DT 00-294
DT 00-295

WILTON TELEPHONE COMPANY
HOLLIS TELEPHONE COMPANY

Investigation of Companies

Prehearing Conference Order

O R D E R N O. 23,744

July 26, 2001

APPEARANCES: Frederick Coolbroth, Esq. and Patrick McHugh, Esq. of Devine, Millimet & Branch for the Companies; Marcia Thunberg, Esq., William Homeyer, and Kenneth Traum, of the Office of Consumer Advocate, for Residential Ratepayers; and Lynmarie Cusack, Esq. and Larry Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

The New Hampshire Public Utility Commission initiated dockets DT 00-294 and DT 00-295 following receipt of a Commission Staff report dated December 22, 2000, that provided a comprehensive review of Wilton Telephone Company's and Hollis Telephone Company's (Wilton and Hollis, or the Companies) efforts toward achieving compliance with Commission orders, rules and a February, 1999 Stipulation executed as a result of Dockets DR 98-058 and DR 98-059.[1] The December 22 Report indicated that the Staff, in attempting to take a proactive approach of ensuring

[1]. On February 4, 1999, Staff and the Parties executed a Stipulation and Comprehensive Settlement Agreement in Dockets DR 98-058 and DR 98-059 (Investigation into Overearnings) which was approved by the Commission in Order No. 23,190. *Re: Wilton Telephone Company, Inc.,* 84 NH PUC 232 (1999). The Dockets were opened as a result not only of the overearnings but also due to noncompliance practices toward Commission regulations.

Company compliance, discovered the Companies were still not fully complying with their own commitments or Commission rulings. The Report noted that in proceeding with audits of the Companies' records it was determined that the Companies missed deadlines, failed to correct discrepancies in Annual Reports and failed to foster or establish an environment of trust with the Staff and the Office of Consumer Advocate (OCA).

The Report provided detail regarding the Companies' compliance with each of the fourteen areas of Settlement found in the February 3, 1999, Stipulation and Comprehensive Settlement. The fourteen points listed in the Settlement Agreement contemplated revenue requirement issues, penalties, refunds to customers, compliance issues (including the hiring of a new accountant, implementing new accounting software, performing additional audit procedures),audit issues, transaction costs relating to the start-up of Hollis, Hollis Switch costs, affiliated contracts, rate design, future rate increases, rate case expenses, temporary rate refunds and customer credits. The report identified through a separate attachment, seven discrete areas where the audit Staff contended the Companies failed to fully comply with the 1999 Agreement. These areas included changes in operations and personnel, both internal and with

respect to the Companies' CPA firm; matters with respect to affiliated contracts; and treatment of rate case expenses, temporary rate refunds and customer credits.

In addition to compliance issues resulting from Order No. 23,190, Staff's memorandum also indicated that its latest analysis showed that both Wilton and Hollis were earning in excess of their last authorized rate of return. Staff recommended that the Commission include within this pending proceeding notice that earnings of both companies would be reviewed as well.

As a result of the Staff's Report, the Commission issued Order No. 23,615, on January 10, 2001, requiring the Companies to explain: why they should not be required to replace their auditors; why the Companies, their officers and agents should not be fined and/or penalized for failure to comply with Order No. 23,190; why the Companies' authority to engage in business in New Hampshire should not be withdrawn; and why the Commission should not open a separate proceeding to investigate the Companies' rates.

On January 12, 2001, the Companies' counsel requested additional time to publish the Order so that the Company could meet with Staff to discuss the issues raised in the Report. Staff

and the Company agreed to recommend that the Commission reschedule the hearing and establish current rates as temporary rates as of January 30, 2001, the originally scheduled hearing date, pursuant to RSA 378:27.

On January 29, 2001, the Commission issued Order No. 23,630, which rescheduled the Prehearing Conference for February 28, 2001. The Order indicated that the issue of temporary rates would be on the agenda for the rescheduled prehearing conference. The Order also directed that before the Companies made dividend payments, they first obtain approval from this Commission.

On February 15, 2001, Staff filed with the Commission its Supplemental Report highlighting a number of issues contained in various submissions by the Companies that were in need of correction or further clarification. Additionally, Parties and Staff filed their respective preliminary position statements. The Prehearing Conference was held, as anticipated, on February 28, 2001. No requests for intervention were received. The Office of Consumer Advocate submitted notice of participation on January 16, 2001, pursuant to a formerly adopted Memorandum of Agreement.

II. ALLEGATIONS OF NON-COMPLIANCE

At Attachment B to the December Report, the Commission Audit Staff provided a descriptive account of each Settlement item and whether the Companies met the requirements or failed to comply. The following provides areas in which the Companies did not comply or failed to fully comply.

The Audit Staff concluded, among other things, that the Companies were not in full compliance with the "refund to customers" portion of the Settlement because of the accounting treatment of "customer credits." The Settlement at Section IV, paragraph 3, noted that Wilton and Hollis would return $130,691 and $231,666 respectively to customers as set forth in the "customer credit" section of the Agreement. The Staff review of the Companies' 1999 Annual Reports and audited financial statements revealed that the Companies had under-reported the net customer refunds in violation of Order No. 23,190. The Audit Staff concluded that there was a $20,340 difference between what should have been refunded to Hollis customers and the Hollis books. Similarly, the Wilton books reflected a $28,866 difference.

Next the Audit Staff averred that the Companies did not comply with the 1999 Settlement Agreement, at Section IV, paragraph 4, subsections a, i through iii. The Settlement required the Companies to hire a new senior accountant, upgrade or replace accounting software, and obtain additional audit procedures from Berry, Dunn, McNeil & Parker (BDM&P). The Audit Staff determined the Companies were out of compliance by failing to hire a new senior accountant. They also determined that the Companies did not fully comply with the requirements of upgrading or replacing the accounting software. The report also indicated that the Companies failed to fully comply with the Section IV, 4. a. iii, Settlement Agreement items regarding the requirements for BDM&P to provide reconciliation to Staff and OCA of amounts between annual reports and audited financial statements, and to meet all Settlement compliance deadlines for audit finds. For example, the Audit Staff found that the Companies failed to complete continuing property records, failed to correct past year depreciation entries and failed to properly book revenue associated with pole line and cable attachments.

The Audit Staff averred that the Companies had not fully complied with the provision found at Section IV, paragraph 5 of the Settlement. The Settlement acknowledged that the

Companies would be subject to random audits to ensure progress and compliance in all settlement areas. The Audit Staff indicated that during the course of conducting at least two audits the Companies "were consistently delinquent in providing responses..., did not provide data" and even after three rounds of inquiries the Companies still had discrepancies in the 1999 Annual Reports.

The Audit Staff found that the Section IV, item 6 b., "Outside Audit Issue," was not fully complied with. The Settlement required BDM&P to issue copies of the SAS 61 letter and annual financial reports directly to the Commission Finance Director and the OCA for fiscal years 1999 to 2000. The Audit Staff pointed out that for years 1998 and 1999 BDM&P did not issue the copies as directed. Moreover, the Audit Staff noted variances in 1999 Audited Financial Statements prepared by BDM&P.

In Section IV, paragraph 6 c. the Settlement states that if

> instances which precipitated the OCA and Staff's recommendation for BDM&P's replacement occur again in the future the Parties and Staff agree that retention of BDM&P will be reviewed by the Commission.

The Audit Staff recommended that the Commission review the Companies retention of BDM&P.

In Section IV, paragraph 9, “Affiliate Contracts,” the Audit Staff recommended that the Companies prove compliance with subparagraphs a and e. The Audit Staff found that the Companies were not in compliance with subparagraph f.

In subparagraph a it was agreed the Companies’ holding company, Telecommunications Systems of New Hampshire (TSNH), was permitted to earn the allowed return on equity as a return on the assets it holds and that are used by TSNH in providing telephone services for the Companies. It was also agreed to facilitate tracking of the return the charges to TSNH should be recorded as separate monthly recurring journal entries. The Audit Staff could not provide an opinion on the Companies compliance with the agreed condition.

In subparagraph f of item 9 the Companies were required to file a reconciliation of all charges by TSNH, Draper Energy and any other company owned by Stuart Draper that showed amounts billed to Hollis and Wilton. The reconciliation was to meet certain criteria that was outlined in the Settlement. Staff Auditors determined that no such reconciliation was filed in 1998 and that in 1999 only a workpaper was prepared by BDM&P which supported affiliate charges reported in 1999. The workpaper, however, was insufficient to meet the outlined criteria and also

differences were noted between affiliate charges reported in financial statements and the 1999 Annual Report. Staff Auditors observed that the Companies even after being asked to reconcile the differences failed to do so.

In Section 4, paragraph 12 the Settlement discussed rate case expenses. The Settlement allowed the Companies to collect only 50% of the expenses from ratepayers. Staff Auditors determined the Companies were not in full compliance of the provision after a review of the 1998 and 1999 Annual Report. For example, Hollis and Wilton were allowed to recover $33,571 and $33,661 respectively from ratepayers; however, for Hollis in 1999 $31,026 was recorded as an offset to customer refunds and $33,552 was charged to nonoperating expense and in 1999 another $17,446 in rate case expenses were charged to an operating expense account (External Relations). For Wilton the 1998 Annual Report indicated $31,116 of rate case expenses were recorded as an offset to customer refunds and $33,549 was charged to a nonoperating expense account. The 1999 Annual Report showed an additional $15,677 of rate case expenses were charged to the External Relations Account. Thus, Staff Auditors determined that the Companies failed to comply with the Agreement.

Staff Auditors also concluded that the Companies failed to fully comply with the provisions of paragraph 14 relating to Customer Credits. The Staff Auditors addressed under-reporting deficiencies with the Company regarding temporary rated reduction refunds and customer credits, but were not satisfied with the Companies response and also recommended further investigation into the matter.

The Staff Auditors found no additional discrepancies in the Attachment B Report.

III. PREHEARING CONFERENCE POSITIONS OF THE PARTIES AND STAFF

A. Wilton Telephone Company and Hollis Telephone Company

The Companies provided a pre-filed Preliminary Statement on February 26, 2001. Essentially the Companies argue that the proceeding before the Commission is an “extremely severe enforcement proceeding” to which they expressly claim and reserve all of their state and federal Constitutional rights, and their state statutory and regulatory protections.

With respect to the issue of replacing the Companies’ auditors, Berry, Dunn, McNeil & Parker, the Companies claim they have a legally protected interest in managing their own affairs and argue there is no statutory provision authorizing the Commission to direct them to replace their independent public

accountants. Further, Wilton and Hollis contend they should be provided with clear specifications of the facts, which the Staff believes would warrant the removal of the auditors. Wilton and Hollis further aver that the Commission Staff should have the burden of going forward, burden of production and of persuasion with respect to this issue.

With respect to the imposition of fines and/or penalties upon the Companies, Wilton and Hollis claim that the civil penalty provisions of RSA 365:41 and RSA 365:42 violate the New Hampshire Constitution.[2] The Companies further submit that the Commission Staff (and the OCA) should have the burden of going forward, the burden of production and the burden of persuasion with respect to the issue of fines and penalties. The Companies argue that no fines or penalties should be imposed unless the offenses giving rise thereto are proved beyond a reasonable doubt.

The Companies argue that the show cause issue regarding the authority to engage in business should be dismissed because neither Wilton nor Hollis have been made aware of any facts that demonstrate how either Company has declined or unreasonably

[2] The Companies commenced a proceeding in the Hillsborough County Superior Court seeking declaratory and injunctive relief in this regard. (Docket No. 01-E-0102). On April 2, 2001, the Court (Homan, J.) denied the relief requested, finding that there was no immediate threat of irreparable harm.

failed to render service within its service territory or that service in either such service territory is in any manner inadequate. The Companies aver, to the contrary that they provide excellent service to their customers, and they are unaware of any substantial complaints from customers. Again, Wilton and Hollis submit that the Staff and the OCA should have the burden of going forward, the burden of production and the burden of persuasion with respect to this issue.

Finally, the Companies indicated that they agree with Staff regarding the setting of temporary rates as of January 30, 2001. As a result of Order No. 23,630, which indicated that the Commission believed temporary rates could not be set without a hearing, the Companies would also not object to having February 28, 2001, the date of the Prehearing Conference serve as the appropriate date for establishing rates as temporary. Moreover, the Companies agreed that a separate proceeding to investigate rates would be appropriate.

B. Office of Consumer Advocate

The OCA concurred with the Preliminary Statement provided by Staff.

C. Staff

Staff provided a pre-filed preliminary statement that served as its preliminary comments. The Staff contends that the Companies' are not in full compliance with the 1999 Agreement and therefore, Order No. 23,190. Moreover, Staff has concerns with discrepancies in the Companies' Annual Reports that despite repeated attempts on the part of Staff have not been corrected by the Companies. Staff believes these problems demonstrate a lack of commitment from the Companies to abide by not only the responsibilities the Companies have under Commission rules but also the burdens accepted under the 1999 Agreement.

Staff asserts that the Companies have the burden of proof on whether they have in fact complied with the Agreement, Order No. 23,190, and with the rules, regulations and other orders of the Commission. Staff also argues, if after a full hearing on the facts, the Commission determines noncompliance then the Commission has the authority to assess penalties pursuant to RSA 365:41 and 365:42.

Finally, Staff believes that establishing a separate proceeding for the ratemaking issues would isolate them from the compliance issues and be more efficient from an administrative standpoint. Staff contends, however, that any information

developed during the compliance dockets should not be precluded from being introduced in the rate dockets. Staff would also agree to setting temporary rates as of February 28, 2001, in compliance with RSA 378:27.

IV. MEMORANDA of LAW REGARDING LEGAL ISSUES

Questions arose at the prehearing conference regarding whether an agency had the burden in an administrative proceeding to prove noncompliance with an agency order. The Commission indicated that it would be helpful for the parties to brief the issue.

On March 9, 2001, the Companies submitted a Memorandum of Law addressing issues related to due process requirements, detailed specification of charges and allocation of burden of proof. The Companies argue first that they should be provided with a detailed specification of the charges against them and that the Staff should be assigned the burden of persuasion and proof with regard to each and every allegation.

The Companies assert they have not been provided with appropriate notice in violation of due process rights of both the State and Federal Constitutions. First, the Companies claim they have not been apprised of the reasons for the review of their authority to conduct business and have no explanation as to what

the Companies are alleged to have done which would trigger a review under RSA 374:28. Next, the Companies contend they have not been apprised as to the factual and legal bases to support the issue concerning the replacement of the auditors since there is no factual allegation which would warrant an order compelling replacement. Likewise, they assert the notice provided does not specify conduct that would warrant the imposition of fines either individually or for the Companies as a whole.

As to the burden of proof, the Companies contend the applicable statutory scheme in New Hampshire does not contain provisions concerning the allocation of the burden of proof in anything but a rate case. See Companies' Memo of Law, p. 10. Accordingly, the Companies assert that one must turn to the Federal Administrative Procedure Act (FAPA) for guidance. The FAPA at 5 USC '556(d) allocates the burden of proof to the proponent of an order except as otherwise provided by statute. As such, the Companies state that since Staff is seeking orders with respect to the matters addressed in the show cause order Staff has the burden of proof.

Staff maintains that in all matters before the Commission, the Companies bear the burden of proof. Moreover, in this specific case, Staff asserts that the adequacy of the notice

provided to the Wilton and Hollis is reasonable and that the Companies are required by statute to satisfy complaints brought against them. Thus, according to Staff, the Companies must bear the burden of proof and persuasion.

In its brief, Staff posits that the requirements of the New Hampshire Administrative Procedure Act at RSA 541-A:31 have been fulfilled and the Companies are reasonably apprised of the issues and the specific allegations against them. Staff cites to Berube v. Belhumeur, 139 NH 562, (1995) for the proposition that notice merely needs to be fair and reasonable under the circumstances and not something that requires "ideal accuracy." Staff argues that the December 22, 2000 report is descriptive in its explanation of the areas of noncompliance therefore the requirements of due process have been adequately met.

Staff further argues that the Companies overlook the fact that New Hampshire statutes provide guidance as to the burden of proof in any case before the Commission. Staff points to RSA 365:2, RSA 365:5 and RSA 541-A:30, II as evidence that supports Staff's contention that the Companies bear the burden of proof.

The Office of the Consumer (OCA) Advocate agrees that due process must be afforded to the Companies in this case. The OCA, however, disagrees with the Companies' assertion that they have not been provided a detailed specification of the charges. Additionally, the OCA contends the Company has the burden of proof with regard to the compliance issues in the case. The OCA further argues that the doctrines of res judicata and collateral estoppel prevent the Companies from objecting to the Commission's authority to impose fines. Finally, the OCA asserts that ratepayers have a right to enforcement of the 1999 Agreement.

V. PROCEDURAL SCHEDULES

At the prehearing conference the Commission indicated that it believed the rate case should proceed on a separate track form the compliance issue case. Accordingly, Commissioner Geiger required dockets to be opened for the rate proceedings.[3] After the Prehearing Conference at the direction of the Commission, the Parties and Staff met in a technical session to discuss procedural schedules for the cases.

The Parties and Staff agreed to a procedural schedule to be used solely in the rate dockets and presented that to the

[3] Docket Numbers for the rate cases are DT 01-40 and DT 01-41 for Wilton Telephone Company and Hollis Telephone company respectively.

Commission. The Parties and Staff also agreed to utilize year 2000 as the test year in the rate case.

As for the compliance dockets the parties and Staff were unable to agree to a procedural schedule in advance of the Commission's rulings regarding the burden of proof and notice issues. Thus, both Staff and the Companies' submitted proposed schedules with their Memoranda of Law.

VI. COMMISSION ANALYSIS

A. RATE CASE

We agree it is necessary and in the interest of expediency and efficiency to open separate dockets to address the issue of rates. It was on this basis that we directed that DT 01-040 and 01-041 be opened to handle the investigation into earnings for the two companies. Additionally, we believe that the type of schedule and time-frames proposed in the procedural schedule accomplish the goals of the rate investigation dockets. However, the passage of time requires new specific dates to be inserted. The parties should work with Staff to establish the specific dates to be inserted in the schedule.

The issue of establishing temporary rates was noticed in Order No. 23,630 and discussed during the prehearing conference. It was agreed by both Staff and the Companies that

the temporary rates should be set at existing rates as of February 28, 2001. We believe that the statutory provisions of RSA 378:27 have been fulfilled and will approve the establishment of temporary rates as of February 28, 2001.

The decision with regard to the compliance investigation procedural schedule is complicated by the fact there is disagreement as to which party has the burden of proof. Accordingly, we must make a determination on the issues raised initially in the Companies' Preliminary Statement and further developed in the Memoranda of Law discussed above.

B. NOTICE ISSUES

As the Companies acknowledge, this matter was initiated as a show cause proceeding requiring Wilton and Hollis to show cause (i) why they should not be required to replace their auditors, (ii) why they and their officers and agents should not be fined or penalized, (iii) why their authority to engage in business in New Hampshire should not be withdrawn pursuant to RSA 374:28, and (iv) why the Commission should not open a separate proceeding to investigate rates. The Companies therefore have been apprised as to the reason for the initiation of the dockets. They argue, however, that they do not have specific information

as to the acts or omissions that form the bases of each issue under review. We disagree.

The Report of December 22, 2000 with its Attachment B details areas of alleged noncompliance by the Companies. These specifics, which are described in Section II above, support our Show Cause orders.

Appendix A of the Report lists 14 points of needed compliance found in the 1999 Stipulation. Staff reports that the Companies are considered to be in full compliance with only seven (7) of the 14 points. In each of the 14 points Staff provides a detailed description, with subparts, of what the Companies were required to do. An even more detailed summary is found at Appendix B to the Report, which provides Staff's opinion as to the deficiencies. Moreover, our Staff has met with the Companies in a technical session to further explain areas of concern. In addition Staff has provided the Companies an addendum to its initial report which further describes areas of concern. We believe, therefore, the Companies are sufficiently and reasonably apprised of the allegations against them.

The Companies' notice argument next focuses on the show cause orders' failure to provide an explanation for a review under RSA 374:28 of the Companies' authority to conduct business,

as there are no allegations concerning the Companies' inability to render adequate or required service. They then argue a similar analysis applies to the remaining issues.

While we do not necessarily agree with the Companies' argument that they have been provided with no factual allegations that would trigger a review under RSA 374:28, we find that our authority to examine the issue of whether their authority to conduct business should be rescinded or otherwise modified is not limited to that statute. Under RSA 365:28, the Commission may, after notice and hearing, alter amend, suspend, annul, set aside or otherwise modify any order made by it. Thus, any orders granting the Companies[4] franchises are subject to modification or rescission so long as the procedural and substantive safeguards of RSA 365:28 are met. See *Appeal of Public Service Company of NH,* 141 NH 13, 21 (1996). The Commission will not proceed under RSA 374:28 to examine the question of whether the Companies' conduct warrants withdrawing their authority to engage in business as public utilities. However, the Companies are hereby notified that the Commission will examine the allegations

[4] Wilton Telephone Company and Hollis Telephone Company have been doing business in New Hampshire since 1900 and 1902, respectively, and have been public utilities and held franchises since the early 1900s. More recently, these franchises were reaffirmed at the time of the GTE/TSNH/MCTA stock transfer transaction (Docket Nos. DF 93-240, DF 93-241, and DF 94-021) that took place in 1993 and 1994. *GTE Corp, MCTA, Inc., et al.*, 79 NH PUC 316 (1994)

contained in the show cause orders for purposes of determining whether a sufficient basis exists to modify or rescind the prior franchise orders pursuant to RSA 365:28, and will also consider whether additional or alternative remedies are appropriate.

Clearly, problems with how these Companies carry out their responsibilities have been reasonably identified. Moreover, the Companies will be afforded ample opportunity to conduct discovery in this case; data requests can be utilized to ascertain the accuracy and basis of each allegation and to obtain any other relevant information.

C. BURDEN OF PROOF

The Commission has considered the briefs of the Staff and the Companies on the allocation of the burden of proof, and has determined that resolution of this question requires that a distinction be made between the burden of going forward to present an affirmative or *prima facie* case and the ultimate burden of persuasion on the issues so established where a public utility is involved. In proceedings, such as the instant one, where the Commission issues a "show cause" order or initiates an investigation on its own motion pursuant to RSA 365:5 and 365:19 or as a result of a complaint under RSA 365:4, the burden is on the complainant or the Commission, through its Staff, to

establish the basis of the complaint and an initial demonstration of non-compliance or violation of an order, rule or statutory requirement. Once this affirmative case has been made, the ultimate burden of persuasion on the subject matter of the complaint or investigation is on the public utility.

This allocation of the burden of proof is consistent with the requirements of RSA 365:23, which states that it is "the duty of every public utility to observe and obey every requirement" of an order served upon it "and to do everything necessary or proper in order to secure compliance with and observance of the same by all its officers, agents and employees." This section places an affirmative duty on the public utility to comply with the Commission's orders, and it is reasonable and consistent with this section to require a public utility to bear the burden of persuasion where such compliance has been questioned.

The allocation of burden of proof is also consistent with the deeper legislative purpose of RSA 374:1 that a public utility is under a continuing duty to furnish safe and adequate service and facilities in a just and reasonable manner. In meeting this duty, the public utility has, among other things, an affirmative obligation to keep its accounts, records and books in

a manner prescribed by the Commission (RSA 374:8, 374:13) and to file reports or produce its books, records or reports at such time and place the Commission requires. Again, since the public utility is under an obligation to regularly demonstrate its compliance with its service obligations, it is logical to impose upon it the burden of persuasion where its compliance is under investigation. This allocation of the burden of persuasion to the public utility is also in accord with a policy of imposing the burden on the party with the best access to relevant evidence, particularly where matters of public safety and health are involved, such as the work of public utilities.

We note that though the Companies have cited to the federal Administrative Procedure Act at §556(d) for the proposition that the "proponent of a rule or order has the burden of proof," this section has consistently been interpreted by the federal courts in a manner consonant with our discussion. In *Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 548 F.2d 998 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925 (1977), the court held that "the burden of proof" in §556(d) does not mean "ultimate burden of persuasion" but means only "burden of going forward." See also *National Labor Relations*

Board v. Transportation Management corp., 426 U.S 393, 103 S.Ct. 2469, 76 L.Ed. 2d 667 (1983).

Accordingly, while Staff has the burden of going forward and establishing a prima facie case, the Companies then bear the ultimate burden of persuasion that they are in compliance with our Orders. In light of our resolution of this threshold issue, we will adopt the following procedural schedule for the duration of this proceeding:

Staff Initial Round of Discovery (completed by)	08/15/01
Staff Testimony	09/03/01
Companies' and OCA Data Requests to Staff	09/17/01
Staff Data Responses	10/01/01
Companies' and OCA Testimony	10/15/01
Data Requests to Companies' and OCA	10/29/01
Data Responses from Companies' and OCA	11/12/01
Rebuttal Testimony	11/28/01
Hearings	12/18 & 12/19/01

D. FINES

The Commission recognizes that the Companies have reserved the right to challenge the constitutionality of the Commission's authority to impose fines and penalties under RSAs

365:41 and 365:42. The Commission renders no decision on the Companies' arguments at this time, as there has been and can be no determination as to whether such remedies are even appropriate until a review of the evidence is completed.

Based upon the foregoing, it is hereby

ORDERED, that Staff bears the burden of production and the Companies bear the burden of persuasion in the compliance case; and it is

FURTHER ORDERED, that the overearnings investigations will proceed as separate dockets DT 01-040 and DT 01-041 with the Parties and Staff to meet to propose a new procedural schedule to be submitted to the Commission no later than July 31; and it is

FURTHER ORDERED, that temporary rates will be established at the level of current rates as of February 28, 2001 in the aforementioned separate dockets; and it is

FURTHER ORDERED, that the procedural schedule as discussed above for the compliance cases is adopted.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 2001.

Douglas L. Patch	Susan S. Geiger	Nancy Brockway
Chairman	Commissioner	Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary