DE 01-224

Connecticut Valley Electric Company Inc.

Request for Temporary Billing Surcharge and Waiver of Rule Puc 1203.05(a)

Order on Oral Motions

O R D E R N O. 23,887

December 31, 2001

APPEARANCES: Ransmeier & Spellman, Dom D'Ambruoso, Esq. on behalf of Connecticut Valley Electric Company; McLane Graf, Raulerson & Middleton, Sarah Knowlton, Esq. for the City of Claremont; New Hampshire Office of the Attorney General, Wynn Arnold, Esq. representing the Governor's Office of Energy and Community Service; Consumer Advocate, Michael Holmes, Esq. for the Office of Consumer Advocate and Lynmarie Cusack, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On November 16, 2001, Connecticut Valley Electric Company Inc. (CVEC) submitted a tariff filing to the New Hampshire Public Utilities Commission (Commission) requesting implementation of a Temporary Billing Surcharge (TBS) to recover approximately $1.7 million in costs related to: the New Hampshire Retail Competition Pilot Program, Docket DE 95-220; Electric Utility Restructuring proceedings in Docket DR 96-150, including core energy efficiency costs; federal court litigation concerning Electric Utility Restructuring in which former Chairman Patch and Commissioners Geiger and Brockway are named defendants (Patch case); Docket DE 00-110 ("Wheelabrator"); the Year 2000 transition (Y2K); and certain

smaller items. The Company proposed to recover such costs on a bills-rendered basis starting on or after January 1, 2002, via a TBS of $0.0123 per kWh. At the same time, CVEC filed a request to decrease its Fuel Adjustment Charge/Purchased Power Adjustment Charge (FAC/PPCA) by $0.0123 per kWH, in docket DE 01-225. The combined effect of the TBS and the FAC/PPCA changes would be a zero net change in customer bills.

On November 29, 2001, CVEC filed the testimony of Company representatives, C.J. Frankiewicz and Alf R. Strom-Olsen, thus completing its November 16, 2001 filing. The testimony described the Company’s need for the TBS and CVEC's cash situation. On November 30, 2001, the Commission issued an order of notice establishing a hearing on the matter for December 18, 2001.

The City of Claremont and the Governor’s Office of Energy and Community Service filed timely requests for intervention. The Office of Consumer Advocate (OCA) also gave notice of its intent to participate in the docket. No objections to the intervention were received.

The hearing on the request for a TBS commenced on December 18, 2001, with a second session held on the afternoon of December 19, 2001. At the close of the Company's case, the Staff and intervenors made various oral motions including motions to strike certain exhibits on the grounds that the

Company had failed to provide discovery as to them and that they were unsupported by competent testimony, and motions to dismiss the case on the grounds that the Company had failed to meet its burden of proving whether the costs it seeks to recover, in particular approximately $1.4 million in legal costs related to restructuring, were reasonable and were prudently incurred. The Company opposed the motions, and noted that it could present the testimony of its legal counsel at a later hearing to support the reasonableness of such costs, if the Commission so desired. Because we dispose of the subject matter of the motions in our decision, below, it is not necessary to address the specifics of these motions.

Also, at the close of the hearing on December 19, 2001, the Chairman of the Commission inquired of the Company its position regarding recusal of one or more Commissioners because of CVEC's attempts to recover legal costs associated with CVEC litigation in which two Commissioners are named defendants. On December 27, 2001, the Company filed a letter (CVEC December 27 letter) stating that it did not request recusal of any Commissioner.

On December 20, 2001, the OCA requested a “full Commission” pursuant to RSA 363:17 in any further proceedings in the docket.

On December 26, 2001, CVEC filed a letter (CVEC December 26 letter) with the Commission requesting that the Commission order the TBS rates into effect as temporary rates, effective January

1, 2002, pending the outcome of the proceeding. On December 27, 2001, Staff filed a letter opposing this request.

II. POSITIONS OF THE PARTIES

A. CVEC

CVEC requests recovery of approximately $1.7 million in costs through a TBS to be effective January 1, 2002, and subject to reconciliation at the end of this proceeding. CVEC asserts that the TBS would permit the recovery of the incremental costs by November, 2002, which would have the effect of avoiding a rate increase in 2002, and of setting up a rate decrease to be effective at the termination of the TBS, and resolving an accounts payable cash deficit that would otherwise persist into the future. The Company alleged that it is unable to pay power bills owed to its parent company and is incurring late payment charges because it is "cash short," as it paid out $1.7 million for costs that it has not recovered in rates.

The proposed TBS includes $995,000 in costs allegedly related to federal court litigation against the Commission relating to the Commission enforcement of RSA 374-F, the Electric Restructuring statute. The TBS would also recover $452,000 in costs related to restructuring in proceedings before the Commission, including $351,400 in outside legal fees. The Company also seeks recovery of approximately $107,000 in Y2K costs and $96,000 in Wheelabrator costs, together with smaller

amounts for Core Energy Efficiency programs ($13,000), unbundling of Company bills ($8,000); and the shift from the franchise tax to the Energy Consumption and Business Profits taxes ($14,000).

According to the Company, the Commission permitted it to defer the costs for which it now seeks recovery. The Company states that it determined as of December 21, 1997, that it no longer qualified for the application of SFAS 71, relating to deferral of costs by regulated utilities, and that "as a result" the Company wrote off all of its regulatory assets associated with its New Hampshire retail business as of that date. *See* Exh. 1, at 2. Until September 30, 2001, when the Company again determined that it qualified for application of SFAS, the Company expensed all similar costs "since they could not be deferred with CVEC's being off FAS 71 accounting." *Id.*

The Company notes that it recovered its Docket DR 95-250 pilot program costs through March 31, 1998, in an earlier TBS authorized by the Commission, and in this docket seeks only those pilot program costs incurred and deferred since then, through September 30, 2001. *Id.*

With respect to DR 96-150 costs, the Company states that it has not recovered any of such costs since it began incurring them in 1995, and seeks recovery of such costs incurred through September 30, 2001. The Company points out that it was

authorized to defer such costs by a provision in the Stipulation approved in its last base rate increase, in Docket DR 96-170. *Id.* The Company argues that the costs of participating in the core energy efficiency programs docket, DE 01-057, are properly considered restructuring costs, and were properly deferred along with DR 96-150 costs pursuant to the Stipulation. Tr. Day I, at 38-39.

The Company notes that it recovered its Wheelabrator costs related to its filing at the Federal Energy Regulatory Commission (FERC), as well as an estimate of subsequent appeal costs, in an earlier TBS authorized by the Commission, which provided for the application of carrying charges to uncollected balances. Exh. 1*, at 2-3.* CVEC seeks to include in the proposed TBS in this docket the small amount of unrecovered appeal costs, and incremental the costs of the Wheelabrator docket incurred through September 30, 2001. *Id. at 3.*

The Company states that it incurred Y2K transition costs during the time it was off FAS 71 accounting, which, it asserts, "would have rendered useless a petition for an accounting order for the purpose of deferring." *Id.* CVEC states that it has not recovered such costs in rates, and seeks their recovery through the proposed TBS.

With respect to the $995,000 in Patch litigation costs, CVEC argues that its legal bills constitute evidence reliably

based on established records, and should therefore be accepted as *prima facie* proof of the reasonableness of the expenditures shown in them. December 27 letter at 2. CVEC states that if mere assertions of unreasonableness require it to produce more evidence, the Commission should grant CVEC the opportunity to respond to the assertions, and to correct perceived deficiencies, before dismissal is granted. *Id.* CVEC notes that it has produced the affidavit of its General Counsel, marked for identification as Exh. 11, in response to assertions that its witness Mr. Frankiewicz is not competent to testify as to the reasonableness of the legal bills, and that attorney Kraus in that affidavit stated under oath that he is "familiar with regulatory and judicial legal processes, the billing practices of private law firms, and the legal needs of public utility companies." *Id.*, quoting from Exh. 11. The Company argues that it is hard to imagine what sort of expert would have more knowledge about the reasonableness of public utility legal bills than the general counsel of a public utility. *Id.* at 2.

The sum of costs the Company proposes to recover is approximately $1.7 million. Company proposes to recover this amount entirely in 2002, in order for the impact of such recovery to coincide with net power cost reductions proposed to be implemented in FAC/PPCA rates, such that a zero net impact on rates will result. The Company asserts that it is unable to pay

its power bills, and is incurring late charges as a result. *Id.* The Company states that the pre-tax amount of overdue power bills in 2002 is estimated to be $1.243 million. The Company avers that its allowed earnings are only $400,000 annually, and that thus it cannot make up its cash shortage out of its earnings. *Id.*

The Company seeks a waiver of Puc 1203.05(a), pursuant to Puc 201.05, on the grounds that implementation of the rate on a bills-rendered basis would eliminate customer confusion and reduce administrative costs. *Id., at 4.*

B. GOECS

The GOECS filed a response to CVEC's December 26, 2001 and December 27, 2001 letters. With respect to CVEC's request for the TBS to go into effect on a temporary basis, GOECS states it is unaware of any precedent allowing for temporary, one-issue rate increases prior to the conclusion of evidentiary hearings, which is precisely what CVEC now seeks in this docket. In GOECS's view, CVEC's sole justification for creating an exception in this case is the "yo-yo effect" that different implementation dates in the two dockets may create. The more appropriate resolution of this issue, according to GOECS, is to delay the FAC/PPCA decrease until a decision on the TBS can be made on the merits after the conclusion of the hearing in that docket. GOECS contends that a delay of a month (or slightly longer if necessary, and with

interest) in the FAC/PPCA docket is a small price to pay in order to be certain that CVEC's recovery from ratepayers is appropriate, especially in light of the contested nature of the expenses at issue in this case. Therefore, GOECS opposes allowing CVEC to implement the TBS on a temporary basis on January 1, 2002.

If the Commission is nevertheless inclined to allow CVEC to implement a temporary TBS, GOECS requests CVEC's own admission concerning its poor cash-flow situation be taken into account, and either: a) require that the Company post bond to secure its ability to repay all monies collected that it might ultimately have to refund to customers; or b) require the Company to amortize recovery over a three or four year period, thus reducing the risk that it might over-recover amounts which it might ultimately have to refund to customers.

GOECS characterizes CVEC's December 27, 2001 letter as mere post-hoc rebuttals to timely evidentiary issues raised by the parties during the December 18th and 19th hearings. According to GOECS, offering an affidavit from Mr. Kraus (CVEC's in-house counsel) stating that the legal bills were reasonable and accurate is not sufficient evidence as to the reasonableness of the bills, or as to the specific proportion of those bills that CVEC seeks to recover from its ratepayers. GOECS contends that it and other intervenors did not have a meaningful chance to review the redacted legal bills, which were only provided for

parties to review at the hearing. Lastly, GOECS states that the redacted bills are too vague for meaningful review.

C. CITY OF CLAREMONT

In its oral motion to exclude evidence and its remarks joining in Staff's oral motion to dismiss CVEC's request, Claremont argues that Company affiant Kraus lacks the necessary expertise to evaluate the reasonableness of the outside legal expenses incurred in the Patch litigation.

D. OCA

OCA orally supported motions to exclude certain evidence and joined in the Staff’s motion to dismiss. OCA also challenged the validity of CVPS’s recovery of $925,000 in Patch litigation costs, and argues that such costs should be refunded. OCA argues this refund would solve CVEC’s cash flow problem.

E. STAFF

Staff believes setting temporary rates in this proceeding is inappropriate and CVEC's December 26 request should be denied. First, Staff notes that the burden of proving the reasonableness of a rate increase is on the utility. Staff contends that if the Commission were to establish temporary rates, the Staff of the Commission and ultimately the Commission would be required to either prove or disprove the Company's case. Staff points to CVEC's suggestion that the Commission should set the rates now and then have the Commission Staff

complete an audit. According to Staff, this approach would place the burden on the Staff to show why the recovery of certain costs might be unreasonable.

Staff further argues that, given the Company's assertions that its financial condition is precarious, establishing a temporary rate without requiring a bond pursuant to RSA 378:30 would be unwise. If the Company's assertions about its cash shortage were true, a bond would be required to ensure the repayment to customers of any difference between the amounts collected under the temporary rate and the rate the Commission finds should have been in effect. Moreover, Staff avers, the situation is made more tenuous when one factors in the testimony that the Company is losing customers.

Other reasons Staff proffers for denying the request relate to the specific project costs that the Company seeks to recover. Staff states that CVEC has neither proven these costs reasonable nor shown them to be allowed by prior Commission orders. Staff cites as an example the nearly $1 million CVEC seeks to recover that are related to the Patch litigation. Staff asserts that neither the Vermont PSB nor the FERC have allowed CVEC's parent company, Central Vermont Public Service (CVPS) to recovery its share of Patch Case costs. Staff further argues that in New Hampshire these costs cannot be said to constitute costs incurred to establish and implement restructuring under RSA 374-

F (the standard by which restructuring costs can be collected), but rather constitute costs incurred to "litigate NHPUC Orders," citing Exh. 2, at 9. Staff also points to CVEC's proposal to include in the TBS about $100,000 in Y2K costs of a kind that the Vermont Public Service Board has ordered be absorbed by the CVPS shareholders (citing the VPSB order in Docket DR 6460 and 6120, June 26, 2001, page 69).

Staff further contends that granting approval for an additional approximately $0.5 million in the proposed TBS even on a temporary basis would contradict Order Nos. 22,984, page 3, and 22,537, page 10, which indicate that Restructuring Costs should be set aside until CVEC implements Retail Choice. Staff states that the record fails to disclose any indication of when retail choice will be available in the CVEC territory. Accordingly, Staff argues, there is no substantiation for granting the temporary rate at this time.

Staff observes that it is well established that the Commission views the temporary rate provision as applicable where financial need is clearly shown. *Concord Electric Co.*, 59 NH PUC 236, 237 (1974) (granting temporary rates to maintain Company financial integrity). Staff argues that in this case, however, while the Company alleges that the recovery of the costs through the TBS would provide cash flow to cure its cash shortage, the Company has provided no proof that the costs are

reasonable. Further, staff contends, the Company has not shown how it attempted to alleviate its cash shortage through other means.

Staff observes that the Commission also said in *Concord Electric Co.* that the temporary rate "provision should not be used indiscriminately but only where the public interest so requires." *Id.* Staff argues that the only showing that the Company makes for putting the temporary rate into effect immediately is that it will preserve "rate stability." Staff contends that the better course of action in this situation would be to wait and determine what costs, if any, the Company should actually recover. Staff argues that the Commission should be certain of the costs it approves and it should not allow a complete temporary recovery only to later determine that customers paid too much.

Staff states that its motion to dismiss was intended to identify that CVEC failed to make its case in establishing the amount and reasonableness of claimed operating expenses. While Patch litigation expenses are the bulk of the CVEC petition, Staff states that it did not limit its request to that portion of CVECs recovery request.

Staff contends that CVEC failed to produce any evidence of the reasonableness of its expenses. There were no exhibits identifying the costs of seven of the project areas for which

recovery was sought, according to Staff. Staff contends that CVEC merely presented the testimony of a witness who offered the amount of expense under each project, and that it was only at Staff's request that CVEC produced redacted legal bills for the Patch litigation project. Staff further notes that it was only after a Staff inquiry at the opening of the case that CVEC asked to make the Patch litigation legal bills an exhibit.

Staff responds to CVEC's implication that its motion to dismiss constitutes an assertion that CVEC's costs were unreasonable, noting that Staff is not able without evidence to make such an assertion. Staff argues that there simply was no evidence of reasonableness.

A review of the standard for granting a motion to dismiss or a motion for directed verdict reveals, in Staff's view, that even if one were to construe the evidence in the light most favorable to CVEC, it cannot be said that the Company met its burden of producing evidence that its expenses were reasonable. Staff contends that simply asserting that project X had n dollars associated with carrying it out falls short of establishing a *prima facie* case, citing the example of a civil negligence action. Staff argues that CVEC wants the Commission to approve costs based apparently on a doctrine similar to that of *res ipsa loquitur*. Staff contends that expenses must be proven, and that CVEC has failed to do so in this case.

Staff also argues that the notice provision of RSA 378:27 has not been followed in this docket: the notice of hearing in this docket did not address setting the TBS as a "temporary rate" as contemplated by the statute. Accordingly, fixing temporary rates at this time is inappropriate, according to Staff.

III. COMMISSION ANALYSIS

The issues in this docket have been complicated by the manner in which the Company has presented its request for a temporary billing surcharge. The proposed TBS is the equivalent of a rate increase in an amount almost four times CVEC's annual earnings, and represents an annual rate increase of approximately 9 percent. CVEC did not file a rate case, but rather sought this extraordinary increase in rates through a miscast billing surcharge. It filed a request for the increase less than two months before the time it proposed that the rate increase would go into effect. It did not file supporting testimony until approximately one month before its proposed effective date. Consequently, the substantive problems with single-issue rate cases were compounded in this docket by the procedural limitations of the Company's proposed form of petition, and truncated schedule request.

Single-issue rate cases are frowned upon in utility ratemaking because the objective of ratemaking is not to ensure

recovery dollar for dollar of every expenditure made by a utility, but rather to ensure that the company has a reasonable opportunity to earn a reasonable overall return on investments dedicated to public utility functions. In order to make this ultimate determination, it is necessary to match ordinary and necessary expenses with income from the same period, and determine whether the net income is sufficient to provide a reasonable return on allowable rate base. Single-issue rate cases do not allow for this determination of overall net income. They focus on the change in a single expense (or revenue) item since the last rate case, ignoring completely what changes may have taken place in the other factors of net income.

The Company argues that the costs in question in this docket are "one-time" costs, and that a TBS is a "perfect mechanism" for recovery of such costs. Tr. Day I, at 42. To establish such a principle, that all "one-time" costs can be included in a TBS, would be to vitiate standard ratemaking principles that require a matching of ordinary costs and revenues. Standard ratemaking does not permit recovery of "one-time" costs (and correspondingly does not reduce rates on account of "one-time" income).

An increase in rates to allow a company to "recover" a single expense (or, as here, several specified expenses), without placing that expense in the overall framework of a net

income determination, risks the establishment of rates that will seriously overcollect (or even undercollect) a company's fair return. A temporary billing surcharge such as the one the Company proposes is, in effect, a single issue rate case, as the Company does not propose that the Commission undertake the rigorous examination of reasonableness and fidelity to regulatory principles that a rate case would require. Neither did the Company follow the Commission's requirements for presenting a rate case. See N.H. Admin. Rule Puc 1600. As we said in Order No. 22,984, "we usually disfavor the use of a surcharge to recover litigation or other expenses that are traditionally reflected in base rates."

The Company argues that it should be allowed to include $1.7 million in costs in rates through a TBS because the Commission has permitted such recovery in the past. Tr. Day I, at 42. However, with respect to the $452,000 in restructuring-related costs incurred in proceedings before the Commission, the Commission has clearly enunciated the rule that the Company may defer such costs, but may not recover them until retail choice exists in the CVEC service area. *See* Order No. 22,984, July 24, 1998. CVEC did not appeal this order. We continue to view it as premature to consider whether and to what extent CVEC should recover restructuring costs when restructuring has not gone forward in CVEC's service area. We do not reach the question of

whether the costs were reasonably incurred, nor whether CVEC presented sufficient evidence in this TBS docket to carry its burden of proof.

CVEC argues that absent its total request of approximately $1.7 million, it will face a continuing cash shortage, and on this basis seeks inclusion of costs in its proposed TBS. CVEC's evidence does not support the relief it seeks.

Essentially, CVEC asks us to sidestep the ordinary course of ratemaking to establish temporary rates on an emergency basis, given its alleged financial crisis. Pursuant to RSA 378:9, the Commission is authorized to temporarily alter a public utility’s rates if the Commission finds that an emergency exists. However, CVEC's own financial witness testified that CVEC is not experiencing a financial emergency. According to CVEC's evidence, its parent and chief source of financing, Central Vermont Public Service Company, is likely to be able to continue providing financing to CVEC, barring unforeseen exigencies. CVEC also contemplates paying a substantial dividend to CVPS in the coming two years. The Company is not at credible risk of losing its ability in the near term to provide service to its customers if it does not obtain an immediate infusion of cash. The Company has failed to demonstrate that the Commission should establish higher rates to maintain its financial integrity as a going concern. *Compare, Concord*

Electric Co., 59 NH PUC 236, 237 (1974) (granting temporary rates to maintain Company financial integrity). Similarly, the Company has failed to demonstrate that a financial crisis justifies ignoring considerations of prudence and reasonableness of its expenses. *Compare, Green Mountain Power Company*, PSB Docket No. 6107, Order issued January 23, 2001 (rates set above level needed to recover all prudently-incurred costs, because utility bankruptcy would otherwise occur).

Moreover, the Company failed to establish a *prima facie* case that such expenses were reasonably incurred. Even if Exh. 11 were accepted into evidence, it would not be sufficient to satisfy the Company's burden. The "business records" evidentiary principle suggested by the Company may have some relevance in a rate case, at least for standard items of Company expense. If a Company were required to put forth expert testimony on every line item in its calculation of rate of return, rate cases would be impossibly unwieldy, and such evidence would not appreciably increase the Commission's understanding of the case. However, rate cases, unlike the present TBS docket, contain numerous procedural devices to identify areas of genuine dispute, and develop a sound record for Commission determination. To ensure that any contested rate case hearings focus on areas truly in dispute, the Commission establishes a well-understood procedural schedule, with pre-

filing notice requirements, filing requirements (including written testimony and workpapers), discovery, Staff and intervenor testimony, rebuttal, and hearings. See Puc 203 and 1600. Through this process, in which the parties are give every opportunity for identifying and exploring issues practicable in the twelve months allotted by statute for a rate case, RSA 378:6, the positions of all sides on contested issues can be brought out, and the Commission obtains sufficient evidence to support its determinations.

In the instant docket, by comparison, the Company gave no advance notice of the request it was preparing to file. Its initial filing lacked supporting testimony. The supporting testimony did not include evidence as to the reasonableness of the expenditures, beyond the conclusory statement of Mr. Frankiewicz, admittedly not competent to opine on the reasonableness of litigation costs. A temporary billing surcharge for such large and contentious items cannot be supported on the conclusory evidence presented by the Company in this case, in a proceeding so truncated that it is difficult to identify issues, and impossible to resolve them.

The TBS is typically used after a base rate case, as a mechanism to collect rate case expenses and provide for any temporary rate recoupment or credit resulting from that proceeding. With such rate case and recoupment surcharges,

there is rarely any dispute as to the recoverability of the costs. In the instant case, the costs are contested, and there is not a sufficient evidentiary basis for the Commission to determine the prudence of the restructuring and Patch litigation expenses in this docket. Similarly, it is not possible in a TBS proceeding to consider the full implications of the proposed recovery on the Company's fair and reasonable return. A TBS is not the appropriate vehicle to consider such costs.

We turn next to the other items for which CVEC seeks recovery in the proposed TBS. With respect to the start up costs associated with implementation of the switch from a franchise taxes to a consumption tax, the Company has filed separately in docket DE 01-232 to recover the ongoing tax. We will allow the proposed TBS, consistent with treatment of such costs in the case of other utilities.

With respect to Y2K transition costs, the Company expensed these costs at the time they were incurred. The Company did not seek an accounting order from the Commission permitting their deferral for ratemaking purposes. The Company argues that it would have been "useless" to request such an order during the time it was not on FAS 71 accounting. Exh. 2 at 4. The Company erroneously conflates accounting for the purposes of meeting Securities and Exchange Commission disclosure requirements (using FASB standards), with accounting for ratemaking purposes.

Even if the Company's Annual Report to Shareholders required that Y2K costs be expensed, the Commission could have provided the Company with an accounting order allowing it to defer the Y2K costs for later ratemaking consideration. Tr. Day II at 111. In any event, the Company expensed its Y2K costs, and it would be a form of retroactive ratemaking to reach back and bring these costs forward for recovery at this time. As with the storm expenses at issue in Docket DR 97-221, if Y2K costs alone were sufficient to lower CVEC's return below a just and reasonable level, and it did not wish to seek an order for their deferral, it could have filed a rate case at the time. *See,* Order No. 22,894. Thus, we deny the proposed inclusion of such costs in the calculation of rates going forward.

With respect to unbundling costs, we do not characterize them as restructuring costs, as they may well have been incurred whether retail choice was introduced or not. However, like the incremental storm costs for which TBS recovery was denied in Order No. 22,894, we see no reason why these costs should be considered outside the context of a rate case.

With respect to restructuring pilot costs, the Commission issued an accounting order, included in Order No. 22,033 at p. 28, permitting deferral of such costs, and expressly authorized their recovery in a TBS. *See* Order No. 22,894. There is no question in this docket that the $14,290 in such costs incurred

between March 31, 1998 and September 30, 2001 are the type of costs at issue in Order Nos. 22,033 and 22,894, and no issue of prudence has been raised with respect to such costs. Consistent with our Order No. 22,984, we will allow CVEC to include these restructuring pilot costs in a TBS, to be effective January 1, 2002.

Similarly, we will allow the recovery of the Wheelabrator litigation expenses in the proposed manner, because this particular category of expenses was included in a TBS in DR 97-221, in Commission Order No. 22,894. We do not reach the question of whether costs with respect to which a company's earnings "appear insufficient to enable it to absorb [the] costs in base rates and ... the expenses relate to a FERC action which the Commission fully supported," Order No. 22,894, may routinely be included in a TBS.

With respect to the costs for which we have determined that the proposed TBS is the proper vehicle for reflection in rates, we will permit the Company to recover carrying costs as proposed in its filing.

With respect to core energy efficiency costs, while the Company argues for their categorization as restructuring costs, they do not fit into the same categorization as the restructuring costs discussed above. The core energy efficiency costs relate to the Company's voluntary participation in Docket

DE 01-057. These costs would be incurred whether the Company opens its service area to retail competition, as required by RSA 374-F, or not. Thus, we do not bar their recovery at this time, under the principle that restructuring costs may be presented for recovery upon the introduction of restructuring. However, the TBS mechanism is not the proper mechanism for recovery of such costs. Absent the establishment in the CVEC territory of a system benefits charge under RSA 374-F, the Conservation and Load Management Program Adjustment is the correct location for energy efficiency cost recovery of this type. The request for a TBS for core efficiency costs is denied at this time, without prejudice to the Company seeking recovery of such costs in connection with its February 27, 2002 Core Energy Efficiency Program filings in dockets DR 96-150 and DE 01-057.

Our determinations above will permit the Company to implement a TBS on January 1, 2002, in an amount sufficient to recover $15,000 in pilot program costs, $14,000 in ECT/(FT)/BPT costs and $96,000 in Wheelabrator costs. In addition, we indicate that $13,000 in core efficiency costs may be presented in other dockets for potential recovery via appropriate surcharges. Thus, our order contemplates a potential increase in rates, outside of a base rate case, of roughly $138,000. This is a substantial increase for customers of a Company the size of CVEC. Finally, we note that rate continuity alone is

not a sufficient reason to permit a utility to raise rates through a temporary surcharge, outside the context of a full rate case examination.

With respect to the Company's request to be permitted to impose the TBS allowed in this order on a bills-rendered basis, we grant the Company's request. It is in the public interest to avoid the additional costs that would be incurred if the Company were to have to impose the rate on a service-rendered basis, particularly as the Company will be implementing a reduction in its FAC/PPCA on a bills-rendered basis at the same time as it implements the instant TBS.

Based upon the foregoing, it is hereby

ORDERED, that the motions for exclusion of evidence and for dismissal of the Company's petition are DENIED as moot; and it is

FURTHER ORDERED, that the Company's request for a temporary billing surcharge to recover restructuring pilot costs, Wheelabrator costs, and the start-up costs related to the Energy Consumption Tax on a bills-rendered basis commencing January 1, 2002 and ending November 30, 2002 is hereby GRANTED; and it is

FURTHER ORDERED, that the Company's request for a temporary billing surcharge to recover other costs is DENIED without prejudice for the reasons set forth above.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of December, 2001.

Thomas B. Getz Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary