedings before the North Hampton Planning Board. In addition, Stratham alleges that Hampton's Petition seeks to be exempt from some conditions which are modeled on conditions imposed in the Stratham well approvals. Finally, Stratham notes that although the wells at issue are located within the municipal bounds of Hampton (albeit by 400 feet at one point), the wells themselves fall within a broader Department of Environmental Services Sanitary Protection Radius that crosses municipal bounds into Stratham.

Hampton opposed Stratham's intervention request, arguing, among other things, that the

wells are not located within Stratham's boundaries, the regional nature of groundwater protection is appropriately under the jurisdiction of the State and the Hampton wells are at least 1500 feet from the nearest Stratham well. Hampton did not object to Stratham obtaining copies of discovery materials and making an unsworn statement at the start of the hearings on the merits.

III. COMMISSION ANALYSIS

[1-4] At the outset, we will grant Stratham's petition for intervention. Because Stratham did not define the extent of the role it wished to play in this docket, for the present we will limit it to placement on the service list for discovery materials as well as pleadings, testimony, etc. In the event Stratham seeks specific expanded participation, we will address an appropriate motion at the proper time.

We will defer ruling on the Motion to Dismiss at this time. We do not think it beneficial to set limits on the scope of the proceeding before the issues have been developed. We generally grant broad leeway in the discovery phase of our proceedings and see no reason to sharply curtail the issues in this case though we may well reach the same conclusions urged by North Hampton at a later stage in this docket.

There is no question the Commission has authority to exempt a utility from some zoning ordinances. The Commission also has authority to impose reasonable conditions on a utility as part of the permitting process, as the Supreme Court made clear in *Appeal of Milford Water Works*, 126 NH 127 (1985). We anticipate that both of these Commission powers may be utilized before this case has reached its

conclusion.

Another reason not to limit the scope of the proceeding at this point is that we believe this is a dispute that might benefit from an alternative dispute resolution process. We direct our Executive Director to pursue alternative dispute resolution and report the results to the Commission. The timetable within which he structures such an effort we leave to him, with consultation of the parties and Staff. If such an effort is unsuccessful, we will revisit North Hampton's Motion to Dismiss.

Based upon the foregoing, it is hereby

ORDERED, that the Town of Stratham is granted intervention; and it is

FURTHER ORDERED, that the Town of North Hampton's Motion to Dismiss is deferred for ruling at a later date; and it is

FURTHER ORDERED, that the Executive Director is directed to pursue alternative dispute resolution with the parties and Staff and report his conclusions to the Commission.

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

December, 1997.

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NH.PUC*12/31/97*[97538]*82 NH PUC 868*Public Service Company of New Hampshire

[Go to End of 97538]

82 NH PUC 868

Re Public Service Company of New Hampshire

DR 97-183
Order No. 22,813

New Hampshire Public Utilities Commission

December 31, 1997

ORDER accepting stipulation as to an electric utility's 1997 conservation and load management (C&LM) program, approving a basic budget of $1.6 million. That figure represents a substantial departure from previous budgets, in recognition of the likely phase-out of many C&LM programs in response to the restructuring of the electric industry.

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1. CONSERVATION, § 1

[N.H.] Conservation and load management (C&LM) programs — Electric utility — Stipulation — 1997 budget — Continuation of certain residential and educational projects — But various budget cuts — Factors — Phase-out of C&LM efforts pursuant to industry restructuring. p. 870.

2. ELECTRICITY, § 4

[N.H.] Operating practices — Conservation and load management (C&LM) programs — Stipulation — Necessity of budget cuts — Factors — Continuation of only certain residential and educational projects — Phase-out of C&LM efforts pursuant to industry restructuring. p. 870.

APPEARANCES: Catherine E. Shively, Esq., for Public Service Company of New Hampshire; David W. Marshall, Esq., for the Conservation Law Foundation; Kenneth E. Traum for the Office of the Consumer Advocate; and, James J. Cunningham, Jr. and Thomas C. Frantz for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On August 29, 1997, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) its 1997 Conservation and Load Management (C&LM) Pre-Approval filing. PSNH seeks approval for a C&LM budget of $2,345,429, of which $1,445,402 represents Lost Fixed Cost Recoveries (LFCR). PSNH proposed to continue the following programs, which have previously been approved by the Commission: Energy Crafted Home, Energy Service, Residential Conservation, Energy

Page 868

Check, Education and Energy Conscious Construction.

By an Order of Notice issued September 24, 1997, the Commission scheduled a prehearing conference for October 14, 1997, set deadlines for intervention requests and objections thereto, outlined a proposed procedural schedule, and required the Parties and Commission Staff (Staff) to summarize their positions with regard to the filing for the record. On October 20, 1997, the Conservation Law Foundation (CLF) filed a petition to intervene, which the Commission granted on November 4, 1997. The Office of the Consumer Advocate (OCA) is a statutorily recognized intervenor.

On October 29, 1997, PSNH filed a Motion for Protective Order to exempt from disclosure certain attachments to its data responses which contained customer specific information. On November 18, 1997, the Commission granted PSNH's Motion.

Pursuant to the approved procedural schedule, PSNH, CLF, OCA and Staff engaged in formal discovery and technical sessions. Staff did not file testimony in this Docket. On November 21, 1997, PSNH, CLF, OCA and Staff participated in a settlement conference.

Subsequent to the settlement conference, PSNH, OCA and Staff entered into a Stipulation. CLF was not a signatory to the Stipulation. The Stipulation was submitted to the Commission on November 26, 1997. A hearing was held on December 4, 1997, at which time testimony supporting the Stipulation was presented to the Commission.

II. STIPULATION

PSNH, OCA and Staff agreed that the 1997 Conservation and Load Management Program proposal, as set forth in PSNH's August 29, 1997 filing, should be modified as set forth in the

Stipulation and as summarized below:

1. Subject to audit by the New Hampshire Public Utilities Commission Audit Staff, PSNH is not subject to the underspending charge described in Docket No. DR 94-256, Order No. 21,623; the end of fixed rate period budget allocation of 42% residential and 58% non-residential is acceptable; use of the recalculated LFCR rate as set forth in the End-of-Settlement Agreement Report is acceptable; the end of fixed-rate period C&LM account balance is an under collection of approximately $4,000; and, any final over or under collected balance with interest applied will be added to or subtracted from the funds otherwise available for C&LM expenditures in 1998.

2. The 1997 C&LM budget is $1.6 million. The programs as proposed in the Company's August 29, 1997 Pre-Approval filing are accepted and, until the Commission reaches a generic decision regarding C&LM in a restructured electric utility industry, continuation of expenditure levels and existing programs as described in the 1997 C&LM Pre-Approval filing and amended by this Settlement Agreement is appropriate.

3. The Parties agree that during the post fixed-rate period in 1997, PSNH will continue to fund C&LM expenditures out of Base rates. The monthly commitment in the post fixed rate period in 1997 is $141,433 and savings from the issuance of tax exempt pollution control revenue bonds (PCRBs) and revenues from the sale of S02 allowances will not be specifically allocated to C&LM.

4. LFCR will be reset to zero as of July 1, 1997, the date base rates take effect in the PSNH base rate case. Resetting LFCR to zero as of July 1, 1997 will significantly reduce PSNH's estimated 1997 C&LM expenditures, resulting in an estimated unspent balance as of December 31, 1997 of approximately $555,000. The actual unspent balance as of December 31, 1997 will be added to funds available for C&LM in 1998.

5. PSNH will file its 1998 C&LM Pre-Approval filing within 30 days after issuance of the Commission's rehearing order in Docket DR 96-150 regarding energy efficiency programs or, if the rehearing order is not issued by December 31, 1997, then PSNH would be required to make its filing by February 1, 1998. In the period from January 1, 1998 until Commission approval of PSNH's 1998 Pre-Approval filing, PSNH will continue implementation of existing programs, and will fund C&LM activities at a level of $141,433 per month on an interim basis. The amount

expended during this period will be deducted from funds authorized or available in 1998.

CLF did not sign the Settlement Agreement because it believed that the C&LM budget was too low. CLF recommends the Commission approve a budget of $2.3 million, an increase of $.7 million.

III. COMMISSION ANALYSIS

[1, 2] After careful review of the Stipulation, supporting testimony and exhibits provided at the December 4, 1997 hearing, we find that PSNH's proposed C&LM programs, as modified by the Stipulation, are reasonable and in the public good.

Regarding the C&LM budget amount, we find that Staff's recommended 1997 C&LM budget of $1.6 million is a reasonable budget. The Commission believes that, since 1997 is the baseline year for establishing the cap on C&LM expenditures during the phase-out period, as specified in our February 28, 1997 Final Plan on Restructuring (Docket DR 96-150), it is important to ensure that 1997 spending levels are realistic and achievable. The Commission believes that, based on the most recent forecast for 1997 spending, as included in the Settlement Agreement (Exhibit 1), the $1.6 million is achievable and we will approve that amount.

Regarding the lost fixed cost recoveries (LFCR), we note that the 1997 amount is considerably more (roughly $700 thousand more) than the amount that is anticipated for 1998. This is due to the reset of LFCR to zero as of July 1, 1997, the effective date for base rates in the Company's rate case proceeding in Docket DR 97-059. In order to be in accord with the Commission spending cap in its Final Plan in DR 96-150, it is clear that PSNH will increase expenditures on C&LM direct program spending to compensate for the reduced level of LFCR, such that the combined direct program spending amount and the LFCR amount do not exceed the $1.6 million spending cap for 1998.

Regarding funding levels during the post fixed-rate period of June 1, 1997 through December 31, 1997, and for the interim 1998 time period until PSNH files its 1998 C&LM proposal, the Company will fund C&LM programs out of base rates at a monthly amount of $141,433.

Regarding the allocation of S02 Allowances and savings on PCRBs, it is our understanding that the allocation, for purposes of C&LM funding, ends on May 31, 1997. Further, it is our understanding that PCRB savings from refinancings are recognized in the cost of capital in the Company's rate case in Docket DR 97-059.

Based upon the foregoing, it is hereby

ORDERED, that the proposed C&LM programs, as amended by the Stipulation, are hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Public Service Co. of New Hampshire, DR 94-256, Order No. 21,623, 80 NH PUC 218, Apr. 24, 1995.

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NH.PUC*12/31/97*[97539]*82 NH PUC 870*Public Service Company of New Hampshire

[Go to End of 97539]

82 NH PUC 870

Re Public Service Company of New Hampshire

DR 97-219
Order No. 22,814

New Hampshire Public Utilities Commission

December 31, 1997

ORDER approving a special service contract negotiated by an electric utility and a large commercial customer, Wal-Mart Stores, Inc. The contract, designed under the guidelines for economic development tariffs for new load, requires the utility to install special capacitors and an enhanced distribution supply system in return for the customer's agreement to take service at certain rates for a minimum two-year

period, in order for the utility to recoup its costs of constructing the special facilities for meeting the customer's needs.

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1. RATES, § 166

[N.H.] Factors affecting reasonableness — Solicitation or retention of business — Economic development rates for new load — Via special rate contract — Necessity of construction of special facilities as justification — Electric utility and large commercial customer. p. 871.

2. RATES, § 332

[N.H.] Electric rate design — Special charges — Negotiation of long-term rate contract — Economic development initiatives for new load as a factor — Necessity of construction of special facilities as a factor — Large commercial customer. p. 871.

3. RATES, § 211

[N.H.] Special rate contracts — Negotiation with individual customer — Under economic development initiatives for new load — Requirements for enhanced reliability as a factor — Necessity of construction of special facilities as a factor — Electric utility and large commercial customer. p. 871.

4. SERVICE, § 326

[N.H.] Electric — Plant and distribution system — Requirements for enhanced reliability — Necessity of construction of special facilities — As justification for long-term special rate contract — Large commercial customer. p. 871.

BY THE COMMISSION:

ORDER

[1-4] On October 8, 1997, the Petitioner, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (NHPUC) a ten-year special contract, Special Contract No. NHPUC-139 (NHPUC-139), between PSNH and Wal-Mart Stores, Inc. (Wal-Mart), a Delaware Corporation having a place of business in Raymond, New Hampshire. Construction on the 1.1 million square foot (26 acres) Wal-Mart Central Warehouse and Distribution Center (CWDC), located in Raymond, New Hampshire, began in the summer of 1995 and was completed in the summer of 1996. The CWDC provides employment for over six-hundred people.

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-139 is proposed to be effective for a period of ten years commencing October 23, 1997, or upon the effective date as stated in the Commission order. PSNH's filing included the special contract, an explanatory statement, and a cover letter summarizing technical and special reliability requirements for this installation.

In order to supply reliable energy to this new facility, Wal-Mart requested and PSNH agreed to design and construct an enhanced distribution supply system specifically designed to provide the CWDC with highly reliable electric service. The service provided under NHPUC-139 includes provision of electric service through a highly reliable distribution system configuration and an enhanced service agreement not normally available under PSNH's Tariff. All technical specifics are defined in the NHPUC-139 filing.

An essential component of the agreement between Wal-Mart and PSNH is that PSNH would be assured total recovery of the excess cost of the distribution enhancements and services provided to Wal-Mart at their CWDC. In order to assure this recovery, NHPUC-139 requires that Wal-Mart agrees to take service for 24 months from PSNH under 1) PSNH's Rate LG, or 2) PSNH's Tariff NHPUC No. 1 - Electricity Delivery, or 3) unbundled retail distribution service

for the term of this agreement. If Wal-Mart discontinues one of these services prior to July 1, 1998 then Wal-Mart must compensate PSNH for a pro-rated portion of the excess costs incurred by PSNH and not yet

recovered. The "Recovery Period" for PSNH incurred costs associated with the enhanced distribution service provided to Wal-Mart under NHPUC-139 is from July 1, 1996 through June 30, 1998. NHPUC-139 also requires PSNH to install capacitors, without cost to Wal-Mart, at the CWDC in order to correct their power factor to 95%. Although PSNH built facilities for capacitor installation in the summer of 1996, capacitors were not installed until December 16, 1997. This agreement can be terminated at any time by either party with one month's written notice.

It should be noted that because the new CWDC facility meets criteria to be considered "New Load" under the pilot program, the CWDC is currently receiving PSNH delivery service as a pilot customer. The CWDC will continue to be able to choose their energy supplier after full-scale competition occurs.

Commission Staff has reviewed NHPUC-139 and the supporting materials filed with it and recommends approval. We have conducted our review pursuant to RSA 378:18 which authorizes the approval of special contracts and find that the contract is in the public interest. However, while the parties executed the contract on October 1, 1997 to take effect October 23, 1997, it seems reasonable under the circumstances, namely the delayed installation of capacitors and the benefits they would have brought, to make the contract effective the date of execution.

Based upon the foregoing, it is hereby

ORDERED NISI, that Special Contract No. NHPUC-139 between PSNH and Wal-Mart as filed on October 8, 1997 is approved; and it is

FURTHER ORDERED, that the Commission hereby waives that portion of PUC 1601.02(c), that requires Special Contracts to be filed at least 15 days in advance of the effective date, so that Special Contract No. NHPUC-139 will be retroactively effective as of October 1, 1997; and it is

FURTHER ORDERED, that PSNH recalculate bills rendered from October 1, 1997 to the current bill as if required capacitors were installed and immediately credit the account with any savings so calculated including monthly interest at the prime rate; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules PUC 203.01, PSNH 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 January 8, 1998 and to be documented by affidavit filed with this office on or before January 15, 1998; 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 22, 1998; and it is

FURTHER ORDERED, that this Order *Nisi* will be effective on January 28, 1998, 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 thirty-first day of December, 1997.

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[Go to End of 97540]

82 NH PUC 872

Re Connecticut Valley Electric Company

DR 97-241
Order No. 22,815

New Hampshire Public Utilities Commission

December 31, 1997

ORDER requiring an electric utility to maintain on a temporary basis its existing fuel adjustment clause (FAC) and purchased power cost adjustment (PPCA) rates, resulting in an FAC rate of 0.59 cents per kilowatt-hour (kWh) and a PPCA charge of 0.23 cents per kWh. Commission schedules hearings to address the utility's request for increases in both its FAC and PPCA rates but warns the utility that such increases appear unwarranted due to the unreasonableness of the utility's wholesale power supply contract with its parent company.

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1. EXPENSES, § 122

[N.H.] Electric utility — Supply costs — Wholesale power contract with parent company — Imprudence — Noncompliance with least-cost principles — Interests of shareholders as placed above those of ratepayers — Impact on fuel and purchased power adjustment clause rates — Rejection of proposed increase — Temporary maintenance of status quo. p. 876.

2. INTERCORPORATE RELATIONS, § 18

[N.H.] Intercorporate arrangements — Wholesale power supply contract — Between parent

company and operating subsidiary — Imprudence of — Contract terms as exceeding least-cost parameters — Electric utility. p. 876.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 13

[N.H.] Direct energy costs — Purchased power cost adjustment rate — Proposal for increase — Due to undercollections and higher wholesale power costs — Rejection — Maintenance of status quo on temporary basis — Factors — Impropriety of contracts executed with parent company — Electric utility. p. 877.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Proposal for increase — Due to undercollections and higher forecasted fuel costs — Rejection — Maintenance of status quo on temporary basis — Factors — Faulty forecasting techniques — Improper reliance on parent company — Electric utility. p. 877.

APPEARANCES: Kenneth Picton, Esq. for Connecticut Valley Electric Company; Ransmeier and Spellman by Dom S. D'Ambruoso, Esq. and John T. Alexander, Esq. on behalf of Connecticut Valley Electric Company; McLane, Graf, Raulerson and Middleton by Steven V. Camerino, Esq. on behalf of the City of Claremont; Kenneth Traum for the Office of Consumer Advocate for residential ratepayers; and, Robert Frank, Esq. for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 26, 1997, Connecticut Valley Electric Company, Inc. (CVEC or the Company), filed with the New Hampshire Public Utilities Commission (Commission) its proposed Fuel Adjustment Clause (FAC), Purchased Power Cost Adjustment (PPCA) and Short-Term Energy Purchase Rate. The filing included proposed tariff pages to be effective for bills rendered on or after January 1, 1998: 15th Revised Page 17, 12th Revised Page 18, 10th Revised Page 50, and 7th Revised Page 51.

In addition, the Company's proposal includes revised Pilot tariffs due to changes in the costs upon which the FAC and PPCA charges are based so that Pilot customers are neither advantaged nor disadvantaged with respect to regular bundled tariff customers. Revised Pilot tariff pages are: 4th revised Page 53, 54 and 55; 3rd revised Page 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66. The Office of Consumer Advocate (OCA) is a statutorily authorized intervenor.

On November 17, 1997, the City of Claremont filed a complaint against CVEC and a petition for a reduction of electric rates. On December 10, 1997, the Commission consolidated the complaint proceeding, which had been initially docketed as DC 97-244, with the FAC and PPCA proceeding.

At the hearing, the Commission heard arguments concerning the scope of the proceeding, based on a Motion to Dismiss by CVEC, which the Commission denied. Four Central Vermont Public Service (CVPS) witnesses testified on behalf of CVEC: Peter Damien

Lena, Ph.D., Principal Consultant - Forecasting; Charles A. Watts, Senior Marketing Analyst; C.J. Frankiewicz, Financial Analysis Coordinator; and, Scott R. Anderson, Regulatory Compliance Facilitator.

After the hearing, CVEC filed a record request which adjusted its proposed FAC and PPCA rates due to a revised 1998 sales forecast. On December 24, 1998, the Company, based upon a request of Staff, submitted a letter to the Commission which described how CVPS intends to respond to a December 17, 1997 decision by the Federal Energy Regulatory Commission (FERC) in docket ER97-3435 concerning CVPS's request at the FERC for stranded costs based on the Commission's February 28, 1997 restructuring order for CVEC.

II. POSITIONS OF THE PARTIES AND STAFF

A. *CVEC*

CVEC proposes to increase its currently effective FAC rate from $0.0059 per kWh to $0.0072 per kWh and to increase its PPCA rate from its Interim PPCA rate of $0.0023 per kWh to $0.0133 per kWh effective on all bills rendered on or after January 1, 1998. The increase in the FAC rate would result in an annual increase in overall revenues to CVEC of $219,554 or 1.3%. The PPCA increase would result in an increase to CVEC's revenues of 11.0% or $1,857,768 on an annual basis.

CVEC's 1998 FAC rate is based on forecasted 1998 RS-2 of $2,987,348 and SPP energy costs of $4,202,800. Adjustments for interest, franchise tax and the over collection from 1997 result in a net estimated energy cost for 1998 of $7,097,667.Base energy revenues of $5,876,961 are subtracted from the $7,097,667 forecasted net energy costs to reflect the energy costs, $1,220,706, to be recovered through the FAC. Those costs are then divided by the forecasted retail sales of 168,888,000 kWh to derive a FAC rate of $0.0072 per kWh for all bills rendered in 1998. CVEC points out that the FAC sales and revenues are neutralized for the New Hampshire Retail Pilot program.

The increase in the FAC rate for 1998 is due to higher RS-2 energy charges which CVEC purchases from its parent company, CVPS, and from lower expected retail sales and higher costs

from the New Hampshire/Vermont Solid Waste Project, a QF located in Claremont, New Hampshire which sells all of its output to CVEC at Commission approved long-term avoided cost rates. The higher projected FAC costs for 1998 are offset by $154,953, the over collection in the FAC expected at the end of 1997 which are $144,741 greater than was forecasted in the 1997 FAC filing. The effect of the proposed FAC rate increase would be to increase a residential customer's monthly bill by $0.66, assuming 500 kWh of electricity usage.

The PPCA increase is calculated by adding the estimated 1998 RS-2 costs and the SPP capacity costs, $9,024,008 and $36,300, respectively, removing the effects of the New Hampshire Pilot program, adding interest and franchise tax to arrive at a total 1998 PPCA cost of $9,114,185. The 1997 PPCA undercollection of $275,285 is added for a net total of $9,389,470. Base capacity revenues of $7,248,765 are then subtracted to yield the 1998 estimated PPCA costs of $2,239,812 which is divided by estimated 1998 retail sales of 168,888,000 to derive the PPCA rate of $0.0133 per kWh.

The PPCA increase reflects an expected under-collection of 1997 PPCA costs of $275,285 due to increased purchased capacity costs of CVPS which are passed on to CVEC, increased production costs of CVPS-owned generation, slightly increased transmission costs and the reflection that the actual 1996 PPCA over collection was $166,878 less than forecasted.

The under-collection is added to the PPCA costs CVEC expects to incur in 1998. Those costs include an increase in the RS-2 capacity costs of $281,273. The increased costs are caused by higher net purchased capacity costs of $147,000, higher production capacity and transmission allocation factors result in a $66,000 increase for CVEC, increased costs for CVPS-owned production results in a $36,000 increase for CVEC and transmission related

Page 874

costs result in approximately $57,000 of increased PPCA costs. The Company points out that most of the increase in the PPCA is due to lower revenues in 1997 as a result of refunds for over-collections and that only 4% of the 11% increase is a result of cost increases.

In a letter dated December 23, 1997, CVEC revised its sales forecast for 1998 upward by 1.7% or 2,881,000 kWh. The revised sales forecast results in a slight decrease to the FAC and PPCA rates originally proposed on November 25, 1997. The FAC would decrease to $0.0071 per kWh, a $0.0001 per kWh change, and the PPCA would drop by $0.0003 per kWh to $0.0130 per kWh.

Concerning CVEC's purchases from its parent company, CVPS, under FERC approved wholesale rates, CVEC argues that this proceeding should not address the issues related to CVEC's FAC and PPCA rates that were raised in the City of Claremont's *Petition for a Reduction in Electric Rates*. CVEC believes the issues belong in DR 96-150, the generic docket on New Hampshire electric restructuring. To address them in this proceeding would be needlessly duplicative in CVEC's opinion. CVEC also believes the City of Claremont's Petition is premature in that the Commission's directive to terminate the RS-2 contract is subject to a pending motion for rehearing and is therefore not yet final. During the hearing, CVEC stated that

if market-based rates were the only costs allowed to be recovered by CVEC and CVPS continued to bill and receive payment from CVEC under the RS-2 contract, CVEC would not recover approximately $5-$6 million of RS-2 costs and would be in default of its financing agreements.

By letter dated December 19, 1997, CVEC outlined a number of financial and accounting implications if the Commission were to order CVEC to exercise its termination provision of the RS-2 power contract and impose market based ratemaking. CVEC continues to believe that DR 96-150 is the proper docket to address these issues and requests that the Commission fully consider the financial and accounting effects of its decision on CVEC before rendering a decision. CVEC also seeks to meet with Staff and other interested parties to discuss the effects of terminating the RS-2 contract.

B. *The City of Claremont*

Claremont's complaint against CVEC argues, among other things, that CVEC's rates are unreasonable inasmuch as CVEC should have terminated its wholesale power contract with its parent, CVPS. In support of its complaint, Claremont noted that in Docket DR 96-392, a CVEC Fuel and Purchased Power Adjustment Charge proceeding, the Commission addressed a number of wholesale power related issues raised by the Office of Consumer Advocate and the Commission Staff. Among the issues addressed in that proceeding was whether CVEC, a wholly owned subsidiary of CVPS, had satisfied, in accordance with Commission Order No. 22,469, "its obligation to assess the prospective benefits and costs of giving termination notice to CVPS for wholesale service." Claremont contends that the Commission found that CVEC had not satisfied this obligation and that CVEC had an obligation to continually assess how best to bring electric service to its customers at the lowest cost. Claremont further contends that, although the Commission recognized that CVEC had not assessed the opportunity for lowering its costs and retail prices by giving termination notice to CVPS, it found that such wholesale power purchase obligations could be better addressed in DR 96-150, the generic docket on electric industry restructuring. Claremont states that the Commission made a finding in DR 96-150, Order No. 22,509 dated February 28, 1997, that CVEC should have terminated its wholesale power purchase contract with CVPS when RSA 374-F was passed on May 21, 1996 and that its failure to do so was imprudent. Under the wholesale power purchase contract with CVPS, CVEC may terminate service at the end of a service year, provided it has given written notice of termination prior to the beginning of that service year. In Claremont's opinion, if CVEC had given written notice of termination to CVPS when RSA 374-F was passed, its obligations to purchase power for CVPS would end effective January 1, 1998.

At the hearing on December 17, 1997, Claremont noted that New Hampshire Electric Cooperative, Inc. (NHEC) provided termination

notice to CVPS in March 1994 and exercised its 1-year right to terminate its wholesale

purchased power contract with CVPS. One year later, CVPS won the bid to provide power to NHEC at a considerably lower cost. Claremont also stated that NHEC did not incur stranded cost charges as a result of exercising its right to terminate the wholesale purchased power contract. Claremont provided evidence at the hearing that it believes supports its contention that the cost of power purchased from CVPS is above the wholesale market value for power. For support, Claremont compared CVPS's RS-2 rate of roughly $84 per MWH with 1998 estimated market prices for power as provided in DR 96-150 by PSNH of roughly $38 per MWH and the La Capra estimate for 1998 of roughly $41 per MWH. Under questioning at the hearing, Mr. Watts admitted that $50 per MWH would be a reasonable wholesale market price for electricity.

Claremont believes that, based on the above, it would be unlawful to allow CVEC to continue to recover such imprudently incurred above-market costs from its ratepayers after December 31, 1997. For support, Claremont cites RSA 378:7 and RSA 378:28. Claremont also believes that the Commission has the necessary authority to disallow recovery of above market costs arising from a wholesale power purchase contract, even though the contract itself may be subject to regulation by the Federal Energy Regulatory Commission.

Claremont requests that the Commission schedule a hearing pursuant to RSA 378:7 and rule that: CVEC's current rates are unjust and unreasonable; the cost of power purchased by CVEC from CVPS is above the wholesale market value for that power; and, CVEC is not entitled to recover from its ratepayers the above-market cost of power it purchases from CVPS after December 31, 1997.

C. *Office of Consumer Advocate*

The OCA supported the City of Claremont's proposal to either reduce the level of payment from CVEC to CVPS, thereby affecting shareholders of CVPS or to allow CVEC to place into rates a lower rate than the RS-2 rate, but higher than market-based rates in order to avoid a CVEC bankruptcy.

D. *Staff*

Staff did not file testimony, but questioned CVEC on the sales forecast, the treatment of Pilot program costs in the FAC and PPCA rates and the costs included in the RS-2 contract. Staff also questioned CVEC concerning the CVPS conditional notice to terminate the RS-2 contract filed at the FERC and its related request to obtain stranded cost recovery.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed the testimony, transcripts and exhibits in this proceeding, including the post-hearing submittals by CVEC and the City of Claremont. Based on our review of the record, we find CVEC has acted imprudently by not terminating the RS-2 wholesale contract between CVEC and its parent company, CVPS. We make this finding separate from any determination in the electric utility restructuring docket, DR 96-150. The issues before us relate

to one of the fundamental principles of regulation, the provision of safe and reliable service at just and reasonable rates. Based on the record, and in disregard for the concerns we have raised previously on this issue, *See*, Order No. 22,509 (February 28, 1997) 71 NH PUC 145, 48 (1986), it is clear that the contractual relationship between the parent company and the affiliate was continued for the benefit of the shareholders of CVPS and that the ratepayers of CVEC received little to no consideration in the decision-making process of CVPS. Services are provided to CVEC through a service contract with CVPS. CVEC's witness, Mr. Frankiewicz, testified that the analysis done on the termination of the RS-2 contract was done strictly from the perspective of the consolidated company. It would appear that termination was not contemplated, even in light of NHEC's 1994 termination notice of its power contract with CVPS, due to the conflict of interest we noted as far back as 1986.

[3, 4] We will direct CVEC to bill its existing FAC and PPCA rates to customers pending the outcome of a hearing on the rates that would have resulted from an appropriate market-based wholesale rate which would have been available no later than January 1, 1998 if CVEC had acted prudently in its purchased power decisions. Based on CVEC's oral testimony and the letter of December 19, 1997, in which it raised a number of serious financial and accounting implications associated with the termination of the RS-2 contract or the non-recovery of above market power costs, we believe CVEC and the other parties and Staff should be afforded the opportunity to present evidence concerning those implications. Prior to the hearing, we believe that CVEC's request to meet with the parties and Staff to discuss these matters should be granted. We urge CVEC, the City of Claremont, OCA and Staff to meet at the earliest possible date to explore these issues before the hearing.

Based upon the foregoing, it is hereby

ORDERED, that CVEC is directed to bill its current FAC and PPCA rates effective January 1, 1998, on a temporary basis pending a hearing to determine: 1) the appropriate proxy for a market price that CVEC could have obtained if it had terminated its RS-2 wholesale contract with CVPS; 2) the implications of only allowing CVEC to pass on to customers that market price; and, 3) whether the Commission's final determination on the FAC and PPCA rates should be reconciled back to January 1, 1998 or some other date; and it is

FURTHER ORDERED, that tariff pages 10th Revised Page 50 and 7th Revised Page 51, the rates paid to Qualifying Facilities under Rate E, are APPROVED and that all other proposed tariff pages are SUSPENDED pending the outcome of the hearing on the above mentioned issues; and it is

FURTHER ORDERED, that CVEC's Motion to Dismiss is DENIED; and it is

FURTHER ORDERED, that a hearing on the above mentioned issues be heard on January 28, 1998 at 10:00 a.m.

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

December 1997.

EDITOR'S APPENDIX

Citations in Text

[N.H.] Re Connecticut Valley Electric Co., DR 96-392, Order No. 22,469, 81 NH PUC 1055, Dec. 31, 1996. [N.H.] Re Connecticut Valley Electric Co., DR 96-150, Order No. 22,509, 82 NH PUC 80, Feb. 28, 1997.

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NH.PUC*12/31/97*[97541]*82 NH PUC 877*Concord Electric Company

[Go to End of 97541]

82 NH PUC 877

Re Concord Electric Company

Additional applicant: Exeter and Hampton Electric Company

DR 97-250
Order No. 22,816

New Hampshire Public Utilities Commission

December 31, 1997

ORDER approving proposed fuel adjustment clause (FAC) and purchased power adjustment clause (PPAC) rates of two affiliated electric utilities, with FAC credits of 0.246 cents per kilowatt-hour (kWh) and 0.213 cents per kWh for Concord and Exeter, respectively, and PPAC charges of 0.780 cents per kWh and 1.074 cents per kWh for Concord and Exeter, respectively.

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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 — Increases in replacement power costs — Despite

mitigation measures — Affiliated electric utilities. p. 879.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 11

[N.H.] Direct energy costs — Fossil fuels — Fuel cost adjustment clause rates — Credits

Page 877

— Factors — Cost updates — Mitigation measures — Affiliated electric utilities. p. 879.

APPEARANCES: LeBoeuf, Lamb, Greene & MacRae by Scott J. Mueller, Esq. on behalf of Concord Electric Company and Exeter & Hampton Electric Company; and Henry J. Bergeron and Todd M. Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On December 2, 1997, 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 clauses (FAC) and purchased power adjustment clauses (PPAC) and short-term purchased power rates for qualifying facilities (QFs) for the period of January 1 through June 30, 1998. On December 10, 1997, Unitil filed an amended FAC/PPAC filing to update the filing made on December 2. As stated in the letter accompanying the amended filing, "[T]he initial FAC/PPAC filing incorporated estimates based on the Company's estimated [Administrative and General (A&G) costs] for the 1998 budget which was initially compiled the last week of November. During the subsequent budget review process, adjustments and corrections were made to the initial A&G estimates and a more recent version of the Company budget was compiled the week ending December 5, 1997." On December 18, 1997, the Commission held a duly noticed consolidated hearing to review the Companies' FAC and PPAC rate filings.

II. POSITIONS OF THE PARTIES AND STAFF

A. *The Companies*

Unitil presented calculations supporting CEC's request for a FAC credit of ($0.00246) per kWh and a PPAC rate of $0.00780 per kWh. The combined effect of the two rates is to increase a typical 500 kWh residential customer's bill by $0.43 per month, or 0.79%.

Unitil also presented calculations in support of E&H's request for a FAC credit of ($0.00213) per kWh and a PPAC rate of $0.01074 per kWh. The combined effect of the two rates is to increase a typical 500 kWh residential customer's bill by $1.78 per month, or 3.38%.

Unitil witness Sheryl L. Wookey, Contracts Manager for Unitil Service Corp., explained why a revised filing was made. The changes that were made in the revised filing lowered A&G costs from $1,631,100 to $1,356,000 for the demand charges and from $898,300 to $747,200 for the base energy charge. The unbilled prior amounts were respectively lowered from $781,500 to $749,300 and from $101,500 to $94,100. The effect was to reduce the demand charge from $26.64 per kW to $26.35 per kW, and to reduce the base energy charge from $0.00661 per kWh to $0.00632 per kWh.

Ms. Wookey testified on the derivation of Unitil Power Corp's (UPC) wholesale rates and the calculation of UPC's short-term avoided costs. Her pre-filed testimony indicated that UPC's wholesale rates, effective January 1, 1998, would be as follows:

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

Demand         $26.35 per kW
Base Energy $0.00632 per kWh
Fuel Charge $0.02247 per kWh
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Ms. Wookey also discussed the approximate $3,000,000 in mitigation savings that Unitil had achieved. These savings can be attributed to the termination of contracts or portions thereof, buyouts of above market priced contracts, and other savings associated with the

pass through of restructuring related savings under cost of service contracts. These savings represent almost 7% of retail power costs.

Ms. Wookey also explained that the cause for higher replacement power costs were the result of a number of Unitil's suppliers being scheduled for either refueling or maintenance outages during the upcoming FAC/PPAC period. For example, during the month of April, four of its suppliers' units are scheduled for a combined total of 101 calendar days of outages.

Linda S. Hafey, Supervisor of Regulatory Operations for Unitil Service Corp., explained that the difference in the rate increase between CEC and E&H can be directly attributable to the prior period over-collection of the purchased power costs. CEC's over-collection was $693,000, and

E&H's was $109,000.

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 3.78 cents per kWh
Off Peak 2.82 cents per kWh
All Hours 3.12 cents per kWh
Capacity Rate $57.71 per kW-year

B. *Commission Staff*

Staff did not oppose the Companies' filings but conducted cross examination on 1) the mitigation savings achieved by the Companies, 2) the higher replacement power costs, 3) the impact, (both from the standpoint of capacity and the financial effect on a customer's bill), of the Millstone 3 unit being out, 4) the difference in the magnitude of the rate increase for each Company, 5) the errors in computing certain demand charges, and 6) the increase in the capacity rate for short-term power purchases for Qualifying Facilities. The capacity rate paid to QFs had been $6.34 per kW for the prior period. The Companies proposed a rate of $57.71 per kW. According to Ms. Wookey, this increase was due to two factors: 1) the capacity rating loss of the Millstone Units 1, 2 and 3 on November 1; and, 2) the uncertainty concerning the phase-in of a "capacity only" market in New England. This phase-in had originally been scheduled for November 1, 1997 but, in late October, it was postponed until April 1, 1998. Consequently, when Unitil had to purchase or arrange contracts for the period of time in which it was deficient in meeting its NEPOOL requirements, the price ranged from $5.75 to $6.75 per kW/month.

Unitil has also changed its methodology of computing the weighted value of these costs. Instead of dividing the costs for the periods in which it was deficient by the total kW per month, including those months in which it had a surplus, the costs are now being divided only by the sum of the kW per month for those months in which a deficiency occurs. This results in the estimated costs being closer to actual since they are no longer being "diluted" by using the total kw for the whole period as the divider.

Unitil also was questioned as to whether it was one of the plaintiffs to the Massachusetts lawsuit against NU regarding the Millstone outages. One of the wholly-owned subsidiaries of Unitil, Fitchburg Gas & Electric, is a joint owner of Millstone and is a party to the demand for arbitration in Connecticut and the Massachusetts lawsuit. With regards to the New Hampshire companies, Unitil has reached a settlement with NU for replacement energy associated with its entitlement in Millstone 3. UPC has since been able to withdraw from its entitlement in Millstone 3.

III. COMMISSION ANALYSIS

[1, 2] We have reviewed all the testimony and exhibits in this case, including the responses provided by the Companies. Based on our review of the record, we find that the FAC for the January 1 through June 30, 1998 period will be a credit of ($0.00246) per kWh for CEC and a credit of ($0.00213) per kWh for E&H. For the same period, the PPAC will be $0.0078 per kWh for CEC and $0.01074 per kWh for E&H. For a typical CEC residential customer using 500 kWh per month, the net result of the FAC and PPAC changes is a $0.43 increase to the monthly bill. For a typical E&H residential customer using 500 kWh per month, the net result of the FAC and PPAC changes is a $1.78 increase to the monthly bill.

Page 879

We find that the proposed short term avoided capacity and energy rates, although calculated in a somewhat different manner for this period than the methodology outlined in prior Commission orders, are just and reasonable.

Based upon the foregoing, it is hereby

ORDERED, that CEC's FAC rate for the period of January 1, 1998 through June 30, 1998, shall be a credit of ($0.00246) per kWh while its PPAC rate shall be $0.00780 per kWh; and it is

FURTHER ORDERED, that E&H's FAC rate for the period of January 1, 1998 through June 30, 1998, shall be a credit of ($0.00213) per kWh while its PPAC rate shall be $0.01074 per kWh; and it is

FURTHER ORDERED, that Concord Electric Company and Exeter & Hampton Electric Company file revised tariff pages in compliance with this order on or before January 31, 1998.

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NH.PUC*12/31/97*[97542]*82 NH PUC 880*Granite State Electric Company

[Go to End of 97542]

82 NH PUC 880

Re Granite State Electric Company

DR 97-249
Order No. 22,817

New Hampshire Public Utilities Commission

December 31, 1997

ORDER approving a fuel adjustment clause rate of 1.193 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 affecting increase — Forecasted increases in fuel costs — Scheduled outages at generating plants — Electric utility — Necessity of reconciliation measures. p. 881.

2. COGENERATION, § 24

[N.H.] Rates — For purchases of power by electric utility from qualifying facility — Factors — Primary versus secondary distribution levels — Sub-transmission level — Peak versus off-peak pricing — Avoided costs. p. 881.

APPEARANCES: Carlos A. Gavilondo, Esquire on behalf of Granite State Electric Company; and, James J. Cunningham, Jr. and Todd M. Bohan for the Staff of the New Hampshire Public Utilities Commission.

BY THE COMMISSION:

ORDER

I. PROCEDURAL HISTORY

On November 26, 1997, Granite State Electric Company (GSEC or Company) filed with the Commission its Testimony and Schedules in support of its First Half 1998 Fuel Adjustment Clause (FAC) and Qualifying Facility (QF) Power Purchase Rate. GSEC is proposing an FAC factor of $0.01193 per kWh for the period January 1, 1998 through June 30, 1998. The FAC factor represents an increase of $0.00138 per kWh over the currently effective FAC factor of $0.01055 per kWh. The FAC proposed by the Company would increase the typical monthly bill of a residential customer using 500 kWhs per month by $0.69.

Regarding its QF energy rates, GSEC is proposing rates at the sub-transmission level of $0.03697 per kWh on-peak, $0.02965 per kWh off-peak and $0.03303 per kWh on average for the first half of 1998. At the primary distribution level, the proposed rates are $0.03971 per kWh on-peak, $0.03111 per kWh off-peak and $0.03508 per kWh on average. The proposed QF rates for the secondary distribution level are

$0.04111 per kWh on-peak, $0.03184 per kWh off-peak and $0.03612 per kWh on average. GSEC is proposing a capacity rate of $2.32 per kW-mo at the sub-transmission level, $2.54 per kW-mo at the primary distribution level and $2.65 per kW-mo for secondary distribution for the first half of 1998. The value of capacity used to determine the Company's QF capacity rate is $26.94 per kW-yr.

II. POSITIONS OF THE PARTIES AND STAFF

A. *GSEC*

At the hearing, the Company presented witnesses in support of its proposals. Jose A. Rotger, Senior Rate Analyst for New England Power Service Company, supported GSEC's proposed FAC factor and QF rates. Jeffrey Van Sant, Vice President and Director of Fuel Supply and Risk Management for New England Power Company (NEP), supported GSEC's fuel price projections for the first half of 1998. Mr. Rotger summarized the Company's proposed FAC factor and QF rates. The proposed FAC factor is $0.01193 per kWh, an increase of $0.00138 per kWh. The proposed QF rates for the first half of 1998 at sub-transmission voltage are 3.697 cents per kWh on-peak, 2.965 cents per kWh off-peak and 3.303 cents per kWh on average.

The increase in the factor is primarily attributable to increased forecast fuel costs for the first half of 1998. There are two principal reasons for this increase. First, forecast prices for both oil and gas are higher for the first half of 1998 than the estimates in the last filing. Second, the forecast period contains scheduled maintenance outages for several NEP base load and intermediate generating units. The increase in fuel costs is partially offset by forecast coal prices which are lower than the estimates reflected in the present factor.

Regarding QF rates, the Company indicated that the value of capacity used to determine GSEC's capacity rate is $26.94 per kW- year. This rate is the estimated market value of short term capacity sales and purchases recently consummated by NEP.

B. *Staff*

At the hearing, Staff questioned the Company about a number of issues pertaining to the potential July 1, 1998 over or under collection of the FAC resulting from the impact of certain restructuring matters including the following: the treatment of changes in the assessment mechanism used to calculate funding of the Independent System Operator (ISO); and, refunds and spent nuclear fuel cost adjustments with the Department of Energy for the period ending June 30, 1998. Staff is concerned that any credits due GSEC ratepayers should be passed back in a reconciliation adjustment which will true-up any amounts owed to GSEC ratepayers at the end

of the first half of 1998.

Also, Staff is concerned about the

Hydro-Quebec Energy Savings Credit (i.e., the New Hampshire Host State Bonus Share mechanism). Specifically, Staff is concerned that, subsequent to divestiture, New Hampshire ratepayers may lose the Savings Credit. In its response to Staff data request DR-STAFF-11, Exhibit No. 3 as marked at the hearing, the Company stated that NEP customers "will receive no savings credit." Staff is concerned that this savings credit belongs to the ratepayers of the state of New Hampshire and it may be at risk in the divestiture of NEP's assets.

III. COMMISSION ANALYSIS

[1, 2] The Commission shares Staff concerns about reconciling adjustments. However, the Commission notes the Company response to Staff data request DR-STAFF-14, one of the data responses contained in Exhibit No. 2 as marked at the hearing, wherein it states that, "upon the commencement of retail access for GSEC customers, any over-collection of the fuel clause balance will be refunded to customers and any under-collection will be recovered through a fuel reconciliation factor. GSEC will make a filing with the Commission prior to the retail access date in which the Company will make a specific proposal for refunding any over-collection or recovering any under-collection."

Regarding Staff's concern about the potential loss of the New Hampshire Bonus Share, the Commission notes that it will have to review and approve the NEP divestiture and as part of this process it will examine the New Hampshire Bonus Share.

Based on the above, and based on the careful review of the record in this case, we believe that the Company's proposed FAC and QF are fair and reasonable and we will approve the rates as proposed.

Based upon the foregoing, it is hereby

ORDERED, that the FAC for bills rendered on or after January 1, 1998 of $0.01193 per kWh is approved; and it is

FURTHER ORDERED, that GSEC pay the QF rates as proposed; 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 thirty-first day of December, 1997.

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Endnotes

1 (Popup)

[1]A Local Access Transport Area or LATA is a geographic area established by the Modified Final Judgement in the divestiture of AT&T. LATAs define the boundaries for provision and administration of services between Bell Operating Companies and AT&T and other interexchange carriers. Because there is essentially only one LATA in New Hampshire, for our purposes the term intraLATA is synonymous with intrastate.

2 (Popup)

[2]According to Annual Reports filed with the Commission, revenue figures for 1995 indicate that the leading intraLATA toll providers are, in order, NYNEX 75%, AT&T 8.5%, MCI 8.5%, Frontier Communications 2.4%, Sprint 1.5%, and all others combined 4.6%.

3 (Popup)

[3]Though the official two year Trial Period has concluded, the authority granted to competitive intraLATA toll providers during that period extends indefinitely, unless and until the Commission orders otherwise. *See*, Order No. 21,851 (October 3, 1995).

4 (Popup)

[1]Although we are ordering Union to respond to data requests, Union may still avail itself of the standard objections to particular requests under our administrative rules.

5 (Popup)

[1]PSNH claims it did not receive the testimony until January 2, 1997; the filing deadline for intervenor testimony in the PSNH proceeding was December 30, 1996.

6 (Popup)

[2]Specifically, PSNH requested that the following witnesses be allowed to testify: John W. Noyes, Vice President of Business Strategy for Northeast Utility Service Company (NUSCO); Wilbur L. Ross, Senior Managing Director of Rothschild Inc.; John H. Forsgren, Executive Vice President and Chief Financial Office of PSNH; Henry A. Clark, III, Managing Director of Solomon Brothers Inc.; James F. Callahan Jr., Certified Public Accountant; Prof. Joseph P. Kalt; Gary A. Long, Vice President of Customer Service

and Economic Development for PSNH; and Frank P. Sabatino, Vice President of Wholesale Marketing for NUSCO.

7 (Popup)

[3]The New Hampshire Municipal Association (NHMA) joined in Manchester's objection.

8 (Popup)

[4]In its Legal Memorandum, PSNH asserts that the Rate Agreement cannot be understood and applied correctly without considering the practical circumstances that gave rise to it. Memorandum. p.3. As noted above, PSNH has requested that we take official notice of the entire record in DR 89-244. To the extent that we deem it necessary to examine the "practical circumstances" giving rise to the Rate Agreement, the record in that proceeding will provide the most reliable and relevant evidence.

9 (Popup)

[1]For example, the Commission could disallow a significant replacement power cost due to management imprudence, which in turn could threaten PSNH's ability to meet financial obligations generally.

10 (Popup)

[1]Though NYNEX and NET are separate entities, we will, for the purposes of this order, refer to them collectively as "NYNEX."

11 (Popup)

[1]At the hearing, Isaacson agreed to waive any and all claims to materials that were accorded confidential privilege previously pursuant to Order No. 22,156 (May 17, 1996).

12 (Popup)

[1]In this context "subsidies" refer to that level of revenue above marginal cost required to cover the embedded cost of service.

13 (Popup)

[1]There are numerous other parties to this proceeding on both a limited and full basis. The appearances listed herein reflect the parties that appeared at the prehearing conference.

14 (Popup)

[2]The Legislature directed the Commission to issue its final order no later than February 28, 1997. RSA 374:4, II.

15 (Popup)

[1]Interim charges were initially provided on a class-by-class basis, without billing determinants. See Exhibit - WJD-2. Information subsequently provided by CVEC indicated a company average of 5.2¢/kWh in 1998 and 5.9¢/kWh in 1999.

16 (Popup)

[2]While notice could have been given any time, there is no possible reason why notice should not have been given any later than May 22, 1996, the day following passage of RSA 374-F.

17 (Popup)

[1]Post-shutdown costs are costs incurred after plant closure but before decommissioning.

18 (Popup)

[1]Having said that, Mr. Weissman disagrees with the "Regulatory Compact" and "takings" clause arguments presented by PSNH and other utilities in this proceeding.

19 (Popup)

[2]Mr. Yoshimura's interim stranded cost charge includes the acquisition premium as a strandable generation-related asset. Thus, under Mr. Yoshimura's formulation, a portion of stranded cost charge revenues would be used to pay the acquisition premium. PSNH treated the acquisition premium as a distribution-related asset and therefore excluded that cost from its stranded cost estimate. Had PSNH treated the acquisition premium as a generation-related asset, Mr. Yoshimura testified that PSNH's proposed interim stranded cost charges would increase to 7.07¢/kWh in 1998 and 7.30¢/kWh in 1999.

20 (Popup)

[3]Because we reject PSNH's market price analysis, we also find its estimate of above market power purchase costs to be unreasonable.

21 (Popup)

[4]While this should not be construed as a requirement of this Order, the savings of $74.2 million was determined by securitizing the NAEC deferrals as they come due using 30-year bonds at a 7.5 percent interest rate.

22 (Popup)

[1]The APRA is a wholesale power contract which currently accounts for over ninety percent of NHEC's capacity and energy purchases. The issue before the FERC is whether NHEC remains obligated to pay PSNH for power that it will no longer require as a result of retail access. PSNH contends that the APRA requires NHEC to pay the full wholesale price for the duration of the contract — irrespective of whether members choose a different power supplier. NHEC contends that it should pay only for the power its members purchase from PSNH, and that it is not responsible to compensate PSNH for lost sales associated with retail access.

23 (Popup)

[1]Under the provisions of the law, retail choice for all customers must be in place no later than June 30, 1998. RSA 374-F:4 also requires that the statewide plan be issued by February 28, 1997.

24 (Popup)

[2]Market institutions include an independent system operator, one or more power exchanges, and local transmission and distribution companies.

25 (Popup)

[3]The Commission contracted with the University of New Hampshire to conduct a survey of Pilot participants. The survey verifies the Legislature's and the Commission's belief that the Pilot Program would be a valuable tool and the results confirm the expectation that retail competition is technically feasible. Few respondents reported a concern with their new power supplier. Also, billing has not emerged as a source of concern. It was particularly gratifying to see that most respondents agreed that the Commission, new suppliers, and the existing distribution companies were all doing a good job serving the interests of consumers. The survey results are available on the Commission's web page at http://www.state.nh.us/puc/puc.html

26 (Popup)

[4]On June 21, 1996, PSNH filed a "Motion for an Adjudicative Proceeding, for Designation of staff, and for Other Relief." PSNH requested that the entire proceeding be designated as "adjudicative" in nature. The motion also requested that staff be designated into advocacy and advisory functions.

27 (Popup)

[5]The Commission subsequently allowed PSNH to raise issues related to the Rate Agreement in its interim stranded cost proceeding.

28 (Popup)

[6]Appendix A lists the individuals and organizations who participated in this proceeding. Prior to the panel hearings, technical sessions were held to clarify and further explore positions described in the Initial Comments of the Parties. Technical session topics addressed market structure issues, including NEPOOL reform and transmission pricing, corporate structure, stranded cost issues and all of the major public policy issues.

29 (Popup)

[7]The current system of economic regulation of electric utilities was established at a time when those firms were thought to possess natural monopoly characteristics. When this condition is present, the most efficient way to organize production is through a single firm.

30 (Popup)

[8]PURPA has been credited with establishing the independent power sector.

31 (Popup)

[9]*See*, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), III FERC Stats. & Regs. ¶ 31,036 (1996) (Open Access Rule).

32 (Popup)

[10]The debate over how to bring competition to bulk power markets dates back to the late 1970s. *See* Introducing Competition into the Electric Utility Industry: An Economic Appraisal, by J.D. Pace, and J. H. Landon, *Energy Law Journal*, Vol 3:1. 1982. By the late 1980s, the policy arguments for and against retail competition were well understood by industry experts. *See* Wheeling and the Obligation to Serve, by J.D. Pace, *Energy Law Journal*, Vol 8:2,

Page 256

1987.

33 (Popup)

[11]A vertically integrated electric utility is generally one that owns and operates generation, transmission and distribution facilities. Of the six electric utilities in New Hampshire, only PSNH (which serves 70% of the state) owns assets in all three segments of the industry. Granite State Electric Company and Connecticut Valley Electric Company are distribution affiliates of vertically integrated parents. The Unitil Companies are distribution affiliates of a wholesale power supplier company which owns no generation assets. The New Hampshire Electric Cooperative (NHEC) purchases all of its power requirements from unaffiliated suppliers.

34 (Popup)

[12]On December 31, 1996, NEPOOL submitted to the FERC a restructuring proposal as required by Order 888. We comment on this proposal in Section IV.D. of this Final Plan.

35 (Popup)

[13]Effective competition is achieved when no individual seller or buyer is able to influence significantly the price of the service for a significant period of time.

36 (Popup)

[14]*See e.g.*, Raymond S. Hartman and Richard D. Tabors for Massachusetts Attorney General, April 1996, and Richard J. Gilbert for Massachusetts Electric Company, February 1996, in MDPU Docket No. 96-25.

37 (Popup)

[15]The seven indicators are:

(1) Local distribution facilities are normally in close proximity to retail customers.

(2) Local distribution facilities are primarily radial in character.

(3) Power flows into local distribution systems; it rarely, if ever, flows out.

(4) When power enters a local distribution system, it is reconsigned or transported on to some other market.

(5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.

(6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

(7) Local distribution systems will be of reduced voltage.

Open Access Rule, 61 Fed. Reg. 21,619.

38 (Popup)

[16]Retail marketing functions comprise retail promotional activities, sales forces and associated infrastructure.

39 (Popup)

[17]Spin-off is a form of corporate divestiture that results in a subsidiary or division becoming an independent company. In a traditional spin-off, shares in the new entity are distributed to the parent corporation's shareholders of record on a *pro rata* basis.

40 (Popup)

[18]*See,* for instance, Appendix C to FERC Order No. 888.

41 (Popup)

[19]*See,* Evaluation of NEES' Load Estimation, Settlement, and Reconciliation System, Hagler Baily Consulting, Inc., December 5, 1996.

42 (Popup)

[20]Each utility shall specify, in its compliance filing, the small customer rate classes

which meet this criterion.

43 (Popup)

[21]PSNH asserts that load estimation reduced the accuracy of the NEPOOL billing process, while acknowledging that it is not technically possible to meter all customers within the timetable of HB 1392. PSNH adds that, if the timetable is to be met, the Commission, suppliers and customers must accept the increased costs and lesser accuracy associated with load estimation.

44 (Popup)

[22]While load estimation removes the option of real-time pricing, and thus the ability of customers to reduce costs through load shifting, we nevertheless see opportunities for marketers to aggregate loads of small customers with similar load profiles (e.g., electric space heating customers) and price that group on a time-of-use basis.

45 (Popup)

[23]Distribution companies will be allowed to separately bill a competitive supplier for additional metering and communications expenses associated with the use of equipment requested by that supplier.

46 (Popup)

[24]Our authorizing the distribution company to provide this service does not preclude a retail load aggregator from providing the same service.

47 (Popup)

[25]We recognize that units are sometimes dispatched out of economic order in the presence of transmission constraints or to avoid dropping load.

48 (Popup)

[26]We will establish a metering working group charged with the task of resolving issues concerning metering standards for competitive providers of metering equipment. We invite interested parties to attend an organizational meeting, as specified in Appendix B.

49 (Popup)

[27]Unbundled transmission and distribution rates shall exclude all generation-related operation and maintenance expenses and all costs associated with wholesale and retail marketing activities. In addition, utilities must allocate an appropriate share of administrative and general expenses and overheads to the generation function.

50 (Popup)

[28]Almost 30% of PSNH's large commercial and industrial load is currently served under special contracts. This figure increases to approximately one-third if all pending contracts are approved.

51 (Popup)

[29]We reject PSNH's argument that we are precluded from unbundling special contracts because to do so would modify the contractual terms.

52 (Popup)

[30]RSA 378:18-a, I applies only to special contracts entered into prior to the effective date of the legislation.

53 (Popup)

[31]The use of the word "stranded," instead of the more descriptive "uneconomic" or "above-market," is a recent addition to economic parlance. Some commentators assert that the introduction of the term "stranded costs" represents an attempt by the industry to shift the focus from bad or unfortunate management decisions to changes in federal and state regulatory policy.

54 (Popup)

[32]The notable exception is qualifying facility power purchases mandated by state and federal law, although even in this case, the prices at which the purchases are made were based on estimates of avoided cost furnished by the utilities.

55 (Popup)

[33]By "net" we mean the aggregate value of assets that have market values in excess of book and assets that have book values in excess of market.

56 (Popup)

[34]PSNH acknowledged that its administrative estimate of stranded cost does not reflect the potential value of its generation plant sites.

57 (Popup)

[35]A discussion of the legal justification for the conclusions reached in this section is found in the Legal Analysis, Part I.

58 (Popup)

[36]We note that we do not intend to re-litigate prudence questions decided previously. Managers can be prudent, yet still make decisions which are less successful than decisions made by other prudent managers. Our inquiry, therefore, will be geared toward determining whether a less successful decision is attributable to management discretion and performance.

59 (Popup)

[37]It goes without saying that in order to qualify for recovery, utilities must demonstrate by a preponderance of the evidence that their costs will be stranded as a result of the implementation of this Final Plan.

60 (Popup)

[38]For this conclusion to be valid, the utility must acquire the least cost resource if it chooses to pass on the QF purchase. This is not an unreasonable assumption given that each utility must purchase sufficient capacity to meet its allocated capability responsibility.

61 (Popup)

[39]Without self-interest, markets would not operate efficiently because customers would

not seek out suppliers with the lowest prices and suppliers would not adopt least cost production methods.

62 (Popup)

[40]This problem can be avoided by requiring that the assets be sold prior to the introduction of competition so that the incumbent utility does not end up with both the cash and the paid-off asset.

63 (Popup)

[41]This duty is to be carried out in accordance with Commission approved line extension tariffs.

64 (Popup)

[42]As part of their compliance plans, distribution companies are invited to propose alternate line extension policies which exclude revenues from the market price component of the bill.

65 (Popup)

[43]A variation on this alternative is to allocate default customers to registered suppliers.

66 (Popup)

[44]Redlining is the practice of denying service to a geographic area based on general demographic information pertinent to that area. For instance, redlining would occur if a supplier refused to provide service to an area it identified as low income.

67 (Popup)

[45]For example, does the Commission have the expertise to model regional air emission dispersion and to interpret modeling results in order to determine whether the application of new source performance standards on existing generators would enable the state to meet the ambient ozone standards established by the DES or the EPA? In addition, does the Commission have the expertise to determine the average emissions for in-state generation, and to track the Company-wide emissions of all generation suppliers serving the state (including out-of-state suppliers) to ensure that such emissions does not exceed the average?

68 (Popup)

[46]For example, a significant contributor to NOx emissions in the state and the region is the transportation sector. Clearly, the Commission does not have the authority to establish emission standards for automobiles, trucks, buses, trains, etc. If it is more cost-effective and environmentally beneficial to reduce emissions from these sources, imposing additional emission controls on electric generators by the Commission, because it is the only sector to which the Commission has environmental improvement authority, would not necessarily further the public interest.

Legal Analysis

69 (Popup)

[46]For example, a significant contributor to NOx emissions in the state and the region is the transportation sector. Clearly, the Commission does not have the authority to establish emission standards for automobiles, trucks, buses, trains, etc. If it is more cost-effective and environmentally beneficial to reduce emissions from these sources, imposing additional emission controls on electric generators by the Commission, because it is the only sector to which the Commission has environmental improvement authority, would not necessarily further the public interest.

Legal Analysis

70 (Popup)
[1]We reject without further discussion the assertion of a number of parties that the Commission's adoption of the proposed stranded investment recovery methodology would violate *Duquesne*'s admonition against switching back and forth between regulatory practices. (*See* Briefs of PSNH, UNITIL, Granite State Electric Co. (GSEC). The concern is unfounded for two reasons. First, Duquesne spoke only to arbitrarily switching between methodologies. As described further below, requiring investors to absorb costs to the extent they exceed the regional average is consistent with their legitimate expectations. It is not a switch in methodologies to require investors to live with the above-average cost consequences of their discretionary decisions. Second, it is not accurate to assert that we are requiring the utilities to "bear the risk of bad investments at some times while denying them the benefit of good investments at others." *Duquesne*, 488 U.S. at 315.

71 (Popup)
[2]We note that in calculating the regional average, we are excluding SPP costs, since the extent of these commitments, and their costs, can vary among the utilities in the region due to differences in state policy. We discuss this issue further in the Legal Analysis at Part I.C.

72 (Popup)
[3]*See, e.g., Tagg Bros. v. United States*, 280 U.S. 420, 436-38 (1929) (observing that ratemaking affects personal liberty and property rights but rejecting due process challenge to order setting rates under the Packers and Stockyards Act of 1921); *Acker v. United States*, 298 U.S. 426, 429-30 (1935) (rejecting various challenges to rates established under the same Act).

73 (Popup)
[4]*Duquesne Light C. v. Barasch*, 488 U.S. 299 (1989); *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Market St. Ry. Co. v. R.R. Comm'n of California*, 324 U.S. 548 (1945); *Bluefield Water Works & Improvement Co. v. Public Service Comm. of West Virginia*, 262 U.S. 679 (1923); *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Comm'n*, 262 U.S. 276 (1923).

74 (Popup)
[5]"Promoting Wholesale Competition through Open Access Non-Discriminatory

Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities," ("Order No. 888"), 61 Fed. Reg. 21,540 (1996), *reh'g pending*.

75 (Popup)

[6]*See, e.g., Conway Corp. v. Fed. Power Comm'n*, 510 F.2d 1264, 1268 (D.C. Cir. 1975) (wholesale competitors "seek to maintain customer satisfaction with the quality and price of their service in order to attract new industries and to retain existing customers"); *Town of Massena v. Niagara Mohawk Power Corp.*, 1980-2 Trade Cases ¶ 63,526 at p. 76,799 (1980) (Retail franchise competition provides consumers "with their most meaningful opportunity to compare alternate price, quality and service. Indeed, at the retail service level, it is this very potential that provides an incentive for [wholesale competitors] to control costs and improve their performance in the areas that they serve."). *See also Alabama Power Co.*, 13 N.R.C. 1027, 1061 (1981) ("the existence of a potential [wholesale] competitor may have an effect on the actions of another distributor"); *City of Groton v. Connecticut Light & Power*, 662 F.2d 921, 930, 934 (2d Cir. 1981). *See generally* James E. Meeks, *Concentration in the Electric Power Industry: The Impact of Antitrust Policy*, 72 Colum. L. Rev. 64 (1972).

76 (Popup)

[7]In *Permian Basin*, 390 U.S. 747, 822 (1967), the Court rejected gas producers' challenge to FPC-set area rates. The Court found that "[t]here was no evidence of financial or other difficulties that required the [FERC] to relieve the producers, even obliquely, from the burdens of their contractual obligations." *Id.* at 822. Turning to the statutory question, the Court stated:

> The regulatory system created by the Act is premised on contractual agreements voluntarily devised by the regulated companies; it contemplates abrogation of these agreements only in circumstances of unequivocal public necessity.

77 (Popup)

[7]In *Permian Basin*, 390 U.S. 747, 822 (1967), the Court rejected gas producers' challenge to FPC-set area rates. The Court found that "[t]here was no evidence of financial or other difficulties that required the [FERC] to relieve the producers, even obliquely, from the burdens of their contractual obligations." *Id.* at 822. Turning to the statutory question, the Court stated:

> The regulatory system created by the Act is premised on contractual agreements voluntarily devised by the regulated companies; it contemplates abrogation of these agreements only in circumstances of unequivocal public necessity.

78 (Popup)

[8]*Ohio Power Co.*, SEC Release No. 17,383 at 2 (Dec. 2, 1971)

79 (Popup)

[9]*Ohio Power Co.*, 39 F.E.R.C. para. 61,098 (1987).

80 (Popup)

[10]The Court of Appeals initially vacated FERC's decision. *Ohio Power Co. v. FERC*, 880

F.2d 1400 (D.C. Cir. 1989). The lower court found that although OPCO was subject to FPA Section 205, OPCO also "plainly is \&... subject to [PUHCA] Section 13(b) with respect to its contractual relations with SOCCO." The court concluded that under FPA Section 318, concerning "Conflict of Jurisdiction," "it is for the SEC rather than FERC to determine the interassociate price." 880 F.2d at 1408.

The U.S. Supreme Court then reversed. *Arcadia. Ohio et al. v. Ohio Power Company*, 498 U.S. —, 111 S.Ct. 415, 112 L.Ed.2d 374 (1990). The Supreme Court found that Section 318 did not apply to the case because it dealt with conflicts involving only four categories of holding company activities, not including interaffiliate transactions.

81 (Popup)

[11]The New Hampshire Constitution, Part I, article 23 provides: "Retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made\&..." This provision protects contracts and other "vested rights." *Furlough*, 135 N.H. at 630, 609 A.2d at 1207. Where contract impairment is alleged, the New Hampshire Supreme Court interprets the State constitutional protections to be "equivalent" to those afforded under federal law. *Id.*

82 (Popup)

[12]As noted above, Exhibit C of the Rate Agreement defines the FPPAC "BA" as the annual base rate level of fuel and purchase power expenses set forth in Schedule 1." Schedule 1 only specifies base rate levels through 1996.

83 (Popup)

[13]*See* also *In re Bankeast Corp.*, 142 B.R. 12, 14 (Bankr. D. N.H. 1992).

84 (Popup)

[14]*In re Sugarhouse Realty, Inc.* 192 B.R. 355, 363 (E.D. Pa 1996).

85 (Popup)

[15]Substantial confirmation is defined by Section 1101(2) of the Bankruptcy Code as: "(A) transfer of all or substantially all of the property proposed by the plan, (B) assumption of the plan by the debtor ... under the plan of the business or of the management

Page 259

of all or substantially all of the property dealt with by the plan and (C) commencement of distribution under the plan."

86 (Popup)

[16]State laws identified as applicable to PSNH's restructuring transactions proposed in the plan of reorganization included RSA 374:30, 374:31 (transfer of franchise, works, system); RSA 369:2 (mortgaging of property); RSA 369:1, 369:7 (issuance of stock, bonds, notes and other evidences of indebtedness) and RSA 366:5 (contracts with affiliates). *In re PSNH*, 99 B.R. 506, 508 (1989) (Order Granting Declaratory Relief).

87 (Popup)

[1]Wilton, like all telephone companies, charges an access fee to any provider of toll service for use of Wilton's facilities in originating or terminating a call for a Wilton customer.

88 (Popup)

[1]Prepaid calling service is more colloquially known as a telephone debit card. A number of competitive toll providers offer debit cards, as do countless non-utility businesses, such as supermarkets and gasoline stations.

89 (Popup)

[1]Enron also requested a stay of Order No. 22,512 pending the Commission's consideration of its motion. In Order 22,526 (March 19, 1997) the Commission granted Enron's rehearing request and stayed Orders No. 22,512 and 22,514 to the extent that such orders required Public Service Company of New Hampshire (PSNH) to write off FAS 71 regulatory assets. The Commission conducted a prehearing conference on March 24, 1997 in order to establish a procedural schedule and to define the scope of the Commission's inquiry relative to the issues raised by Enron.

90 (Popup)

[2]GSEC, along with CRR, CLF and the Northeast Energy Council, filed a motion for "limited suspension" of Order Nos. 22,511 and 22,514 pending the Commission's review of a "Memorandum of Understanding" entered into by those parties.

91 (Popup)

[1]Per letter dated January 24, 1996 from Marco P. Philippon, Consumers New Hampshire Water Company's Engineering Coordinator, to Lewis Builders Development, Inc.

92 (Popup)

[2]The DES letter did point out two minor deficiencies which were to be corrected by January 1, 1997. These were a capped filler pipe to accommodate water delivery by tank truck and permanently installed air tubes or other provisions for determining the static and draw down water levels. Since Staff's site visit in January, DES has extended the date for compliance to January 1, 2007 for all water companies.

93 (Popup)

[1]Without intraLATA presubscription, customers must dial a five digit code in order to access an intraLATA toll carrier other than NYNEX.

94 (Popup)

[1]CLF's motion for rehearing was filed on behalf of itself and "others" who purportedly represent a group self-named the "Electric Utility Restructuring Collaborative."

95 (Popup)

[2]ECS is not a party to this proceeding, but asserts that it has standing to seek rehearing because it is "directly affected" by the Commission's order in this area. *See*, RSA 541:3. Although not an intervenor, it is appropriate to consider ECS's positions in view of that agency's stated mission which includes the advancement of programs and policies "that support energy conservation, as well as economically and environmentally sound energy use and planning in New Hampshire."

96 (Popup)

[3]The policy principles articulated in RSA Chapter 374-F are intended to guide the Commission "in implementing a statewide electric utility industry restructuring plan ... and in regulating a restructured electric utility industry." RSA 374-F:1,III.

97 (Popup)

[1]Pelham Plaza's rates are based on Northern's system-wide rate base in New Hampshire. This spreads the risk of rate shock caused by the failure of any single component of service across the entire customer base.

98 (Popup)

[1]The Commission received letters from the following customers objecting to the transfer of the Holiday Ridge assets to the Association and alternatively requesting a transfer to the Precinct: John D. Crouchley, Walter J. Zawacki, Robert J. Taylor, Albreht Kopp, John G. Sinkus, Robert A. and Kathleen Zimmerman and Robert Heiges.

99 (Popup)

[2]The Commission received letters supporting the proposed transfer to the Association, contingent on subsequent transfer to the Precinct, from the following customers: Robert J. Taylor, Kenneth Trank, Rita and William Lucey.

100 (Popup)

[1]The proposed tariff pages are NHPUC No. 77: Part M, Section 1 pages 14-20, 29; Part M, Section 3, pages 58-60, 66, and 84-86; and NHPUC No. 79: Access Service, Section 30, page 6.

101 (Popup)

[1]The PSNH Motion was also filed in three other proceedings pending before the Commission; specifically, PSNH filed the same Motion in its biannual Fuel and Purchase Power Adjustment Clause (FPPAC) proceeding (DR 97-014), Petition of Hannaford Brothers Co. (DR 97-424) and in the general rate case proceeding initiated by PSNH (DR 97-059). Separate orders will be issued in those dockets.

102 (Popup)

[2]See, *Public Service Company of New Hampshire, et al. v. Patch, et al.*, N.H. Civil Action No. 97-97-JD, RI Action C.A. 97-121L. For reasons we need not recite here, that case has been transferred to the Chief Judge of the federal court in Rhode Island.

103 (Popup)

[3]Those two issues relate to the methodology used to develop PSNH's interim stranded cost charges and whether the adoption of such an approach by the Commission would cause the State to "repudiate" the Rate Agreement.

104 (Popup)

[4]ECS supports a 45 day suspension of this proceeding with an opportunity to extend the suspension if circumstances warrant it.

105 (Popup)

[5]The suspension of this docket will not affect the ongoing efforts of the "working groups" because participation in those groups is voluntary. During the hearing in this proceeding, PSNH agreed that any suspension should not interrupt the progress of the working groups. Transcript, May 14, 1997, p. 84.

106 (Popup)

[1]See DR 93-028, Order No. 20,840 (May 17, 1993).

107 (Popup)

[1]The PSNH motion to suspend the FPPAC proceeding was made pursuant to the waiver authority of the Commission contained in Rule Puc 201.05. PSNH's motion to suspend FPPAC was included with the request by PSNH to suspend three other dockets: DR 96-150 - Electric Utility Restructuring Proceeding; DR 96-424 - petition of Hannaford Brothers Company; and DR 97-059 - PSNH Intent to File Rate Schedules and Request for Waiver of Tariff Filing Requirements (Base Rate Case).

108 (Popup)

[1]CRHC is also known as Mednet Services.

109 (Popup)

[2]A decision on this proposed filing was delayed due to a number of contested issues involving CRHC and the resale of retail toll services. These issues were the focus of DE 95-054. The final Order No. 22,435 in DE 95-054 was issued on December 9, 1996.

110 (Popup)

[1]The parties should not infer from this statement that this argument will justify continuing delays to DR 96-150.

111 (Popup)

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

112 (Popup)

[2]Twice before, in 1984 and 1989, Danbury has met the quantified community of interest test with Bristol. Each time, a majority of the customer base in Danbury failed to vote affirmatively for the extended calling area.

113 (Popup)

[3]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

114 (Popup)

[1]The record indicates that a minor portion of the original estate is located in Exeter and Hampton's service territory, but the proposed cluster development would not include the construction of any residences on this portion of land.

115 (Popup)

[2]In fact, the testimony revealed that Mr. Saviano was informed by PSNH that a $3,800 line extension deposit could not be returned to him after PSNH's decision to deny him service because he was a creditor in the bankruptcy proceeding. This is consistent with the record of the bankruptcy proceeding.

116 (Popup)

[1]Except as noted above, the relevant procedural history leading to this order is summarized in Order No. 22,599 (May 22, 1997).

117 (Popup)

[1]The original Harrison rates for Northern and ENGI were further adjusted by Mr. Harrison to reflect certain methodological changes. The revised Harrison methodology results in slightly higher rates than did the original Harrison methodology. Northern, ENGI and ultimately Staff endorsed the revised methodology.

118 (Popup)

[2]In Order No. 20,950, the Commission held that if an LDC did not suffer any harm, that is, was not fined by the interstate pipeline for being out of balance beyond the pipeline's tolerance band, it could not penalize a transportation customer who had been outside the LDC's tolerance band. This became known as the "no harm, no foul" policy, i.e., no damages.

119 (Popup)

[1]We recognize that the costs PSNH proposes to charge ratepayers for SCR prove to be less expensive than SNCR on a semi-annual basis because of the amortization schedule utilized by PSNH to write down its investment in SCR technology. The amortization schedule runs well beyond 1999 while the hypothetical investment in SNCR is amortized over four years. Our analysis and risk allocation assume that the capital costs of SCR are written off in total by 1999.

120 (Popup)

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

121 (Popup)

[2]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

122 (Popup)

[1]PSNH also filed the same request in DR 96-424. A separate order addressing PSNH's request has been issued.

123 (Popup)

[1]In Order No. 22,107, at p. 13, the Commission said "While we would consider amending and reactivating the current EAS guidelines as a means to provide some relief to consumers during the transition to competition, we conclude that the Telecommunications Act of 1996 inhibits our ability to do so."

124 (Popup)

[2]For purposes of this examination, a central business area is a cluster of 12 or more businesses, in essence a "Main Street."

125 (Popup)

[1]Although counsel for the District appeared at the May 9, 1997 hearing, the District has never entered an appearance or filed a motion to intervene in this proceeding or DE 95-271, the proceeding controlling the receivership of the Beebe River Village community water system.

126 (Popup)

[1]The recitation of "1986" in Order No. 22,663 was merely a typographical error.

127 (Popup)

[2]PSNH's claim that it was denied notice and an opportunity to be heard on this issue is without merit. The joint petition contained an affidavit of Mr. Saviano in which he testified to PSNH's refusal to serve. In fact Order No. 22,565 (April 21, 1997) issued subsequent to the prehearing conference makes reference to the fact that PSNH and Exeter and Hampton specifically contested whether PSNH had consented to Exeter and Hampton's provision of service to this parcel in 1988.

128 (Popup)

[1]*See*, Orders No. 22,599 (May 22, 1997) and 22,664 (July 21, 1997).

129 (Popup)

[2]LaCapra Associates has instituted its own separation of Staff, for those employees who assisted participants in the mediation process. Mr. LaCapra was not involved in the mediation.

130 (Popup)

[1]Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (DR 95-246), Bridgewater Power Company (DR 95-022), BioEnergy Corporation (DR 95-247), Whitefield Power and Light Company and Hemphill Power and Light Company (DR 95-268).

131 (Popup)

[1]The Bell Atlantic and Independent Telephone Companies' basic exchange rates noted herein include the $3.50 Subscriber Line Charge.

132 (Popup)

[2]Hollis Telephone Company is an exception in that Hollis provides a flat rate residential service for $16.22 or a low use measured service option for $10.02.

133 (Popup)

[1]The agreement as filed named NYNEX as a party. Since then the merger between NYNEX and Bell Atlantic has been approved and therefore the Agreement must be construed as applying to Bell Atlantic as well.

134 (Popup)

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135 (Popup)

[1]Includes Call Forwarding, Call Forwarding II, Call Waiting, Speed Calling 8, Speed calling 30, and Three-Way calling.

136 (Popup)

[2]Includes Call Manager, Call Manager with Name, Call Return, Call Waiting ID, Call Waiting ID with Name, and Repeat Dialing.

137 (Popup)

[1]"APRA" is an acronym for Amended Partial Requirements Agreement. Under it, NHEC purchases over 90% of its energy and capacity requirements in order to serve its members.

138 (Popup)

[2]*See, Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc.*, Docket No. EL 96-53-000.

139 (Popup)

[3]*See, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶31,036, clarified, 76 FERC ¶61,009 and 76 FERC ¶61,347 (1996); and Order No. 888-A (Order on Rehearing), 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶30,048 (1997).

140 (Popup)

[1]See, Orders No. 22,599 (May 22, 1997) 22,664 (July 21, 1997) and 22,681 (August 12, 1997) for a complete procedural history of the rehearing schedule

that was suspended as a result of the requests of PSNH, the State of New Hampshire and others.

141 (Popup)

[1]Arguably, this transaction could be construed as a taking by agreement under RSA 38:8 which makes no provision for Commission approval. At hearing, however, the parties contended that because Hudson's taking has been contested by Consumers, the provisions of RSA 38:10 apply. For purposes of this order only, we will assume the parties are correct.

142 (Popup)

[2]Assuming once again that our decision is made pursuant to RSA 38:10, we must determine whether

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this transaction is "in the public interest." Notwithstanding the arguable inapplicability of RSA 38:10 discussed in footnote 1, *supra*, RSA 374:30 compels us to review a transfer of Consumers' assets and to approve it upon a finding that "it will be for the public good." Accordingly, we believe it is appropriate that "public interest" and "public good" be used interchangeably herein. *See, Pennichuck Water Works, Inc., et al.*, 77 NH PUC 708, 712 (1992) ("public good" standard is analogous to the "public interest" standard as that standard has been applied by the Commission and the New Hampshire Supreme Court.)

143 (Popup)

[1]Although the testimony and exhibits purported to support an increase in base rates, PSNH did not request a rate increase. Rather, PSNH chose the alternative relief of no change in base rates, or an increase

Page 802

in base rates to reflect an increase in Base Assumptions.

144 (Popup)

[2]Notwithstanding the findings of NU's internal investigation into the outage and the findings of the investigation conducted for the Connecticut Department of Public Utility Control which have been placed in evidence, we believe we should provide PSNH an opportunity to respond to these reports. We note that the OCA has not merely requested a decision regarding replacement power, an issue to be addressed in FPPAC, but the removal of the plant from rate base and consequentially the disallowance of all operation and maintenance expenses,

depreciation expenses, and a return on PSNH's investment associated with Millstone III.

145 (Popup)

[3]In this case the average would consist of five rather than thirteen points to reflect the fact that PSNH closes its books on a quarterly rather than a monthly basis.

146 (Popup)

[4]The reduction of 6.47% announced at our oral deliberations was based on an incorrect adjustment related to the global settlement. Staff's rate base is $1,186,803,000 when the global settlement is correctly included.

147 (Popup)

[5]Because PSNH was unable to provide Staff or the Commission with the requested security for ratepayers, we conclude that Staff also supports a rate decrease.

148 (Popup)

[1]76 NH PUC 150, 167.

149 (Popup)

[1]Toll denial means a complete block of all outgoing toll calls. Toll control means a cap on monthly toll billings, after which outgoing toll calls are blocked.

150 (Popup)

[2]Lifeline is a low-income assistance program that provides discounted monthly local exchange service to eligible customers. Link-Up is a low-income assistance program that provides discounted installation charges for new service to eligible customers.

151 (Popup)

[3]A "carrier's study area" is the geographic area designated by the FCC for cost study purposes in determining the cost of access. For Bell Atlantic, the carrier study area is the entire State of New Hampshire.

152 (Popup)

[1]Though Freedom Ring now asks that our decision in this docket apply to all ILECs, Freedom Ring's initial petition focused on Bell Atlantic. As a result, our Order of Notice identified only Bell Atlantic and its customers as potentially being subject to a Fresh Look opportunity. We thus limit our decision to Bell Atlantic and its customers.

153 (Popup)

[2]The *Mobile-Sierra* doctrine is based on the United States Supreme Court's holdings in

two cases: *United Gas Pipe Line Company v. Mobile Gas Service Corporation and Federal Power Commission*, 350 U.S. 332 and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956).

154 (Popup)

[1]Including local transport and switching services.

155 (Popup)

[1]With approval of this filing, the concept of rate groups for business measured service 4E subscribers will be eliminated. All subscribers regardless of location will pay the same rates. The existing tariff consisted of three rate groups.

