

DR 97-241
DR 98-206
DC 98-198

CONNECTICUT VALLEY ELECTRIC COMPANY

Fuel Adjustment Charge and Purchased Power Cost Adjustment

Order Changing 1999 Temporary Rates

O R D E R N O. 23,214

May 17, 1999

APPEARANCES: Kenneth C. Picton, Esq. for Connecticut Valley Electric Company, Steven V. Camerino, Esq. and Sarah B. Knowlton for the City of Claremont, Gary Epler, Esq. for the Commission, Michael W. Holmes, Esq. for Residential Ratepayers, and Thomas C. Frantz for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 22, 1999, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,168 which directed Connecticut Valley Electric Company (CVEC or Company) to implement a rate refund rider, effective April 1, 1999 through December 31, 1999, as a mechanism to refund the over-collection of revenue CVEC recovered from its customers during the last 8 months of 1998. The refund rider was designed to refund to customers the difference between the total FAC and PPCA revenues collected during 1998 and those FAC and PPCA revenues that it would have collected had the December 1997 FAC and PPCA rate levels been in effect for the entire year. After Order No. 23,168 was issued, CVEC sought and received an injunction from the United States District Court for the District of New

Hampshire¹ (District Court) which stopped implementation of the rate refund rider. The District Court also ordered that rates could not go below the rates in effect on December 31, 1997.² CVEC sent a letter to the Commission dated April 9, 1999 proposing to terminate the rate rider refund on bills rendered on or after April 16, 1999 and requesting the implementation of a rate rider refund recoupment. On April 15, 1999, the Commission issued Order No. 23,195 ordering a consolidated hearing of Dockets DR 97-241, DC 98-198 and DR 98-206 to be held on April 22, 1999 to address, among other things, modifying CVEC's temporary rates to the levels that were in effect on December 31, 1997. On April 19, 1999, the Commission received a letter from Kenneth Picton, Esq. which stated effective that day CVEC terminated the rate refund rider. On April 22, 1999 a hearing was held at the Commission.

II. POSITIONS OF THE PARTIES AND STAFF

A. CVEC

¹ Public Service Company of New Hampshire, et al. v. Douglas Patch, et al., District of New Hampshire C.A. No. 97-97-JD, District of Rhode Island, C.A. No. 97-121-L.

² The procedural history which led to the rate refund rider can be found in Order No. 23,168. On May 11, 1999, the District Court for New Hampshire issued a written decision which denied the Commission's Motion to Dissolve Amended Restraining Order and Preliminary Injunction.

CVEC presented the testimony of two witnesses, C.J. Frankiewicz, Financial Analysis Coordinator, and Greg White, Manager - Capital Budgeting. The Company advocated leaving its rates at the existing levels and allowing the issues to be addressed through negotiations or litigation. According to CVEC's calculations, cutting rates to December 31, 1997 levels would result in a \$1.1 million pretax cash flow loss. If this rate were implemented, Mr. Frankiewicz testified, the Company would cut discretionary spending in fuse coordination and pole treating, tree trimming, and the Pilot incentive credit by a combined total of \$262,000.

In the event the Commission decided to reduce rates to December 31, 1997 levels, the Company proposed an "Interim FAC/PPCA" for the remainder of 1999. The proposed "Interim FAC/PPCA" reflects FAC/PPCA RS-2 rates in effect January 1, 1999 for the first four months of the year and also reflects RS-2 costs at the December 31, 1997 level for the remainder of 1999. The proposal uses actual November and December 1998 SPP and Wheelabrator costs, and updated forecasts of SPP and Wheelabrator costs for the remainder of the year. CVEC argues this is the appropriate means to penalize the Company for RS-2 costs without penalizing the Company for the remainder of its power costs. Mr. Frankiewicz testified that the "Interim FAC/PPCA" rates would

still result in an \$800,000 under collection for 1999 when compared to the rates currently in effect.

The Company also argued the rate rider refund was contrary to past Federal District Court rulings and therefore requests the \$182,000 rate rider refund that was provided to customers over the first 10 billing cycles of April be recouped with interest over the first 10 billing cycles in May. The Company stated it did not intend to bill customers for the recoupment until a Commission order was issued.

B. City of Claremont

The City of Claremont (City) presented the testimony of Paul Chernick, a consultant. Mr. Chernick testified that, as he had previously contended, CVEC was imprudent in not terminating its RS-2 power contract with CVPS by December 31, 1997. Had it done so, the contract would have expired by now. In addition, Mr. Chernick testified that the current market cost of power is less than the December 31, 1997 RS-2 rate and, therefore, the 1997 rate will more than adequately allow for recovery of CVEC's prudent expenses. The City requests the Commission set temporary rates at the December 31, 1997 level. In addition, the City interprets the December 3, 1998 decision of the United States Court of Appeals for the First Circuit as completely vacating the preliminary injunction issued by the District Court and allowing

the Commission to issue refunds. In the event the Commission does not issue refunds for the period back to December 31, 1997, the City requests the Commission order CVEC to post a bond until the refund issue is resolved.

The City also requests that the Commission issue orders for its February 1998 oral deliberations in Docket DR 97-241, CVEC's Motion for Rehearing in DR 98-206, and the City of Claremont's Motion in DR 98-206 objecting to the City of Claremont's Motion for Rehearing, in order for these cases to come to a conclusion.

The City argues that CVEC should not be permitted to cut services which are funded through base rates to pay for purchased power which has been found imprudent by this Commission.

C. OCA

The Office of Consumer Advocate (OCA) presented no witnesses but cross-examined the Company. The OCA proposes the Commission should consider setting base rates as temporary rates. Pursuant to this recommendation, OCA states that if services are cut by CVEC in order to divert funds to its parent company to pay for RS-2 power, the Commission will be able to return those funds to ratepayers. The OCA recommends, and believes the only safe action for the Commission to take with respect to power costs, is

to set rates at the December 31, 1997 level.

D. Staff

The Staff of the New Hampshire Public Utilities Commission (Staff) presented no witnesses but cross-examined the Company's witnesses. In particular, Staff questioned the Company's re-forecasting of kilowatt-hour sales for 1999, the effect of the reforecasted sales on the Company's proposed "Interim FAC/PPCA" rates, and the effect of spending cuts on pole treating and tree trimming on reliability. Staff expressed concern about the impact of capital budget and O&M expense cuts upon reliability, and recommends the Commission require the Company to meet with Commission Engineering Staff who could then advise the Commission prior to CVEC making any budget cuts.

Given that the District Court did not address the rate rider refund recoupment, Staff advised the Commission to defer the issue until a written order is received. Staff believes CVEC customers are entitled to a refund based upon the Commission's February 23, 1998 oral deliberations, in Docket DR 97-241. Staff recommends the Commission put December 31, 1997 rates into effect May 1, 1999.

III. COMMISSION ANALYSIS

We have reviewed the record in Dockets DR 97-241, DC 98-198 and DR 98-206 along with the testimony presented at the

hearing on April 22, 1999 and find no compelling reason to keep CVEC's current, temporary rates in effect. The First Circuit Court vacated the District Court's April 12, 1998 injunction and affirmed our authority to reduce rates back to the December 31, 1997 level. Based upon that First Circuit Court decision, the District Court's May 11, 1999 written decision which prevents this Commission from implementing rates at levels lower than those in effect on December 31, 1997, and previous decisions by this Commission finding CVEC imprudent, we will order the Company to set temporary rates at the level in effect December 31, 1997 subject to a future reconciliation. Pending a hearing on permanent rates, even if the adjustments proposed by CVEC are factored in, Mr. Chernick's testimony provides additional support for our determination that the December 31, 1997 rates are the appropriate level for current temporary rates.

With respect to Staff's concerns about the possible impact of the discretionary spending cuts to tree trimming, fuse coordination and pole treating CVEC plans to implement, we direct CVEC to meet with the Commission's Engineering Staff prior to making any discretionary spending cuts. Finally, at this time, we will not require CVEC to post bond with respect to refunds owed to customers, but reserve this issue for reconsideration at

a later time.

Based upon the foregoing, it is hereby

ORDERED, that Connecticut Valley Electric Company set temporary rates at the FAC/PPCA level in effect December 31, 1997 for bills issued on and after June 1, 1999; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company meet with Commission Engineering Staff and gain Commission approval prior to implementing any discretionary spending cuts in tree trimming, fuse coordination and pole treating; and it is

FURTHER ORDERED, that Connecticut Valley Electric Company's proposal for a rate refund rider recoupment is DENIED.

DR 97-241
DR 98-206
DC 98-198

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By order of the Public Utilities Commission of New
Hampshire this seventeenth day of May, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary